



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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**MINI RECORD  
VOLUME 1**



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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

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- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

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		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	<p>Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)</p>
01/11/2021	1721	<p>Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,</p>

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.  
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and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.  
Douglas S. Draper, La. Bar No. 5073



**APPELLEE’S AMENDED SUPPLEMENTAL  
 DESIGNATION OF RECORD ON APPEAL**

Appellee Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its amended supplemental designation of the record in the appeal filed by The Dugaboy Investment Trust and Get Good Trust (together, the “Appellants”) from the *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788] entered by the United States Bankruptcy Court for the Northern District of Texas on January 21, 2021 in the above-captioned chapter 11 bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

**I. Supplemental Items Designated from the Docket in the Bankruptcy Case**

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellants:

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol. 10 002202	April 8, 2020	Proof of Claim No. 143	HarbourVest 2017 Global Fund L.P. Claim No. 143
002211	April 8, 2020	Proof of Claim No. 147	HarbourVest 2017 Global AIF L.P. Claim No. 147
002220	April 8, 2020	Proof of Claim No. 149	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149
002229	April 8, 2020	Proof of Claim No. 150	HarbourVest Dover Street IX Investment L.P. Claim No. 150
002238	April 8, 2020	Proof of Claim No. 153	HV International VIII Secondary L.P. Claim No. 153
002247	April 8, 2020	Proof of Claim No. 154	HarbourVest Skew Base AIF L.P. Claim No. 154

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol 10 002256	July 30, 2020	906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
002279 thru Vol. 12	September 11, 2020	1057	HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
Vol. 12 002896	October 18, 2020	1208	Declaration of Michael Pugatch
002900	October 18, 2020	1207	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan
			Highland CLO Funding Portfolio Management Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
			Highland CLO Funding Subscription and Transfer Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
Vol. 13 002919	November 24, 2020	1473	Liquidation Analysis
			All exhibits necessary for impeachment and/or rebuttal purposes

**II. Docket Items from Case 18-30264-sgj11**

003097	April 13, 2018	118	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264- sgj11, (Bankr. N.D. Tex. Apr. 13, 2018))
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Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan (*In re Acis Capital Mgmt.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019))

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Appellee reserves the right to designate additional items depending on the arguments made by Appellants on appeal.

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Dated: February 25, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
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-and-

**HAYWARD PLLC**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

**NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): \_\_\_\_

*The Dugaboy Investment Trust and Get Good Trust*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.  
Plaintiff  
Defendant  
Other (describe)  
\_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.  
Debtor  
 Creditor  
Trustee  
Other (describe)  
\_\_\_\_\_

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: *Order Approving Debtor's Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*

2. State the date on which the judgment, order, or decree was entered: January 21, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP

Jeffery N. Pomerantz

Ira D. Kharasch

John A. Morris

Gregory V. Demo

Hayley R. Winograd

780 Third Avenue, 34th Floor

New York, NY 10017-2024

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Telephone: (972) 755-7100

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2. Party: Creditor: James Dondero

Attorney:

BONDS ELLIS EPPICH SCHAFER JONES, LLP

D. Michael Lynn

John Y. Bonds

John T. Wilson

Bryan C. Assink

420 Throckmorton Street, Suite 1000

Fort Worth, Texas 76102

Telephone: (817) 405-6900

Fax: (817) 405-6902

3. Party: Creditor: CLO Holdco, Ltd.

Attorney:

KANE RUSSELL COLEMAN LOGAN PC  
Joseph M. Coleman  
John J Kane  
Bank of America Plaza  
901 Main Street, Suite 5200  
Dallas, Texas 75202  
Telephone: (214) 777-4200  
Fax: (214) 777-4299

4. Party: Creditors: HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.

Attorney:

CROWE & DUNLEVY, P.C.  
Vickie Driver  
2525 McKinnon Street, Suite 425  
Telephone: (214) 420-2142

And

DEBEVOISE & PLIMPTON, LLP  
M. Natash Labovitz  
Erica S. Weisgerber  
Daniel E. Stroik  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 909-6000

5. Party: The Dugaboy Investment Trust and Get Good Trust

Attorney:

HELLER, DRAPER & HORN, L.L.C.  
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Leslie A. Collins  
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New Orleans, LA 70130  
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**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

**Not applicable.**

February 1, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

**AMENDED NOTICE OF APPEAL AND STATEMENT OF ELECTION**

**Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s): \_\_\_\_

*The Dugaboy Investment Trust and Get Good Trust*

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- Plaintiff
- Defendant
- Other (describe)

\_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

- Debtor
- Creditor
- Trustee
- Other (describe)

\_\_\_\_\_

**Part 2: Identify the subject of this appeal**

1. Describe the judgment, order, or decree appealed from: *Order Approving Debtor's Settlement with HarbourVest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*

2. State the date on which the judgment, order, or decree was entered: January 21, 2021

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. **Party/Appellee:** Debtor: Highland Capital Management, L.P.

Attorney:

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffery N. Pomerantz  
Ira D. Kharasch  
John A. Morris  
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2. **Interested Party:** Creditor: James Dondero

Attorney:

BONDS ELLIS EPPICH SCHAFER JONES, LLP  
D. Michael Lynn  
John Y. Bonds  
John T. Wilson  
Bryan C. Assink  
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3. **Interested Party:** Creditor: CLO Holdco, Ltd.

Attorney:

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901 Main Street, Suite 5200  
Dallas, Texas 75202  
Telephone: (214) 777-4200  
Fax: (214) 777-4299

4. **Interested Party:** Creditors: HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.

Attorney:

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And

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Erica S. Weisgerber  
Daniel E. Stroik  
919 Third Avenue  
New York, NY 10022  
Telephone: (212) 909-6000

5. **Party/Appellants:** The Dugaboy Investment Trust and Get Good Trust

Attorney:

HELLER, DRAPER & HORN, L.L.C.  
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**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

**Not applicable.**

February 3, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

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and Get Good Trust*



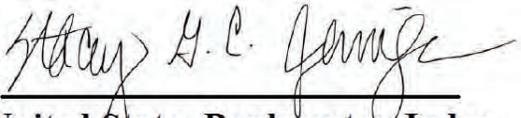
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed January 20, 2021

  
United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT  
WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND  
AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion"),<sup>2</sup> filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Motion; (b) the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1631] (the "Morris Declaration"), and the exhibits annexed thereto, including the Settlement Agreement attached as **Exhibit "1"** (the "Settlement Agreement"); (c) the arguments and law cited in the Motion; (d) *James Dondero's Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest* [Docket No. 1697] (the "Dondero Objection"), filed by James Dondero; (e) the *Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1706] (the "Trusts' Objection"), filed by the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts"); (f) *CLO Holdco's Objection to HarbourVest Settlement* [Docket No. 1707] (the "CLOH Objection" and collectively, with the Dondero Objection and the Trusts' Objection, the "Objections"), filed by CLO Holdco, Ltd.; (g) the *Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1731] (the "Debtor's Reply"), filed by the Debtor; (h) the *HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* [Docket No. 1734] (the "HarbourVest Reply"), filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, "HarbourVest"); (i) the testimonial and documentary evidence admitted into evidence during the hearing held on January 14, 2021 (the "Hearing"), including assessing the credibility of the witnesses; and (j) the

arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion are overruled.
3. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

4. All objections to the proofs of claim subject to the Motion<sup>3</sup> are overruled as moot in light of the Court's approval of the Settlement Agreement.

5. The Debtor, HarbourVest, and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement without need of further approval or notice.

6. Pursuant to the express terms of the *Members Agreement Relating to the Company*, dated November 15, 2017, HarbourVest is authorized to transfer its interests in HCLOF to a wholly-owned and controlled subsidiary of the Debtor pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* without the need to obtain the consent of any party or to offer such interests first to any other investor in HCLOF.

7. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

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<sup>3</sup> This includes the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906].

# **EXHIBIT 1**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

---

<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
One Financial Center  
Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its  
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed  
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General  
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,  
its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

# Exhibit A

**TRANSFER AGREEMENT  
FOR ORDINARY SHARES OF  
HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of January \_\_\_\_, 2021 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
  - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
  - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
  - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
  - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
  - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
  - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
  - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
  
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
  
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
  - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
  - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

  - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
  
6. Miscellaneous.
  - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

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

**TRANSFeree:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

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

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

*[Signature Page to Transfer of Ordinary Shares of Highland CLO Funding, Ltd.]*

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	54,355,482.14	71.0096%
HarbourVest 2017 Global AIF L.P.	7,426,940.38	9.7025%
HarbourVest 2017 Global Fund L.P.	3,713,508.46	4.8513%
HV International VIII Secondary L.P.	9,946,780.11	12.9944%
HarbourVest Skew Base AIF L.P.	1,103,956.03	1.4422%

SEALEDEXH, APPEAL, DirectAppeal, SealedDocument, FUNDS, TRANSIN, REFORM,  
ClaimsAgent, EXHIBITS, COMPLEX

**U.S. Bankruptcy Court  
Northern District of Texas (Dallas)  
Bankruptcy Petition #: 19-34054-sgj11**

*Assigned to:* Stacey G. Jernigan  
Chapter 11  
Voluntary  
Asset  
Show Previous Cases

*Date filed:* 10/16/2019  
*Date Plan Confirmed:* 02/22/2021  
*Date transferred:* 12/04/2019  
*Plan confirmed:* 02/22/2021  
*341 meeting:* 01/09/2020  
*Deadline for filing claims:* 04/08/2020  
*Deadline for filing claims (govt.):* 04/13/2020

**Debtor**  
**Highland Capital Management, L.P.**  
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Dallas, TX 75201  
DALLAS-TX

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*TERMINATED: 12/09/2019*

**Melissa S. Hayward**

000032

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**United States Trustee**  
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214-767-8967

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**Creditor Committee**  
**Official Committee of Unsecured Creditors**

represented by **Sean M. Beach**  
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**Gregory V. Demo**

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(See above for address)

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Filing Date	Docket Text
12/04/2019	<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)
12/04/2019	<u>2</u> DOCKET SHEET filed in 19-12239 in the U.S. Bankruptcy Court for Delaware . (Okafor, M.)
12/04/2019	<u>3</u> Chapter 11 Voluntary Petition . Fee Amount \$1717. Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Creditor Matrix) [ORIGINALLY FILED AS DOCUMENT #1 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>4</u> Motion to Pay Employee Wages /Motion of the Debtors for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A - Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #2 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>5</u> Motion to Pay Critical Trade Vendor Claims /Motion of the Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and

	(B) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #3 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>6</u> Motion to Extend Deadline to File Schedules or Provide Required Information Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #4 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>8</u> **WITHDRAWN** – 10/29/2019. SEE DOCKET # 72. Motion to Approve Use of Cash Collateral /Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Order)(O'Neill, James) Modified on 10/30/2019 (DMC)[ORIGINALLY FILED AS DOCUMENT #6 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>9</u> Application to Appoint Claims/Noticing Agent KURTZMAN CARSON CONSULTANTS, LLC Filed By Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Engagement Agreement # <u>2</u> Exhibit B – Gershbein Declaration # <u>3</u> Exhibit C – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #7 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>10</u> Motion to File Under Seal/Motion of the Debtor for Entry of Interim and Final Orders Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #8 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>11</u> Affidavit/Declaration in Support of First Day Motion /Declaration of Frank Waterhouse in Support of First Day Motions Filed By Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #9 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>12</u> Notice of Hearing on First Day Motions (related document(s)2, 3, 5, 6, 7, 8, 9 [ON DELAWARE DOCKET]) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #11 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>13</u> Notice of Hearing // Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.

	(Attachments: # <u>1</u> Exhibit A) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #12 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>14</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 10/18/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #13 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>15</u> Notice of appearance Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #14 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>16</u> Motion to Appear pro hac vice of Marshall R. King of Gibson, Dunn & Crutcher LLP. Receipt Number 2757354, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #15 ON 10/1/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>17</u> Motion to Appear pro hac vice of Michael A. Rosenthal of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #16 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>18</u> Motion to Appear pro hac vice of Alan Moskowitz of Gibson, Dunn & Crutcher LLP. Receipt Number 2624495, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean) ) [ORIGINALLY FILED AS DOCUMENT #17 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>19</u> Motion to Appear pro hac vice of Matthew G. Bouslog of Gibson, Dunn & Crutcher LLP. Receipt Number 2581894, Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Beach, Sean)) [ORIGINALLY FILED AS DOCUMENT #18 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>20</u> Notice of Appearance and Request for Notice by Louis J. Cisz filed by Interested Party California Public Employees Retirement System (CalPERS) . (Okafor, M.) [ORIGINALLY FILED AS DOCUMENT #19 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE]
12/04/2019	<u>21</u> Motion to Appear pro hac vice (Jeffrey N. Pomerantz). Receipt Number 2564620, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #20 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>22</u> Motion to Appear pro hac vice (Maxim B. Litvak). Receipt Number 2564620, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #21 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>23</u> Motion to Appear pro hac vice (Ira D. Kharasch). Receipt Number DEX032537, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #22 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

12/04/2019	<u>24</u> Motion to Appear pro hac vice (Gregory V. Demo). Receipt Number DEX032536, Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #23 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>25</u> Motion to Appear pro hac vice of Marc B. Hankin. Receipt Number 2757358, Filed by Redeemer Committee of the Highland Crusader Fund. (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #24 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>26</u> Order Approving Motion for Admission pro hac vice Marshall R. King of Gibson(Related Doc # 15) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #25 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>27</u> Order Approving Motion for Admission pro hac vice Michael A. Rosenthal (Related Doc # 16) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #26 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>28</u> Order Approving Motion for Admission pro hac vice Alan Moskowitz (Related Doc # 17) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #27 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>29</u> Order Approving Motion for Admission pro hac vice Matthew G. Bouslog(Related Doc # 18) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #28 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>30</u> Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz (Related Doc # 20) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #29 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>31</u> Order Approving Motion for Admission pro hac vice Maxim B. Litvak (Related Doc # 21) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #30 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>32</u> Order Approving Motion for Admission pro hac vice Ira D. Kharasch (Related Doc # 22) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #31 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>33</u> Order Approving Motion for Admission pro hac vice Gregory V. Demo(Related Doc # 23) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #32 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>34</u> Order Approving Motion for Admission pro hac vice Marc B. Hankin(Related Doc # 24) Order Signed on 10/17/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #33 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>35</u> Certificate of Service of: 1) Notice of Hearing on First Day Motions; 2) Notice of Interim Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C)

	Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing; and 3) Notice of Agenda for Hearing of First Day Motions Scheduled for October 18, 2019 at 10:00 a.m. (related document(s)11, 12, 13) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #34 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>36</u> Motion to Appear pro hac vice (John A. Morris). Receipt Number 2635868, Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #35 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>37</u> Notice of Appearance and Request for Notice by Richard B. Levin , Marc B. Hankin , Kevin M. Coen , Curtis S. Miller filed by Interested Party Redeemer Committee of the Highland Crusader Fund . (Miller, Curtis) [ORIGINALLY FILED AS DOCUMENT #36 ON 10/17/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>38</u> Order Approving Motion for Admission pro hac vice John A. Morris(Related Doc # 35) Order Signed on 10/18/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #38 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>39</u> Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief. (related document(s)2) Order Signed on 10/18/2019. (NAB) [ORIGINALLY FILED AS DOCUMENT #39 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>40</u> Interim Order (A) Authorizing the Debtor to Pay Certain Prepetition Claims of Critical Vendors and (B) Granting Related Relief (Related Doc 3) Order Signed on 10/18/2019 (Attachments: # <u>1</u> Agreement)) (NAB) Modified Text on 10/21/2019 (LB) [ORIGINALLY FILED AS DOCUMENT #40 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>41</u> Notice of Appearance and Request for Notice by Eric Thomas Haitz filed by Debtor Highland Capital Management, L.P.. (Haitz, Eric)
12/04/2019	<u>42</u> Interim Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief. (Related Doc 5) Order Signed on 10/18/2019. (JS) Modified Text on 10/21/2019 (LB). [ORIGINALLY FILED AS DOCUMENT #42 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>43</u> Order Appointing Kurtzman Carson Consultants, LLC as Claims and Noticing Agent for the Debtors Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (Related Doc # 7) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #43 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>44</u> Interim Order Authorizing the Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information. (Related Doc # 8) Order Signed on 10/18/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #44 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>45</u> Notice of Appearance and Request for Notice by Elizabeth Weller filed by Irving ISD , Grayson County , Upshur County , Dallas County , Tarrant County , Kaufman County ,

	Rockwall CAD , Allen ISD , Fannin CAD , Coleman County TAD . (Okafor, M.)
12/04/2019	<u>46</u> Notice of hearing/ <i>scheduling conference</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)). Status Conference to be held on 12/6/2019 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Haitz, Eric)
12/04/2019	<u>47</u> Notice of Service // Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief (related document(s) <u>2</u> , <u>39</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #47 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>48</u> Notice of Service // Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) (related document(s) <u>7</u> , <u>43</u> ) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #48 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/9/2019 (Okafor, M.)
12/04/2019	<u>49</u> Notice of Hearing // Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s) <u>4</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019.(Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #49 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>50</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s) <u>3</u> , <u>40</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #50 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>51</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (related document(s) <u>5</u> , <u>42</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #51 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>52</u> Notice of Hearing // Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information (related document(s) <u>8</u> , <u>44</u> ) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6,

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	Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #52 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>53</u> Notice of Hearing // Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 10/31/2019. (Attachments: # <u>1</u> Exhibit 1) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #53 ON 10/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>54</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Approving Motion for Admission pro hac vice Jeffrey N. Pomerantz [Docket No. 29]; (2) [Signed] Order Approving Motion for Admission pro hac vice Maxim B. Litvak [Docket No. 30]; (3) [Signed] Order Approving Motion for Admission pro hac vice Ira D. Kharasch [Docket No. 31]; (4) [Signed] Order Approving Motion for Admission pro hac vice Gregory V. Demo [Docket No. 32]; (5) [Signed] Order Approving Motion for Admission pro hac vice John A. Morris [Docket No. 38]; (6) Notice of Entry of Order on Motion of Debtor for Entry of Order (I) Authorizing the Debtor to (A) Pay and Honor Prepetition Compensation, Reimbursable Business Expenses, and Employee Benefit Obligations, and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition; and (II) Granting Related Relief [Docket No. 47]; (7) Notice of Entry of Order on Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent for the Debtor Pursuant to 28 U.S.C. §156(C), 11 U.S.C. §105(A), and Local Rule 2002-1(F) [Docket No. 48]; (8) Notice of Motion of Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 49]; (9) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 50]; (10) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief [Docket No. 51]; (11) Notice of Entry of Interim Order and Final Hearing on Motion of Debtor for Entry of Interim and Final Orders Authorizing Debtor to File Under Seal Portions of Its Creditor Matrix Containing Employee Address Information [Docket No. 52]; and (12) Notice of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing [Docket No. 53] (related document(s)29, 30, 31, 32, 38, 47, 48, 49, 50, 51, 52, 53) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #55 ON 10/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M)
12/04/2019	<u>55</u> Notice of Appearance and Request for Notice by Josef W. Mintz , John E. Lucian , Phillip L. Lamberson , Rakhee V. Patel filed by Acis Capital Management, L.P. , Acis Capital Management GP, LLC . (Attachments: # <u>1</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #56 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>56</u> Motion to Appear pro hac vice of Rakhee V. Patel of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #57 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
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	<u>57</u> Motion to Appear pro hac vice of Phillip Lamberson of Winstead PC. Receipt Number 3112761165, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #58 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>58</u> Motion to Appear pro hac vice of John E. Lucian of Blank Rome LLP. Receipt Number 3112548736, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #59 ON 10/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>59</u> Notice of Appearance and Request for Notice by Michael I. Baird filed by Interested Party Pension Benefit Guaranty Corporation . (Attachments: # <u>1</u> Certification of United States Government Attorney # <u>2</u> Certificate of Service) (Baird, Michael) [ORIGINALLY FILED AS DOCUMENT #60 ON 10/23/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.)
12/04/2019	<u>60</u> Order Granting Motion for Admission pro hac vice for Rakhee V. Patel (Related Doc # 57) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #61 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>61</u> Order Granting Motion for Admission pro hac vice of John E. Lucian (Related Doc # 59) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #62 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>62</u> Order Granting Motion for Admission pro hac vice of Phillip Lamberson (Related Doc # 58) Order Signed on 10/24/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #63 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>63</u> Notice of Appearance and Request for Notice by Michael L. Vild filed by Creditor Patrick Daugherty . (Vild, Michael) [ORIGINALLY FILED AS DOCUMENT #64 ON 10/24/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>64</u> Notice of Appointment of Creditors' Committee Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #65 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>65</u> Request of US Trustee to Schedule Section 341 Meeting of Creditors November 20,2019 at 9:30 a.m. Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #66 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>66</u> Notice of Meeting of Creditors/Commencement of Case Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #67 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>67</u> Motion to Authorize /Motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Form of Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #68 ON 10/29/2019 IN U.S.

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	BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A # <u>3</u> Exhibit B # <u>4</u> Exhibit C – Proposed Order # <u>5</u> 2016 Statement # <u>6</u> Declaration Frank Waterhouse # <u>7</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)
12/04/2019	<u>69</u> **WITHDRAWN per #437. Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Hurst Declaration # <u>3</u> Exhibit B – Proposed Order # <u>4</u> 2016 Statement # <u>5</u> Declaration Frank Waterhouse # <u>6</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/11/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>70</u> Application/Motion to Employ/Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019(Attachments: # <u>1</u> Notice # <u>2</u> Rule 2016 Statement # <u>3</u> Declaration of Jeffrey N. Pomerantz in Support # <u>4</u> Declaration of Frank Waterhouse # <u>5</u> Proposed Form of Order # <u>6</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #71 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>71</u> Notice of Withdrawal of Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Authorizing the Liquidation of Securities, (D) Modifying the Automatic Stay, and (E) Scheduling a Final Hearing (related document(s)6) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #72 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>72</u> Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #73 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>73</u> Application/Motion to Employ/Retain Kurtzman Carson Consultants as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Gershbein Declaration # <u>4</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #74 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>74</u> Application/Motion to Employ/Retain Development Specialists, Inc. as Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and

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	Restructuring-Related Services, Nunc Pro Tunc As of the Petition Date Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Engagement Letter # <u>3</u> Exhibit B – Sharp Declaration # <u>4</u> Exhibit C – Proposed Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #75 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – OCP List # <u>4</u> Exhibit C – Form of Declaration of Disinterestedness # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>76</u> **WITHDRAWN by # <u>360</u> ** Motion to Approve /Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Appendix I # <u>3</u> Appendix II # <u>4</u> Proposed Form of Order # <u>5</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #77 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 1/16/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>77</u> Notice of Appearance and Request for Notice by William A. Hazeltine filed by Interested Party Hunter Mountain Trust . (Okafor, M.) (Hazeltine, William) [ORIGINALLY FILED AS DOCUMENT #78 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>78</u> Notice of Meeting of Creditors/Commencement of Case (Corrected) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 11/20/2019 at 09:30 AM at J. Caleb Boggs Federal Building, 844 King St., Room 3209, Wilmington, Delaware. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #79 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>79</u> Motion to Appear pro hac vice of Brian P. Shaw of Rogge Dunn Group. Receipt Number 0311-27677, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #80 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>80</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Certificate of Service) (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #81 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>81</u> Notice of Appearance and Request for Notice by Jessica Boelter , Alyssa Russell , Matthew A. Clemente , Bojan Guzina filed by Creditor Committee Official Committee of Unsecured Creditors . (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #82 ON 10/30/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>82</u> Initial Reporting Requirements /Initial Monthly Operating Report of Highland Capital Management, LP Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #83 ON 10/31/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>83</u> Order Approving Motion for Admission pro hac vice Brian P. Shaw(Related Doc # 80) Order Signed on 11/1/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #84 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>84</u> Notice of Appearance and Request for Notice by Sarah E. Silveira , Michael J. Merchant , Asif Attarwala , Jeffrey E. Bjork filed by Interested Parties UBS AG London Branch , UBS Securities LLC . (Attachments: # <u>1</u> Certificate of Service) (Merchant, Michael) [ORIGINALLY FILED AS DOCUMENT #85 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>85</u> Motion to Change Venue/Inter-district Transfer Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E – Certificate of Service) (Guzina, Bojan)[ORIGINALLY FILED AS DOCUMENT #86 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>86</u> Emergency Motion to Shorten Notice With Respect To The Motion Of Official Committee Of Unsecured Creditors To Transfer Venue Of This Case To The United States Bankruptcy Court For The Northern District Of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Certificate of Service) (Guzina, Bojan) [ORIGINALLY FILED AS DOCUMENT #87 ON 11/01/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>87</u> Order Denying Emergency Motion to Shorten Notice With Respect to The Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District Of Texas (Related Doc # 87) Order Signed on 11/4/2019. (JS) [ORIGINALLY FILED AS DOCUMENT #88 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>88</u> Notice of Appearance. The party has consented to electronic service. Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #89 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>89</u> Motion to Appear pro hac vice of Patrick C. Maxcy. Receipt Number 2770240, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #90 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>90</u> Motion to Appear pro hac vice of Lauren Macksoud. Receipt Number 2770389, Filed by Jefferies LLC. (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #91 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>91</u> Notice of Appearance. The party has consented to electronic service. Filed by INTEGRATED FINANCIAL ASSOCIATES, INC. (Carlyon, Candace) [ORIGINALLY FILED AS DOCUMENT #92 ON 11/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>92</u> Order Approving Motion for Admission pro hac vice Patrick C. Maxcy(Related Doc # 90) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #93 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>93</u> Order Approving Motion for Admission pro hac vice Lauren Macksoud(Related Doc # 91) Order Signed on 11/5/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #94 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>94</u> HEARING CANCELLED. Notice of Agenda of Matters not going forward. The following hearing has been cancelled. Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/7/2019 at 03:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #95 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>95</u> Notice of Appearance. The party has consented to electronic service. Filed by BET Investments, II, L.P.. (Attachments: # <u>1</u> Certificate of Service) (Kurtzman, Jeffrey) (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #96 ON 11/05/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>96</u> Certification of Counsel Regarding Order Scheduling Omnibus Hearing Date Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Proposed Form of Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #97 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>98</u> Order Scheduling Omnibus Hearings. Omnibus Hearings scheduled for 12/17/2019 at 11:00 AM US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Signed on 11/7/2019. (CAS) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #98 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>101</u> Exhibit(s) // Notice of Filing of Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #99 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>102</u> Affidavit/Declaration of Service for service of [Signed] Order Scheduling Omnibus Hearing Date [Docket No. 98] (related document(s)98) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #100 ON 11/07/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>103</u> Notice of Deposition – Notice to Take Rule 30(b)(6) Deposition Upon Oral Examination of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #101 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>104</u> Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #102 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)

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	(Entered: 12/05/2019)
12/04/2019	<u>106</u> Notice of Service – Notice of Intent to Serve Subpoena Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #103 ON 11/10/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>107</u> Notice of Substitution of Counsel Filed by Alvarez & Marsal CRF Management, LLC, as Investment Manager of the Highland Crusader Funds. (Attachments: # <u>1</u> Certificate of Service) (Ryan, Jeremy) [ORIGINALLY FILED AS DOCUMENT #104 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>108</u> Amended Notice of Appearance. The party has consented to electronic service. Filed by Official Committee of Unsecured Creditors. (Beach, Sean) . [ORIGINALLY FILED AS DOCUMENT #105 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>110</u> Motion to Appear pro hac vice Of Bojan Guzina of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #106 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>111</u> Motion to Appear pro hac vice of Alyssa Russell of Sidley Austin LLP. Receipt Number 2620330, Filed by Official Committee of Unsecured Creditors. (Beach, Sean)[ORIGINALLY FILED AS DOCUMENT #107 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>112</u> Motion to Appear pro hac vice of Matthew A. Clemente of Sidley Austin LLP. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #108 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>113</u> Motion to Appear pro hac vice of Paige Holden Montgomery. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #109 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>114</u> Motion to Appear pro hac vice of Penny P. Reid of Sidley Austin. Receipt Number 2775584, Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #110 ON 11/11/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>115</u> Order Approving Motion for Admission pro hac vice Bojan Guzina(Related Doc # 106) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #111 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>116</u> Order Approving Motion for Admission pro hac vice Alyssa Russell (Related Doc # 107) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #112 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>117</u> Order Approving Motion for Admission pro hac vice Matthew A. Clemente (Related Doc # 108) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #113 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF

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	DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>118</u> Order Approving Motion for Admission pro hac vice Paige Holden(Related Doc # 109) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #114 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>119</u> Order Approving Motion for Admission pro hac vice Penny P. Reid(Related Doc # 110) Order Signed on 11/12/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #115 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>120</u> Limited Objection to the Debtors: (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Certificate of Service) (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #116 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>121</u> Limited Objection and Reservation of Rights of Jefferies LLC to Debtor's Motion for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business (related document(s)77) Filed by Jefferies LLC (Attachments: # <u>1</u> Exhibit A # <u>2</u> Certificate of Service) (Bowden, William) [ORIGINALLY FILED AS DOCUMENT #117 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>122</u> Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #118 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>123</u> Limited Objection to Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employee, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business (related document(s)76) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #119 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>124</u> <b>**WITHDRAWN per # 456**</b> Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified on 2/19/2020 (Ecker, C.). (Entered: 12/05/2019)
12/04/2019	<u>125</u> Limited Objection to the Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #121 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>126</u> Joinder to Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #122 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>128</u> [SEALED in Delaware Bankruptcy Court] Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (related document(s)5, 75, 77, 123) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #124 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>130</u> Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (Redacted) (related document(s)5, 75, 77, 123, 124) Filed by Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E)(Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #125 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>131</u> Notice of Service of Discovery Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #126 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>132</u> Objection Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)8) Filed by U.S. Trustee (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #127 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>133</u> Certificate of Service of Objection of the Debtor to Motion of Official Committee of Unsecured Creditors to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)118) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #128 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>134</u> Certificate of Service of Acis's Joinder in Motion to Transfer Venue (related document(s)122) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #129 ON 11/13/2019 IN

	U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>135</u> Objection U.S. Trustee's Objection to the Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Provide a Chief Restructuring Officer, Additional Personnel and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date (related document(s)75) Filed by U.S. Trustee (Attachments: # <u>1</u> Certificate of Service)(Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #130 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>136</u> Certificate of Service of United States Trustees Objection to Motion of Debtor for Entry of Order Authorizing Debtor to File Under Seal Portions of Creditor Matrix Containing Employee Address Information (related document(s)127) Filed by U.S. Trustee. (Leamy, Jane) [ORIGINALLY FILED AS DOCUMENT #131 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>137</u> Certification of Counsel Regarding Debtor's Motion Pursuant to Sections 105(A), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for the Interim Compensation and Reimbursement of Expenses of Professionals (related document(s)73) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #132 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>138</u> Certificate of No Objection Regarding Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date (related document(s)74) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #133 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>139</u> Certificate of No Objection Regarding Motion of the Debtor for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief (related document(s)4) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #134 ON 11/13/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>140</u> Notice of Appearance. The party has consented to electronic service. Filed by Crescent TC Investors, L.P.. (Held, Michael) [ORIGINALLY FILED AS DOCUMENT #135 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>141</u> ORDER ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS(Related Doc # 73) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #136 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>142</u> ORDER AUTHORIZING THE DEBTOR TO EMPLOY AND RETAIN KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE ADVISOR EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 74) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #137 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>143</u> ORDER (I) EXTENDING TIME TO FILE SCHEDULES OF ASSETS AND LIABILITIES, SCHEDULES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND STATEMENT OF FINANCIAL AFFAIRS, AND (II) GRANTING RELATED RELIEF (Related Doc # 4) Order Signed on 11/14/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #138 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>144</u> Notice of Appearance. The party has consented to electronic service. Filed by Intertrust Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #139 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>145</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Entities. (Desgrosseilliers, Mark) [ORIGINALLY FILED AS DOCUMENT #140 ON 11/14/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>146</u> Notice of Deposition Upon Oral Examination Under Rules 30 and 30(b)(6) of the Debtor, Highland Capital Management, L.P. Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #141 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>147</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service) [ORIGINALLY FILED AS DOCUMENT #142 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>148</u> Affidavit/Declaration of Service for service of (1) [Signed] Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Docket No. 136]; (2) [Signed] Order Authorizing the Debtor to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective Nunc Pro Tunc to the Petition Date [Docket No. 137]; and (3) [Signed] Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Executory Contracts and Unexpired Leases, and Statement of Financial Affairs, and (II) Granting Related Relief [Docket No. 138] (related document(s)136, 137, 138) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #143 ON 11/15/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>149</u> Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)86, 87, 88) Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #144 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>150</u> Notice of Rescheduled 341 Meeting (related document(s)67, 79) Filed by Highland Capital Management, L.P.. 341(a) meeting to be held on 12/3/2019 at 10:30 AM (check with U.S. Trustee for location) (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #145 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>151</u> Agenda of Matters Scheduled for Telephonic Hearing (related document(s)142) Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware.(Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED

	AS DOCUMENT #146 ON 11/18/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>152</u> Notice of Appearance. The party has consented to electronic service. Filed by CLO Holdco, Ltd.. (Kane, John) [ORIGINALLY FILED AS DOCUMENT #149 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>153</u> Amended Notice of Deposition of Frank Waterhouse Filed by Official Committee of Unsecured Creditors. (Guerke, Kevin) [ORIGINALLY FILED AS DOCUMENT #150 ON 11/19/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>154</u> Notice of Appearance and Request for Notice by Sally T. Siconolfi , Joseph T. Moldovan filed by Interested Party Meta-e Discovery, LLC . (Moldovan, Joseph)[ORIGINALLY FILED AS DOCUMENT #152 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>156</u> Affidavit/Declaration of Service regarding Notice of Hearing regarding Motion to Change Venue/Inter-district Transfer (related document(s)144) Filed by Official Committee of Unsecured Creditors. (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #153 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>158</u> Motion to Appear pro hac vice of Annmarie Chiarello of Winstead PC. Receipt Number 0311-27843, Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P.. (Bibiloni, Jose) [ORIGINALLY FILED AS DOCUMENT #154 ON 11/20/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>159</u> Order Approving Motion for Admission pro hac vice Annmarie Chiarello (Related Doc # 154) Order Signed on 11/21/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #155 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Additional attachment(s) added on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)
12/04/2019	<u>162</u> Reply in Support of Motion to Transfer Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118) Filed by Official Committee of Unsecured Creditors (Beach, Sean) [ORIGINALLY FILED AS DOCUMENT #156 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>163</u> Reply in Support of the Motion of the Official Committee of Unsecured Creditors For an Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86, 118, 122, 156) Filed by Acis Capital Management GP LLC, Acis Capital Management, L.P. (Mintz, Josef) [ORIGINALLY FILED AS DOCUMENT #157 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>164</u> Response of the Debtor to Acis's Joinder to Motion to Transfer Venue (related document(s)86, 122) Filed by Highland Capital Management, L.P. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #158 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>165</u> Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date; and (II) Application for an Order Authorizing the Retention and

	<p>Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Nunc Pro Tunc to Petition Date (related document(s)69, 70, 116, 120) Filed by Highland Capital Management, L.P.(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #159 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) Modified text on 12/5/2019 (Okafor, M.). (Entered: 12/05/2019)</p>
12/04/2019	<p><u>166</u> Omnibus Reply of the Debtor in Support of: (1) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)5, 75, 77) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Redline Order Approving Ordinary Course Protocols Motion # <u>2</u> Exhibit B – Redline Order Approving Cash Management Motion # <u>3</u> Exhibit C – Redline Order Approving DSI Retention Motion # <u>4</u> Exhibit D – Summary of Intercompany Transactions) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #160 ON 11/21/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>168</u> Certificate of Service of 1) Response of the Debtor to Acis's Joinder to Motion to Transfer Venue; 2) Omnibus Reply In Support of (I) Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner as Special Texas Counsel Nunc Pro Tunc to the Petition Date, and (II) Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP; and 3) Omnibus Reply of the Debtor in Support of: (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions (related document(s)158, 159, 160) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #161 ON 11/22/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>169</u> Exhibit(s) // Notice of Filing of Second Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #162 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>170</u> Certification of Counsel Regarding Motion of Debtor for Entry of Interim and Final Orders (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (related document(s)3, 40) Filed by Highland Capital Management, L.P..(Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #163 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>171</u> <b>**WITHDRAWN**</b> – 11/26/2019. SEE DOCKET # 165. Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (O'Neill, James) Modified on 11/26/2019 (DMC). [ORIGINALLY FILED AS DOCUMENT #164 ON 11/25/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)</p>
12/04/2019	<p><u>172</u> Notice of Withdrawal of Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)164) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS</p>

	DOCUMENT #165 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>173</u> Certification of Counsel Regarding Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtor in the Ordinary Course of Business (related document(s)76, 99, 162) Filed by Highland Capital Management, L.P (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #166 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>174</u> Notice of Agenda of Matters Scheduled for Hearing Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. (Attachments: # <u>1</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #167 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>175</u> FINAL ORDER (A) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND (B) GRANTING RELATED RELIEF (Related document(s) 3, 40) Signed on 11/26/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #168 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>178</u> Supplemental Declaration in Support of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #171 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE(Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>179</u> Certification of Counsel Regarding Debtor's Application Pursuant to Section 327(A) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014–1 for Authorization to Employ and Retain Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date (related document(s)71) Filed by Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Blackline Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #172 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE](Okafor, M.) (Entered: 12/05/2019)

12/04/2019	<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # <u>1</u> Notice # <u>2</u> Exhibit A – Proposed Order # <u>3</u> Exhibit B – Declaration of John Dempsey in Support # <u>4</u> Exhibit C – Highland Key Employee Incentives # <u>5</u> Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>181</u> Certificate of Service and Service List for service of Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief [Docket No. 170] (related document(s)170) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #174 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>182</u> Amended Notice of Agenda of Matters Scheduled for Hearing (related document(s)167) Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/2/2019 at 10:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware (Attachments: # <u>1</u> Certificate of Service)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #175 ON 11/27/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>183</u> ORDER PURSUANT TO SECTION 327(a) OF THE BANKRUPTCY CODE, RULE 2414 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL RULE 2014-1 AUTHORIZING THE EMPLOYMENT AND RETENTION OF PACHULSKI TANG ZIEHL & JONES LLP AS COUNSEL FOR THE DEBTOR AND DEBTOR IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE (Related Doc # 71) Order Signed on 12/2/2019. (DRG) [ORIGINALLY FILED AS DOCUMENT #176 ON 12/02/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>184</u> Certification of Counsel Regarding Order Transferring Venue of This Case to the United States Bankruptcy Court for the Northern District of Texas (related document(s)86) Filed by Official Committee of Unsecured Creditors. (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #182 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>185</u> Affidavit/Declaration of Service for service of (1) [Signed] Final Order (A) Authorizing Debtor to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief [Docket No. 168]; (2) [Signed] Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [Docket No. 169]; and (3) [Signed] Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date [Docket No. 176] (related document(s)168, 169, 176) Filed by Highland Capital Management, L.P.. (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #183 ON 12/03/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	<u>186</u> ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS (related document(s)86) Order Signed on 12/4/2019. (CAS) [ORIGINALLY FILED AS DOCUMENT #184 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/04/2019	

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	<u>187</u> Certificate of Service re: 1) Notice of Chapter 11 Bankruptcy Case; and 2) [Corrected] Notice of Chapter 11 Bankruptcy Case (related document(s)67, 79) Filed by Kurtzman Carson Consultants LLC. (Kass, Albert) ( [ORIGINALLY FILED AS DOCUMENT #185 ON 12/04/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Entered: 12/05/2019)
12/05/2019	<u>97</u> Motion to appear pro hac vice for Bojan Guzina. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228141, amount \$ 100.00 (re: Doc# <u>97</u> ). (U.S. Treasury)
12/05/2019	<u>99</u> Notice of Appearance and Request for Notice by Linda D. Reece filed by Wylie ISD, Garland ISD, City of Garland. (Reece, Linda)
12/05/2019	<u>100</u> Motion to appear pro hac vice for Matthew A. Clemente. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	<u>105</u> Motion to appear pro hac vice for Alyssa Russell. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>100</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228455, amount \$ 100.00 (re: Doc# <u>105</u> ). (U.S. Treasury)
12/05/2019	<u>109</u> Motion to appear pro hac vice for Ira D. Kharasch. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27228644, amount \$ 100.00 (re: Doc# <u>109</u> ). (U.S. Treasury)
12/05/2019	<u>129</u> Notice of Appearance and Request for Notice by Laurie A. Spindler filed by City of Allen, Allen ISD, Dallas County, Grayson County, Irving ISD, Kaufman County, Tarrant County. (Spindler, Laurie)
12/05/2019	<u>155</u> Notice of Appearance and Request for Notice by Mark A. Platt filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Platt, Mark)
12/05/2019	<u>157</u> Motion to appear pro hac vice for Marc B. Hankin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	<u>160</u> Motion to appear pro hac vice for Richard Levin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Addendum) (Platt, Mark)
12/05/2019	<u>161</u> Motion to appear pro hac vice for Terri L. Mascherin. Fee Amount \$100 Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Platt, Mark)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>157</u> ). (U.S. Treasury)

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12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>160</u> ). (U.S. Treasury)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27229964, amount \$ 100.00 (re: Doc# <u>161</u> ). (U.S. Treasury)
12/05/2019	<u>167</u> Motion to appear pro hac vice for Gregory V. Demo. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/05/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27230422, amount \$ 100.00 (re: Doc# <u>167</u> ). (U.S. Treasury)
12/05/2019	<u>188</u> Notice of Appearance and Request for Notice by Juliana Hoffman filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/06/2019	<u>189</u> Motion to appear pro hac vice for Jeffrey N. Pomerantz. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233957, amount \$ 100.00 (re: Doc# <u>189</u> ). (U.S. Treasury)
12/06/2019	<u>190</u> Amended Motion to appear pro hac vice for Jeffrey N. Pomerantz. (related document: <u>189</u> ) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	<u>191</u> Motion to appear pro hac vice for John A. Morris. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric)
12/06/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27233983, amount \$ 100.00 (re: Doc# <u>191</u> ). (U.S. Treasury)
12/06/2019	<u>192</u> INCORRECT ENTRY – Incorrect Event Used; Refiled as Document <u>220</u> . Motion to withdraw as attorney (Eric T. Haitz) Filed by Debtor Highland Capital Management, L.P. (Haitz, Eric) Modified on 12/9/2019 (Dugan, S.). Modified on 12/9/2019 (Dugan, S.).
12/06/2019	193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P., (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Edmond, Michael)
12/06/2019	194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s)) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.) (Edmond, Michael)

12/06/2019	<u>195</u> Request for transcript regarding a hearing held on 12/6/2019. The requested turn-around time is hourly. (Edmond, Michael)
12/06/2019	<u>196</u> Order granting motion to appear pro hac vice adding Bojan Guzina for Official Committee of Unsecured Creditors (related document # <u>97</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document # <u>100</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document # <u>105</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document # <u>109</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document # <u>160</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document # <u>161</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document # <u>167</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document # <u>157</u> ) Entered on 12/6/2019. (Banks, Courtney)
12/06/2019	<u>204</u> INCORRECT ENTRY: DRAFT OF MOTION. SEE DOCUMENT 206. Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/06/2019	<u>206</u> Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL</i>

	<i>COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u> ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana) Modified on 12/18/2019 (Rielly, Bill).
12/06/2019	<u>220</u> Withdrawal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>41</u> Notice of appearance and request for notice). (Dugan, S.) (Entered: 12/09/2019)
12/08/2019	<u>207</u> Transcript regarding Hearing Held 12/6/19 RE: Status and scheduling conference. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/9/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Palmer Reporting Services, Telephone number PalmerRptg@aol.com, 800-665-6251. (RE: related document(s) 193 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Continued Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , 194 Hearing held on 12/6/2019., Hearing continued (RE: related document(s) <u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P. (Okafor, M.)) Hearing to be held on 12/12/2019 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1</u> , (Appearances: C. Gibbs, introducing J. Pomerantz and I. Kharasch for Debtor (also J. Morris on phone); M. Clemente and P. Reid for Official Committee of Unsecured Creditors; B. Shaw for Acis; M. Platt for Redeemer Committee of Crusader Fund (also on phone M. Hankin and T. Mascherin); M. Rosenthal for Alvarez and Marsal; P. Maxcy (telephonically) for Jeffries; L. Lambert for UST. Nonevidentiary status conference. Court heard reports about case, parties, and ongoing discussions regarding corporate governance. Schedules will be filed next 12/13/19. At request of parties, another status conference is set for 12/12/19 at 9:30 am (telephonic participation will be allowed if requested). At current time, parties are not requesting that pending motions be set.)). Transcript to be made available to the public on 03/9/2020. (Palmer, Susan)
12/08/2019	<u>208</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>197</u> Order granting motion to appear pro hac vice adding Matthew A. Clemente for Official Committee of Unsecured Creditors (related document <u>100</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>209</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>198</u> Order granting motion to appear pro hac vice adding Alyssa Russell for Official Committee of Unsecured Creditors (related document <u>105</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>210</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>199</u> Order granting motion to appear pro hac vice adding Ira D Kharasch for Highland Capital Management, L.P. (related document <u>109</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>211</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>200</u> Order granting motion to appear pro hac vice adding Richard B. Levin for Redeemer Committee of the Highland Crusader Fund (related document <u>160</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>212</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>201</u> Order granting motion to appear pro hac vice adding Terri L. Mascherin for Redeemer Committee of the Highland Crusader Fund (related document <u>161</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	

	<u>213</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>202</u> Order granting motion to appear pro hac vice adding Gregory V Demo for Highland Capital Management, L.P. (related document <u>167</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/08/2019	<u>214</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>203</u> Order granting motion to appear pro hac vice adding Marc B. Hankin for Redeemer Committee of the Highland Crusader Fund (related document <u>157</u> ) Entered on 12/6/2019.) No. of Notices: 1. Notice Date 12/08/2019. (Admin.)
12/09/2019	<u>215</u> Acknowledgment of split/transfer case received FROM another district, Delaware, Delaware division, Case Number 19–12239. (Okafor, M.)
12/09/2019	<u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document # <u>190</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document # <u>191</u> ) Entered on 12/9/2019. (Banks, Courtney)
12/09/2019	<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # <u>1</u> Declaration # <u>2</u> Proposed Order) (Crooks, David)
12/09/2019	<u>219</u> Notice of Appearance and Request for Notice by Charles Martin Persons Jr. filed by Creditor Committee Official Committee of Unsecured Creditors. (Persons, Charles)
12/09/2019	Receipt of filing fee for Motion for relief from stay(19–34054–sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27240994, amount \$ 181.00 (re: Doc# <u>218</u> ). (U.S. Treasury)
12/09/2019	<u>221</u> Notice of Appearance and Request for Notice by Brian Patrick Shaw filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Shaw, Brian)
12/09/2019	<u>222</u> Motion to appear pro hac vice for Dennis M. Twomey. Fee Amount \$100 Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/09/2019	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 27241671, amount \$ 100.00 (re: Doc# <u>222</u> ). (U.S. Treasury)
12/09/2019	<u>223</u> Certificate of service re: 1) <i>Application Pursuant to Fed. R. Bankr. P. 2014(a) for Order Under Section 1103 of the Bankruptcy Code Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019; and 2) [Amended] Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors, Nunc Pro Tunc to October 29, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVISOR TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO NOVEMBER 6, 2019</i> Filed by Creditor Committee Official

	Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING THE RETENTION AND EMPLOYMENT OF SIDLEY AUSTIN LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, NUNC PRO TUNC TO OCTOBER 29, 2019</i> (related document: <u>204</u> ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/10/2019	<u>224</u> Certificate Certificate of Conference filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). (Crooks, David)
12/10/2019	<u>225</u> Certificate of service re: Certificate of Service filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181., <u>224</u> Certificate (generic)). (Attachments: # <u>1</u> Service List) (Crooks, David)
12/10/2019	<u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney ( <i>Co-Counsel</i> ) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/10/2019	<u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.).
12/10/2019	<u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)
12/10/2019	<u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020. (Neary, William)
12/10/2019	<u>230</u> Notice of Appearance and Request for Notice by Melissa S. Hayward filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/10/2019	<u>231</u> Notice of Appearance and Request for Notice by Zachery Z. Annable filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2019	<u>232</u> Joint Motion to continue hearing on (related documents 194 Hearing held, Hearing set/continued) <i>Joint Motion to Continue Status Conference</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order # <u>2</u> Service List) (Hayward, Melissa)
12/11/2019	<u>233</u> Motion to appear pro hac vice for Michael I. Baird. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Attachments: # <u>1</u> Certificate of Service) (Baird, Michael)

12/11/2019	<u>234</u> Order granting joint motion to continue hearing on (related document # <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019. (Banks, Courtney)
12/11/2019	<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. (Pomerantz, Jeffrey)
12/11/2019	<u>236</u> Motion to appear pro hac vice for Lauren Macksoud. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250084, amount \$ 100.00 (re: Doc# <u>236</u> ). (U.S. Treasury)
12/11/2019	<u>237</u> Motion to appear pro hac vice for Patrick C. Maxcy. Fee Amount \$100 Filed by Interested Party Jefferies LLC (Doherty, Casey)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27250165, amount \$ 100.00 (re: Doc# <u>237</u> ). (U.S. Treasury)
12/11/2019	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] (0.00). Receipt Number KF – No Fee Due, amount \$ 0.00 (re: Doc <u>233</u> ). (Floyd)
12/11/2019	<u>238</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>216</u> Order granting motion to appear pro hac vice adding Jeffrey N. Pomerantz for Highland Capital Management, L.P. (related document <u>190</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/11/2019	<u>239</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>217</u> Order granting motion to appear pro hac vice adding John A. Morris for Highland Capital Management, L.P. (related document <u>191</u> ) Entered on 12/9/2019.) No. of Notices: 1. Notice Date 12/11/2019. (Admin.)
12/12/2019	<u>240</u> Notice of Appearance and Request for Notice by J. Seth Moore filed by Creditor Siepe, LLC. (Moore, J.)
12/12/2019	<u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/12/2019	<u>242</u> Order granting motion to appear pro hac vice adding Michael I. Baird for Pension Benefit Guaranty Corporation (related document # <u>233</u> ) Entered on 12/12/2019. (Okafor, M.)
12/12/2019	<u>243</u> BNC certificate of mailing. (RE: related document(s) <u>227</u> INCORRECT ENTRY: DEFICIENCIES ARE DUE 12/13/2019 – Notice of deficiency. Schedule A/B due 10/30/2019. Schedule D due 10/30/2019. Schedule E/F due 10/30/2019. Schedule G due 10/30/2019. Schedule H due 10/30/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 10/30/2019. Summary of Assets and Liabilities and Certain Statistical Information due 10/30/2019. Statement of Financial Affairs due 10/30/2019. (Okafor, M.) Modified on 12/10/2019 (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)

12/12/2019	<u>244</u> BNC certificate of mailing. (RE: related document(s) <u>228</u> Notice of deficiency. Schedule A/B due 12/13/2019. Schedule D due 12/13/2019. Schedule E/F due 12/13/2019. Schedule G due 12/13/2019. Schedule H due 12/13/2019. Declaration Under Penalty of Perjury for Non-individual Debtors due 12/13/2019. Summary of Assets and Liabilities and Certain Statistical Information due 12/13/2019. Statement of Financial Affairs due 12/13/2019. (Okafor, M.)) No. of Notices: 8. Notice Date 12/12/2019. (Admin.)
12/13/2019	<u>245</u> Certificate of service re: <i>1) Application of the Official Committee of Unsecured Creditors to Retain and Employ Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel, Nunc Pro Tunc to November 8, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney (Co-Counsel) <i>Nunc Pro Tunc</i> Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/13/2019	<u>246</u> Certificate of service re: <i>1) First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 10/16/2019 to 10/31/2019, Fee: \$383,583.75, Expenses: \$9,958.84. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/2/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/13/2019	<u>247</u> Schedules: Schedules A/B and D-H with Summary of Assets and Liabilities (with Declaration Under Penalty of Perjury for Non-Individual Debtors.). Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding schedules) (Hayward, Melissa)
12/13/2019	<u>248</u> Statement of financial affairs for a non-individual . Filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>228</u> Notice of deficiency). (Attachments: # <u>1</u> Global notes regarding SOFA) (Hayward, Melissa)
12/13/2019	<u>249</u> BNC certificate of mailing – meeting of creditors. (RE: related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.) No. of Notices: 8. Notice Date 12/13/2019. (Admin.)
12/13/2019	<u>250</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>234</u> Order granting joint motion to continue hearing on (related document <u>232</u> ) (related documents Hearing held) Status Conference to be held on 12/18/2019 at 09:30 AM. Entered on 12/11/2019.) No. of Notices: 1. Notice Date 12/13/2019. (Admin.)
12/16/2019	<u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document # <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document # <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)
12/16/2019	<u>253</u> Order rescheduling status conference (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Status Conference to be held on 12/18/2019 at 10:30 AM at Dallas Judge Jernigan Ctrm. Entered on 12/16/2019 (Dugan, S.)
12/17/2019	<u>254</u> Notice of Appearance and Request for Notice by Jason Patrick Kathman filed by Creditor Patrick Daugherty. (Kathman, Jason)

12/18/2019	<u>255</u> Declaration re: <i>Supplemental Declaration In Support of</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/18/2019	Hearing held on 12/18/2019. (RE: related document(s) <u>1</u> Status/Scheduling Conference; Order transferring case number 19–12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Pomerantz and I. Kharasch for Debtor; M. Hayward, local counsel for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; M. Platt and T. Mascherin and M. Hankin (each telephonically) for Redeemer Committee; L. Spindler for taxing authorities; A. Chiarello and R. Patel (telephonically) for Acis; L. Lambert for UST; P. Maxcy (telephonically) for Jeffries. Nonevidentiary status conference. Court heard reports regarding continued negotiations between Debtor and UCC regarding a proposed management structure for Debtor and ordinary course protocols. Debtor expects to file a motion for approval of same (if agreements reached) by 12/27/19 for a 1/9/20 hearing. Otherwise, UCC will file a motion for a chapter 11 trustee (which, if filed, will be filed 12/30/19 and set 1/20/20–1/21/20). Scheduling order to be submitted. Also, US Trustee announced intention to move for a Chapter 11 Trustee.) (Edmond, Michael)
12/18/2019	<u>256</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>251</u> Order granting motion to appear pro hac vice adding Lauren Macksoud for Jefferies LLC (related document <u>236</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/18/2019	<u>257</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>252</u> Order granting motion to appear pro hac vice adding Patrick C. Maxcy for Jefferies LLC (related document <u>237</u> ) Entered on 12/16/2019. (Dugan, S.)) No. of Notices: 1. Notice Date 12/18/2019. (Admin.)
12/19/2019	<u>258</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Dechert LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Demo, Gregory)
12/19/2019	<u>259</u> Support/supplemental document to the <i>Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.). (Hayward, Melissa)
12/19/2019	<u>260</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (ASW Law Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/19/2019	<u>261</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>241</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Charles Harder)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/20/2019	<u>262</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
12/20/2019	<u>263</u> Certificate of service re: <i>Supplemental Declaration of Bojan Guzina in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and</i>

	<i>1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)255 Declaration re: Supplemental Declaration In Support of filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)206 Amended Application to employ Sidley Austin LLP as Attorney APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>
12/20/2019	<i>264 Certificate of service re: Supplement to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)259 Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)7 Motion to maintain bank accounts.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
12/22/2019	<i>265 Objection to (related document(s): 176 Document)Limited Objection of The Official Committee of Unsecured Creditors to the Retention of Harder LLP as Ordinary Course Professional filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</i>
12/23/2019	<i>266 Declaration re: Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)</i>
12/23/2019	<i>267 Declaration re: Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)</i>
12/23/2019	<i>268 Declaration re: Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US)) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)176 Document). (Hayward, Melissa)</i>
12/23/2019	<i>269 Agreed scheduling Order (RE: related document(s)1 Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)</i>
12/23/2019	<i>270 Application for compensation – First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019 for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)</i>
12/23/2019	<i>271 Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee (Lambert, Lisa)</i>
12/23/2019	<i>272 Trustee's Objection to Motion to Seal Official Committee's Omnibus Objection and Supporting Exhibits (RE: related document(s)127 Document) (Lambert, Lisa)</i>
12/23/2019	<i>273 Motion for leave to Extend Deadline to Object to Motion for Relief of Stay of PensionDanmark (related document(s) 218 Motion for relief from stay) Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/6/2020. (Hoffman, Juliana)</i>

12/24/2019	<u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton Andrews Kurth LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/24/2019	<u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/25/2019	<u>277</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>269</u> Agreed scheduling Order (RE: related document(s) <u>1</u> Order transferring case filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2019 (Blanco, J.)) No. of Notices: 1. Notice Date 12/25/2019. (Admin.)
12/26/2019	<u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Hayward, Melissa)
12/26/2019	<u>279</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 3) <i>Declaration of Marc D. Katz</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>266</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Houlihan Lokey Financial Advisors Inc.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>267</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Rowlett Law PLLC)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>268</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (DLA Piper LLP (US))</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/27/2019	<u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
12/27/2019	<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Hayward, Melissa)
12/27/2019	<u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, Nunc Pro Tunc as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa)
12/27/2019	<u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
12/28/2019	<u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C –

	Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/28/2019	<u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # <u>1</u> Exhibit) (Hayward, Melissa)
12/30/2019	<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. (Pomerantz, Jeffrey)
12/30/2019	<u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , (Hayward, Melissa)
12/31/2019	<u>288</u> Certificate No Objection to Retention of Sidley Austin LLP filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/31/2019	<u>289</u> Debtor-in-possession monthly operating report for filing period November 1, 2019 to November 30, 2019 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
12/31/2019	<u>290</u> Certificate No Objection to Retention of FTI Consulting, Inc. filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
12/31/2019	<u>291</u> Order granting motion for expedited hearing (Related Doc# <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019. (Whitaker, Sheniqua)
01/02/2020	<u>292</u> Certificate of service re: 1) <i>Disclosure Declaration of Ordinary Course Professional</i> ; 2) <i>Disclosure Declaration Alexander G. McGeoch in Support of Hunton Andrews Kurth LLP as Ordinary Course Professional</i> ; 3) <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>274</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Carey Olsen Cayman Limited)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>275</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Hunton</i>

	<i>Andrews Kurth LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>276</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Wilmer Cutler Pickering Hale and Dorr LLP)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>293</u> Certificate of service re: <i>Disclosure Declaration of Ordinary Course Professional</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>278</u> Declaration re: <i>Disclosure Declaration of Ordinary Course Professional (Kim &amp; Chang)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>294</u> Certificate Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>226</u> Application to employ Young Conaway Stargatt & Taylor, LLP as Attorney ( <i>Co-Counsel</i> ) <i>Nunc Pro Tunc</i> ). (Hoffman, Juliana)
01/02/2020	<u>295</u> Notice of Appearance and Request for Notice by Edwin Paul Keiffer filed by Interested Party Hunter Mountain Trust. (Keiffer, Edwin)
01/02/2020	<u>296</u> Certificate of service re: <i>Documents Served on December 27, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors, <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>282</u> Support/supplemental document to the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring Related Services, <i>Nunc Pro Tunc</i> as of the Petition Date filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>283</u> Motion for expedited hearing(related documents <u>281</u> Motion to compromise controversy) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/02/2020	<u>297</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>291</u> Order granting motion for expedited hearing (Related Doc <u>283</u> )(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u> , Entered on 12/31/2019.) No. of Notices: 2. Notice Date 01/02/2020. (Admin.)
01/03/2020	<u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)
01/03/2020	<u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/8/2020. (Hoffman, Juliana)
01/03/2020	<u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document # <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)
01/03/2020	<u>301</u> Order granting the joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (related document # <u>273</u> ). The Committee and the Debtor shall have until January 6, 2020 to object to PensionDanmarks

	Stay Relief Motion Entered on 1/3/2020. (Okafor, M.)
01/05/2020	<u>302</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>298</u> Order Regarding Telephonic Appearances Entered on 1/3/2020 (Okafor, M.)) No. of Notices: 45. Notice Date 01/05/2020. (Admin.)
01/05/2020	<u>303</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>300</u> Order granting motion to appear pro hac vice adding Dennis M. Twomey for Official Committee of Unsecured Creditors (related document <u>222</u> ) Entered on 1/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/05/2020. (Admin.)
01/06/2020	<u>304</u> Order granting <u>299</u> joint motion to extend time to object to the motion of PensionDanmark's motion for relief from the automatic stay (Re: related document(s) <u>299</u> Motion to extend time to (RE: related document(s) <u>273</u> Motion for leave)) Entered on 1/6/2020. (Okafor, M.)
01/06/2020	<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Annable, Zachery)
01/06/2020	<u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Annable, Zachery)
01/06/2020	<u>307</u> Trustee's Objection to <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> (RE: related document(s) <u>280</u> Motion for protective order) (Lambert, Lisa)
01/06/2020	<u>308</u> Motion to appear pro hac vice for Asif Attarwala. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>309</u> Motion to appear pro hac vice for Kimberly A. Posin. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>310</u> Motion to appear pro hac vice for Andrew Clubok. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	<u>311</u> Motion to appear pro hac vice for Kuan Huang. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>308</u> ). (U.S. Treasury)

01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>309</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>310</u> ). (U.S. Treasury)
01/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27322441, amount \$ 100.00 (re: Doc# <u>311</u> ). (U.S. Treasury)
01/06/2020	<u>312</u> Response opposed to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Jefferies LLC. (Attachments: # <u>1</u> Exhibit A) (Doherty, Casey)
01/06/2020	<u>313</u> Trustee's Objection to <i>Motion to Approve Joint Agreement</i> (RE: related document(s) <u>281</u> Motion to compromise controversy) (Lambert, Lisa)
01/06/2020	<u>314</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/06/2020	<u>315</u> Certificate of service re: <i>1) Notice of Hearing on Debtors Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to held on January 9, 2020 at 9:30 a.m. (CT); and 2) Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be held on January 9, 2020 at 9:30 a.m. (CT)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>284</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P., <u>285</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u> , (Attachments: # 1 Exhibit) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/06/2020	<u>316</u> Certificate of service re: <i>1) Second Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from November 1, 2019 Through November 30, 2019; 2) Notice of Hearing re: Motion of the Debtor to Approve Settlement with Official Committee of</i>

	<p><i>Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course; to be Held on January 9, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1/2019 to 11/30/2019, Fee: \$798,767.50, Expenses: \$26,317.71. Filed by Debtor Highland Capital Management, L.P. Objections due by 1/21/2020. filed by Debtor Highland Capital Management, L.P., <u>287</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/07/2020	<p><u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document # <u>308</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>318</u> Order granting motion to appear pro hac vice adding Kimberly A. Posin for UBS AG London Branch and UBS Securities LLC (related document # <u>309</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u>) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).</p>
01/07/2020	<p><u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch and UBS Securities LLC (related document # <u>311</u>) Entered on 1/7/2020. (Okafor, M.)</p>
01/07/2020	<p><u>321</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)</p>
01/07/2020	<p><u>322</u> Certificate of service re: Certificate of Service filed by Interested Party Jefferies LLC (RE: related document(s)<u>312</u> Response). (Doherty, Casey)</p>
01/07/2020	<p><u>323</u> Notice of Appearance and Request for Notice (<i>Amended</i>) by Joseph E. Bain filed by Creditor Issuer Group. (Bain, Joseph)</p>
01/07/2020	<p><u>324</u> ***WITHDRAWN per docket # <u>467</u>** Objection to (related document(s): <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P.)<i>Limited Objection to Motion of the Debtor for Approval of Settlement With the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group. (Bain, Joseph) Modified on 2/24/2020 (Ecker, C.).</p>
01/08/2020	<p><u>325</u> Motion to appear pro hac vice for James T. Bentley. Fee Amount \$100 Filed by Creditor Issuer Group (Anderson, Amy)</p>
01/08/2020	<p>Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27331269, amount \$ 100.00 (re: Doc# <u>325</u>). (U.S. Treasury)</p>
01/08/2020	<p><u>326</u> Notice of Compliance with Local Bankruptcy Rule 2090-4 filed by Creditor Issuer Group. (Anderson, Amy)</p>

01/08/2020	<p><u>327</u> Declaration re: (<i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Annable, Zachery)</p>
01/08/2020	<p><u>328</u> Agreed Notice of hearing with <i>PensionDanmark and Highland Capital Management, L.P.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u>, (Hoffman, Juliana)</p>
01/08/2020	<p><u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.).</p>
01/08/2020	<p><u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.).</p>
01/08/2020	<p><u>331</u> Certificate of service re: <i>Order Regarding Request for Expedited Hearing; to be Held on January 9, 2020 at 9:30 a.m. (Prevailing Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>291</u> Order granting motion for expedited hearing (Related Doc<u>283</u>)(document set for hearing: <u>281</u> Motion to compromise controversy) Hearing to be held on 1/9/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>281</u>, Entered on 12/31/2019.). (Kass, Albert)</p>
01/08/2020	<p><u>332</u> Certificate of service re: <i>1) Amended Notice of Hearing on Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code for Authority to Employ Mercer (US) Inc. as Compensation Consultant; to be Held on January 21, 2020 at 9:30 a.m. (Central Time); 2) Amended Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>305</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>180</u>, filed by Debtor Highland Capital Management, L.P., <u>306</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>177</u>, filed by Debtor Highland Capital Management, L.P.).</p>

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	(Kass, Albert)
01/09/2020	<u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document # <u>325</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document # <u>206</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>335</u> Court admitted exhibits date of hearing 01/09/2020. DEBTOR EXHIBIT 1 ADMITTED. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) (Jeng, Hawaii)
01/09/2020	<u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document # <u>205</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>337</u> Order granting application to employ Young Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.) Modified to correct Firm name on 1/13/2020 (Ecker, C.).
01/09/2020	<u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). (Hayward, Melissa)
01/09/2020	<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( related document # <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)
01/09/2020	<u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Melissa S. Hayward # <u>2</u> Proposed Order) (Annable, Zachery)
01/09/2020	<u>341</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>317</u> Order granting motion to appear pro hac vice adding Asif Attarwala for UBS AG London Branch and UBS Securities LLC (related document <u>308</u> ) Entered on 1/7/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/09/2020. (Admin.)
01/09/2020	Hearing held on 1/9/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.) (Edmond, Michael) (Entered: 01/10/2020)
01/10/2020	<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date

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	(related document # <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)
01/10/2020	<u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. (Hoffman, Juliana)
01/10/2020	<u>344</u> Certificate of service re: <i>Documents Served on January 8, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>327</u> Declaration re: ( <i>Declaration of Bradley D. Sharp in Support of the Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>328</u> Agreed Notice of hearing <i>with PensionDanmark and Highland Capital Management, L.P.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>218</u> Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab Objections due by 12/23/2019. (Attachments: # 1 Declaration # 2 Proposed Order)). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>218</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>329</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) (Hayward, Melissa) Modified to match docket text to PDF on 1/9/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>330</u> Response unopposed to (related document(s): <u>313</u> Objection) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana) Modified text to match PDF on 1/9/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/10/2020	<u>345</u> Certificate of service re: <i>Documents Served on January 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>334</u> Order granting application to employ Sidley Austin LLP for Official Committee of Unsecured Creditors as Attorney (related document <u>206</u> ) Entered on 1/9/2020. (Okafor, M.), <u>336</u> Order granting application to employ FTI Consulting, Inc. as Financial Advisor to The Official Committee of Unsecured Creditors (related document <u>205</u> ) Entered on 1/9/2020. (Okafor, M.), <u>337</u> Order granting application to employ Conway Stargatt & Taylor, LLP for Official Committee of Unsecured Creditors as Attorney (Co-Counsel) (related document <u>226</u> ) Entered on 1/9/2020. (Okafor, M.), <u>338</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors, Strand Advisors, Inc., and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. ). filed by Debtor Highland Capital Management, L.P., <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Melissa S. Hayward # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/10/2020	<u>346</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>319</u> Order granting motion to appear pro hac vice adding Andrew Clubok for UBS AG London Branch and UBS Securities LLC (related document <u>310</u> ) Entered on 1/7/2020. (Okafor, M.) MODIFIED text on 1/7/2020 (Okafor, M.).) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/10/2020	<u>347</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>320</u> Order granting motion to appear pro hac vice adding Kuan Huang for UBS AG London Branch

	and UBS Securities LLC (related document <u>311</u> ) Entered on 1/7/2020. (Okafor, M.) No. of Notices: 1. Notice Date 01/10/2020. (Admin.)
01/11/2020	<u>348</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>333</u> Order granting motion to appear pro hac vice adding James T. Bentley for Issuer Group (related document <u>325</u> ) Entered on 1/9/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/11/2020. (Admin.)
01/12/2020	<u>349</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/12/2020. (Admin.)
01/13/2020	<u>350</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/13/2020	<u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/13/2020	<u>352</u> DOCKET IN ERROR: Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is daily. (Edmond, Michael) Modified on 1/21/2020 REQUEST WAS CANCELLED THE SAME DATE AS REQUESTED OF 1/13/2020. (Edmond, Michael).
01/13/2020	<u>353</u> Objection to (related document(s): <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
01/14/2020	<u>354</u> Notice ( <i>Notice of Final Term Sheet</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # <u>1</u> Exhibit A—Final Term Sheet) (Annable, Zachery)
01/14/2020	<u>355</u> Certificate of service re: <i>Summary and First Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from October 29, 2019 to and Including November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 10/29/2019 to 11/30/2019, Fee: \$795,054.96, Expenses: \$10,247.88. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 1/31/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
01/14/2020	<u>356</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>351</u> Motion to extend time to (Debtor's Motion for

	Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) Filed by Debtor Highland Capital Management, L.P. Objections due by 2/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/14/2020	<u>357</u> Witness and Exhibit List <i>in Connection with Motion to Appoint a Chapter 11 Trustee</i> filed by U.S. Trustee United States Trustee (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee). (Lambert, Lisa)
01/14/2020	<u>358</u> Witness and Exhibit List <i>in connection with Motion to Seal and Joint Motion for an Agreed Protective Order</i> filed by U.S. Trustee United States Trustee (RE: related document(s) <u>10</u> Motion to file document under seal., <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> ). (Lambert, Lisa)
01/15/2020	<u>359</u> Agreed Motion to continue hearing on (related documents <u>218</u> Motion for relief from stay) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
01/15/2020	<u>360</u> <i>Withdrawal of Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>76</u> Motion by Highland Capital Management, L.P.). (Hayward, Melissa)
01/15/2020	<u>361</u> Order granting motion to continue hearing on (related document # <u>359</u> ) (related documents Motion for relief from stay <i>MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT</i> Fee amount \$181.). It is hereby ORDERED that a hearing on the Stay Relief Motion shall be continued to a later date provided by the Court and mutually acceptable to the Parties. Entered on 1/15/2020. (Okafor, M.)
01/15/2020	<u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/15/2020	<u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to

	<p>Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O’Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee’s Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, (Annable, Zachery)</p>
01/15/2020	<p><u>364</u> Objection to (related document(s): <u>271</u> Trustee’s Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
01/16/2020	<p><u>365</u> Certificate of service re: Objection to First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel for the Period From October 16, 2019 Through November 30, 2019 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>366</u> Amended Witness and Exhibit List <i>in Connection with Motion to Appoint a Chapter 11 Trustee</i> filed by U.S. Trustee United States Trustee (RE: related document(s)<u>357</u> List (witness/exhibit/generic)). (Lambert, Lisa)</p>
01/16/2020	<p><u>367</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, <u>69</u> Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). (Chiarello, Annmarie)</p>
01/16/2020	<p><u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/17/2020	<p><u>369</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)</p>

01/17/2020	<u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)( <i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/17/2020	<u>371</u> Order granting joint motion to continue hearing on (related document # <u>370</u> ) (related documents Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox & Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.)
01/17/2020	<u>372</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>362</u> Response). (Annable, Zachery)
01/19/2020	<u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/20/2020	<u>374</u> Amended Notice ( <i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice ( <i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>368</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
01/21/2020	<u>375</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.) (Edmond, Michael)
01/21/2020	Hearing held on 1/21/2020. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M.

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	<p>Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p><u>376</u> Certificate of service re: <i>Notice of Final Term Sheet</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>354</u> <i>Notice (Notice of Final Term Sheet)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)). (Attachments: # 1 Exhibit A—Final Term Sheet) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s)<u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s)<u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p><u>377</u> Certificate of service re: 1) <i>Objection of the Debtor to United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee; and 2) Notice of Hearing; to be Held on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>362</u> Response opposed to (related document(s): <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>363</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF</p>

	<p>DELAWARE] (Okafor, M.), <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>177</u> Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>180</u> Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>259</u> Support/supplemental document to the Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account, (C) Limited Waiver filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>7</u> Motion to maintain bank accounts.), <u>271</u> Trustee's Motion to appoint trustee Filed by U.S. Trustee United States Trustee, <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> Filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors). Hearing to be held on 1/21/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>7</u> and for <u>68</u> and for <u>177</u> and for <u>259</u> and for <u>280</u> and for <u>271</u> and for <u>180</u> and for <u>69</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s) <u>280</u> Motion for protective order <i>Joint Motion for Entry of an Order Approving the Agreed Protective Order</i> filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.) (Edmond, Michael)</p>
01/21/2020	<p>Hearing held on 1/21/2020. (RE: related document(s) <u>127</u> Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1</p>

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	Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.) (Edmond, Michael)
01/21/2020	<u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. (Hoffman, Juliana)
01/21/2020	<u>383</u> Court admitted exhibits date of hearing January 21, 2020 (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by Lisa Lambert representing the U.S. Trustee) (Court Admitted U.S. Trustee's Exhibits #4, #5, #7, #8, #9, #10 and Took Judicial Notice of Exhibit #11) (Edmond, Michael) (Entered: 01/22/2020)
01/22/2020	<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document # <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document # <u>177</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document # <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>382</u> Agreed Order Granting Motion for Protective Order (related document # <u>280</u> ) Entered on 1/22/2020. (Okafor, M.)
01/22/2020	<u>384</u> Declaration re: <i>Notice / Declaration of Conor P. Tully in Support of the Retention of FTI Consulting, Inc.</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>205</u> Application to employ FTI CONSULTING, INC. as Financial Advisor <i>APPLICATION PURSUANT TO FED. R. BANKR. P. 2014(a) FOR ORDER UNDER SECTION 1103 OF THE BANKRUPTCY CODE AUTHORIZING THE EMPLOYMENT AND RETENTION OF FTI CONSULTING, INC. AS FINANCIAL ADVIS</i> ). (Hoffman, Juliana)
01/22/2020	<u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland C). (Annable, Zachery)
01/22/2020	<u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). (Annable, Zachery)
01/22/2020	<u>387</u> Request for transcript regarding a hearing held on 1/21/2020. The requested turn-around time is hourly. (Edmond, Michael) (Entered: 01/23/2020)

01/23/2020	<u>388</u> Certificate of service re: First Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Nunc Pro Tunc to November 6, 2019 filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>384</u> Declaration). (Hoffman, Juliana)
01/23/2020	<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. (Hoffman, Juliana)
01/23/2020	<u>390</u> Supplemental Notice of the <i>Young Conaway Stargatt &amp; Taylor, LLP Final Fee Application</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.). (Hoffman, Juliana)
01/23/2020	<u>391</u> Certificate of service re: Final Fee Application <i>on behalf of Young Conaway Stargatt &amp; Taylor, LLP</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)
01/24/2020	<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. (Pomerantz, Jeffrey)
01/24/2020	<u>393</u> Transcript regarding Hearing Held 01/21/2020 (140 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/23/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/21/2020. (RE: related document(s) <u>271</u> Trustee's Motion to appoint trustee filed by U.S. Trustee United States Trustee) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Evidentiary hearing. Motion denied. Debtors counsel should upload a form of order consistent with the courts ruling.), Hearing held on 1/21/2020. (RE: related document(s) <u>7</u> Motion to Maintain Bank Accounts /Motion of the Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P. (Attachments: <u>1</u> Exhibit A – Interim Order) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #5 ON 10/16/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted on a final basis. Debtors counsel should upload

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order.), Hearing held on 1/21/2020. (RE: related document(s)177 Motion to Authorize Motion of the Debtor for Entry of an Order Authorizing the Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Exhibit A – Proposed Order # 2 Notice) [ORIGINALLY FILED AS DOCUMENT #170 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion, as narrowed, granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)180 Application/Motion to Employ/Retain Mercer (US) Inc. as Compensation Consultant Filed by Highland Capital Management, L.P.. Hearing scheduled for 12/17/2019 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 12/10/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – Declaration of John Dempsey in Support # 4 Exhibit C – Highland Key Employee Incentives # 5 Certificate of Service and Service List)(O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #173 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)280 Motion for protective order Joint Motion for Entry of an Order Approving the Agreed Protective Order filed by Debtor Highland Capital Management, L.P., Creditor Committee Official Committee of Unsecured Creditors) (Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion granted, with certain amendments as discussed on the record. Debtors counsel should upload order.), Hearing held on 1/21/2020. (RE: related document(s)127 Motion to File Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtors (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for Ordinary Course Transactions Filed by Official Committee of Unsecured Creditors. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/19/2019. (Attachments: # 1 Notice # 2 Proposed Form of Order) [ORIGINALLY FILED AS DOCUMENT #123 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)(Appearances: J. Pomerantz, J. Morris, M. Litvak, M. Hayward, and Z. Annable for Debtor; D. Twomey, P. Reid, and J. Hoffman for Official Unsecured Creditors Committee; R. Patel for Acis; L. Lambert for UST; M. Platt and M. Hankin (telephonically) for Crusader Fund Redeemer Committee; K. Posin and A. Attarwala for UBS; A. Anderson and J. Bentley (telephonically) for CLO Issuers. Nonevidentiary hearing. Motion denied for mootness. UCCs counsel should upload order.)). Transcript to be made available to the public on 04/23/2020. (Rehling, Kathy)

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394 Application for compensation *Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley & Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019* for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)

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01/24/2020	<u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/24/2020	<u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) ( <i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/24/2020	<u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Email Correspondence) (Annable, Zachery)
01/24/2020	<u>398</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 01/24/2020. (Admin.)
01/24/2020	<u>399</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u> ) Entered on 1/22/2020. (Okafor, M.)) No. of Notices: 44. Notice Date 01/24/2020. (Admin.)
01/27/2020	<u>400</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
01/27/2020	<u>401</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>368</u> <i>Notice (Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time))</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/27/2020	<u>402</u> Certificate of service re: <i>Documents Served on January 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>369</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from October 16, 2019, Through November 30, 2019)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P., <u>370</u> Joint Motion to continue hearing on (related documents <u>68</u> Application to employ, <u>69</u> Application to employ)( <i>Joint Motion for Continuance of Hearing on (i) Debtor's Application for an Order Authorizing the Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date, and (ii) Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>371</u> Order granting

	<p>joint motion to continue hearing on (related document <u>370</u>) (related documents Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel, Application to employ Lynn Pinker Cox &amp; Hurst LLP as Special Counsel). ORDERED that the hearing on the Applications currently scheduled for January 21, 2020 at 9:30 a.m., will be continued to a new hearing date to be determined by the Parties; and it is further Entered on 1/17/2020. (Okafor, M.), <u>372</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List in Connection with Its Opposition to Motion to Appoint a Chapter 11 Trustee</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>362</u> Response). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><u>403</u> Certificate of service re: <i>Documents Served on or before January 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.). filed by Debtor Highland Capital Management, L.P., <u>374</u> Amended Notice (<i>Second Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P., <u>373</u> Amended Notice (<i>First Amended Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>368</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on January 21, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.).). filed by Debtor Highland Capital Management, L.P., <u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$322,274.88, Expenses: \$4,687.35. Filed by Attorney Juliana Hoffman Objections due by 2/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
01/27/2020	<p><u>404</u> Certificate of service re: <i>Documents Served on January 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>379</u> Final Order Authorizing (A) Continuance of Existing Cash Management System, (B) Continued Use of the Prime Account and Maxim Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief Filed By Highland Capital Management, L.P (related document <u>7</u>) Entered on 1/22/2020. (Okafor, M.), <u>380</u> Order Authorizing Debtor to Pay and Honor Ordinary Course Obligations Under Employee Bonus Plans and Granting Related Relief Filed by Highland Capital Management, L.P. (related document <u>177</u>) Entered on 1/22/2020. (Okafor, M.), <u>381</u> Order Granting Application to Employ Mercer (US) Inc. as Compensation Consultant to the debtor (related document <u>180</u>) Entered on 1/22/2020. (Okafor, M.), <u>382</u> Agreed Order Granting Motion for Protective Order (related document <u>280</u>) Entered on 1/22/2020. (Okafor, M.), <u>385</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>235</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From October 16, 2019 Through October 31, 2019</i> for Highland C). filed by Debtor Highland Capital Management, L.P., <u>386</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>286</u> Application for compensation <i>Second Monthly Application for Compensation and for Reimbursement of Expenses for the Period from November 1, 2019 through November 30, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 11/1). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/27/2020	<p><u>405</u> Debtor-in-possession monthly operating report for filing period 10/16/2019 to 10/31/2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/27/2020	<p><u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized</i></p>

	<i>by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Updated OCP List # <u>2</u> Exhibit 2—Blackline OCP List) (Annable, Zachery)
01/27/2020	<u>407</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
01/27/2020	<u>408</u> Notice of hearing( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/28/2020	<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) <u>128</u> Document and <u>127</u> Motion ). Entered on 1/28/2020 (Okafor, M.). Modified linkage on 2/11/2020 (Okafor, M.).
01/28/2020	<u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc# <u>396</u> )(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , Entered on 1/28/2020. (Okafor, M.)
01/28/2020	<u>411</u> Notice of Appearance and Request for Notice by Shawn M. Christianson Filed by Creditor Oracle America, Inc.. (Christianson, Shawn)
01/28/2020	<u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , (Annable, Zachery)
01/29/2020	<u>413</u> Certificate of service re: 1) <i>First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> ; 2) <i>Notice of First and Final Application of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for the Official Committee of Unsecured Creditors for Allowance of Compensation and Reimbursement of Expenses Incurred for the First and Final Period from November 8, 2019 Through and Including January 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>390</u> Supplemental Notice of the Young Conaway Stargatt &amp; Taylor, LLP Final Fee Application filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/8/2019 to 1/13/2020, Fee: \$272,300.00, Expenses: \$8,855.56. Filed by Attorney Juliana Hoffman Objections due by 2/13/2020.</i>). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</i>

01/29/2020	<p><u>414</u> Certificate of service re: <i>Documents Served on January 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1/2019 to 12/31/2019, Fee: \$589,730.35, Expenses: \$26,226.80. Filed by Debtor Highland Capital Management, L.P. Objections due by 2/14/2020. filed by Debtor Highland Capital Management, L.P., <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland), <u>395</u> Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>396</u> Motion for expedited hearing(related documents <u>395</u> Motion to extend/shorten time) (<i>Motion for (i) Expedited Hearing on Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. 1121(d) and Local Rule 3016–1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan, or Alternatively, (ii) Entry of a Bridge Order Extending the Exclusivity Period for the Filing of a Chapter 11 Plan Through February 19, 2020</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>415</u> Certificate of service re: <i>Documents Served on January 27, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>406</u> Notice (<i>Notice of Filing of Third Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Updated OCP List # 2 Exhibit 2—Blackline OCP List) filed by Debtor Highland Capital Management, L.P., <u>407</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional—Shawn Raver</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>408</u> Notice of hearing(<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Email Correspondence)). Status Conference to be held on 2/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/30/2020	<p><u>416</u> Certificate of service re: <i>Documents Served on January 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>409</u> Order Denying as Moot the Motion of the Official Committee of Unsecured Creditors for an Order Authorizing Filing Under Seal of the Omnibus Objection to the Debtor's (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for "Ordinary Course" Transactions (RE: related document(s) 128 Document). Entered on 1/28/2020 (Okafor, M.), <u>410</u> Bridge Order extending the exclusivity periods for filing Chapter 11 Plan and granting motion for expedited hearing (Related Doc<u>396</u>)(document set for hearing: <u>395</u> Motion to extend/shorten time) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u>, Entered on 1/28/2020. (Okafor, M.), <u>412</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>395</u> Motion to extend or limit</p>

	the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>395</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/31/2020	<u>417</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
01/31/2020	<u>418</u> Debtor–in–possession monthly operating report for filing period December 1, 2019 to December 31, 2019 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/31/2020	<u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
01/31/2020	<u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # <u>1</u> Exhibit A Fee Statement # <u>2</u> Exhibit B Expense Detail) (Hoffman, Juliana)
01/31/2020	<u>421</u> Motion for leave ( <i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Form of Bar Date Notice # <u>2</u> Exhibit B—Form of Publication Notice # <u>3</u> Exhibit C—Proposed Order) (Annable, Zachery)
01/31/2020	<u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) ( <i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
02/02/2020	<u>423</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>343</u> Application for compensation <i>First Monthly Application for Compensation and for Reimbursement of Expenses of Sidley Austin LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 11/30/2019, Fee: \$7). (Hoffman, Juliana)
02/03/2020	<u>424</u> Certificate of service re: <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/04/2020	<u>425</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>340</u> Application to employ Hayward & Associates PLLC as Attorney ( <i>Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associate</i> ). (Hayward, Melissa)

02/04/2020	<p><u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, (Annable, Zachery)</p>
02/05/2020	<p><u>427</u> Order granting motion for expedited hearing (Related Doc# <u>422</u>)(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, Entered on 2/5/2020. (Okafor, M.)</p>
02/05/2020	<p><u>428</u> Order denying motion to appoint trustee. (related document # <u>271</u>) Entered on 2/5/2020. (Okafor, M.)</p>
02/06/2020	<p><u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)</p>
02/06/2020	<p><u>430</u> Certificate of service re: <i>Documents Served on January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>417</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2019 through December 31, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>419</u> Motion to extend time to (Agreed Motion to Extend by One Hundred Twenty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee: \$702,665.28, Expenses: \$30,406.08. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 2/21/2020. (Attachments: # 1 Exhibit A Fee Statement # 2 Exhibit B Expense Detail) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>422</u> Motion for expedited hearing(related documents <u>421</u> Motion for leave) (<i>Motion for Expedited Hearing on Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/06/2020	<p><u>431</u> Certificate of service re: <i>Notice of Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>426</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Form of Bar Date Notice # 2 Exhibit B—Form of Publication Notice # 3 Exhibit C—Proposed Order)). Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u>, filed by Debtor Highland</p>

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	Capital Management, L.P.). (Kass, Albert)
02/06/2020	<u>432</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/07/2020	<u>433</u> Clerk's correspondence requesting an order or a notice of hearing from attorney for debtor. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)) Responses due by 2/14/2020. (Ecker, C.)
02/10/2020	<u>434</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>351</u> Motion to extend time to (Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure)). (Hayward, Melissa)
02/10/2020	<u>435</u> Order granting application to employ Hayward & Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document # <u>340</u> ) Entered on 2/10/2020. (Okafor, M.)
02/10/2020	<u>436</u> Certificate of service re: <i>(Supplemental) Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/10/2020	<u>437</u> Notice ( <i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox & Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
02/10/2020	<u>438</u> **WITHDRAWN by document # <u>443</u> ** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> , (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.).

02/11/2020	<u>439</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>67</u> Motion by Highland Capital Management, L.P.). (Annable, Zachery)
02/12/2020	<u>440</u> Certificate of service re: <i>1) Order Granting Motion for Expedited Hearing on Debtor's Motion for an Order (I) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (II) Approving the Form and Manner of Notice Thereof; to be Held on February 19, 2020 at 9:30 a.m. (Central Time); 2) Order Denying United States Trustee's Motion for an Order Directing the Appointment of a Chapter 11 Trustee</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>427</u> Order granting motion for expedited hearing (Related Doc <u>422</u> )(document set for hearing: <u>421</u> Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) Hearing to be held on 2/19/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>421</u> , Entered on 2/5/2020. (Okafor, M.), <u>428</u> Order denying motion to appoint trustee. (related document <u>271</u> ) Entered on 2/5/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>441</u> Certificate of service re: <i>Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>429</u> Order granting <u>419</u> Motion to Extend Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by One Hundred and Twenty Days Entered on 2/6/2020. (Okafor, M.)). (Kass, Albert)
02/12/2020	<u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. (Hoffman, Juliana)
02/12/2020	<u>443</u> Notice ( <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u> )). (Annable, Zachery)
02/12/2020	<u>444</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>378</u> Application for compensation <i>First Monthly Application for Compensation and Reimbursement of Expenses on behalf of the Unsecured Creditors Committee</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/6/2019 to 11/30/2019, Fee: \$32). (Hoffman, Juliana)
02/13/2020	<u>445</u> Certificate of service re: <i>1) Order Authorizing and Approving Debtor's Application Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Hayward &amp; Associates PLLC as Local Counsel; 2) Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date; and 3) Notice of Hearing re: First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019; to be Held on March 11, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	<p>document(s)<u>435</u> Order granting application to employ Hayward &amp; Associates PLLC for Highland Capital Management, L.P. as Local Counsel (related document <u>340</u>) Entered on 2/10/2020. (Okafor, M.), <u>437</u> Notice (<i>Notice of Withdrawal of Debtor's Application for an Order Authorizing the Retention and Employment of Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel, Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>69</u> Application/Motion to Employ/Retain Lynn Pinker Cox &amp; Hurst LLP as Special Texas Litigation Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Hurst Declaration # 3 Exhibit B – Proposed Order # 4 2016 Statement # 5 Declaration Frank Waterhouse # 6 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #70 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>438</u> **WITHDRAWN by document <u>443</u>** Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270</u>, (Annable, Zachery) Modified on 2/13/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/13/2020	<p><u>446</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>68</u> Application to employ Foley Gardere, Foley &amp; Lardner LLP as Special Counsel). (Chiarello, Annmarie)</p>
02/13/2020	<p><u>447</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>395</u> Motion to extend or limit the exclusivity period). (Annable, Zachery)</p>
02/13/2020	<p><u>448</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>)). (Annable, Zachery)</p>
02/13/2020	<p><u>449</u> Certificate of service re: 1) <i>Second Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2019 to and Including December 31, 2019</i>; 2) <i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through November 30, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 3/4/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, Financial Advisor FTI Consulting, Inc., <u>443</u> Notice (<i>Notice of Withdrawal of Notice of Hearing on the First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>438</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>270</u> Application for compensation – <i>First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 10/16/2019 to</p>

	11/30/2019, Fee: \$176129.00, Expenses: \$7836.31. Filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP f/k/a Gardere Wynne Sewell LLP Objections due by 1/13/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland)). Hearing to be held on 3/11/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>270.</u> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/14/2020	<u>450</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>389</u> Application for compensation <i>First and Final Application for Compensation and Reimbursement of Expenses on behalf of Young Conaway Stargatt &amp; Taylor, LLP as Co-Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Perio). (Hoffman, Juliana)
02/14/2020	<u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # <u>1</u> Exhibit 1 (Arb Award) # <u>2</u> Exhibit 2 (Rule 11) # <u>3</u> Exhibit 3 (Terry Declaration)) (Shaw, Brian)
02/14/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27457656, amount \$ 181.00 (re: Doc# <u>451</u> ). (U.S. Treasury)
02/14/2020	<u>452</u> Notice of hearing filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181, Filed by Jennifer G. Terry, Joshua Terry Objections due by 3/2/2020. (Attachments: # 1 Exhibit 1 (Arb Award) # 2 Exhibit 2 (Rule 11) # 3 Exhibit 3 (Terry Declaration))). Preliminary hearing to be held on 3/11/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Shaw, Brian)
02/14/2020	<u>453</u> Objection to (related document(s): <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i> ) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)
02/14/2020	<u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). (Annable, Zachery)
02/17/2020	<u>455</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/18/2020	<u>456</u> Notice of Withdrawal of Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>124</u> Limited Objection to the Debtor's Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley & Lardner LLP and Lynn Pinker Cox & Hurst as Special Texas Counsel and Special Litigation Counsel, Nunc Pro Tunc to the Petition Date (related document(s)69, 70) Filed by Official Committee of Unsecured Creditors (Weissgerber, Jaclyn) [ORIGINALLY FILED AS DOCUMENT #120 ON 11/12/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hoffman, Juliana)
02/18/2020	<u>457</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>392</u> Application for compensation <i>Third Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2019 through December 31, 2019</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 12/1). (Annable, Zachery)
02/19/2020	<u>458</u> Order granting first and final application for compensation (related document # <u>389</u> ) granting for Young Conaway Stargatt & Taylor, LLP as co-counsel for Official Committee of Unsecured Creditors, fees awarded: \$272300.00, expenses awarded: \$8855.56 Entered on 2/19/2020. (Okafor, M.)

02/19/2020	<u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document # <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)
02/19/2020	<u>462</u> Court admitted exhibits date of hearing February 19, 2020 (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P., (Court Admitted Debtors/Plaintiffs Exhibits #1, #2, #3, #4, #5, #6, #7 #8, & #9; Also Admitted Defendant/Respondent Exhibits #16 & #27 only). (Edmond, Michael)
02/19/2020	<u>463</u> Request for transcript regarding a hearing held on 2/19/2020. The requested turn-around time is hourly (Jeng, Hawaii)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted.(Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>397</u> Motion to enforce( <i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i> ) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing.

	<i>Discussion of prior order on sealing motion and court clarified its intent.) (Edmond, Michael) (Entered: 02/25/2020)</i>
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>421</u> Motion for leave (Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 02/25/2020)
02/19/2020	Hearing held on 2/19/2020. (RE: related document(s) <u>218</u> Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.) (Edmond, Michael) (Entered: 02/25/2020)
02/20/2020	<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. (Pomerantz, Jeffrey)
02/20/2020	<u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A December 2019 Fee Statement) (Annable, Zachery)
02/21/2020	<u>466</u> Notice ( <i>Notice of Debtor's Amended Operating Protocols</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document <u>281</u> ) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Amended Operating Protocols # <u>2</u> Exhibit B—Redline of Amended Operating Protocols) (Annable, Zachery)
02/21/2020	<u>467</u> <i>Withdrawal of Limited Objection to Motion of the Debtor for Approval of Settlement with The Official Committee Of Unsecured Creditors regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course</i> filed by Creditor Issuer Group (RE: related document(s) <u>324</u> Objection). (Bain, Joseph)
02/21/2020	<u>468</u> Certificate of service re: <i>Objection to Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel for the Period From December 1, 2019 through December 31, 2019</i> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 20</i> ). (Chiarello, Annmarie)

02/21/2020	<u>469</u> Certificate of service re: <i>Debtor's Witness and Exhibit List in Connection with its Application for an Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>454</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>68</u> Application to employ Foley Gardere, Foley & Lardner LLP as Special Counsel). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>470</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>455</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on February 19, 2020 at 9:30 a.m. (Central Time)</i> )) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/21/2020	<u>471</u> Certificate of service re: <i>1) Order Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; 2) Order Granting Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(D) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 3) Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505 and (II) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>459</u> Order granting <u>351</u> Debtor's Motion for Entry of an Order Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure Entered on 2/19/2020. (Okafor, M.), <u>460</u> Order granting <u>395</u> Debtor's Motion to extend or limit the exclusivity period through and including June 12, 2020 Entered on 2/19/2020. (Okafor, M.), <u>461</u> Order granting motion of the Debtor for Entry of an Order (I) Authorizing Bradley D. Sharp to Act as Foreign Representative Pursuant to 11 U.S.C. Section 1505 and (II) Granting Related Relief (related document <u>67</u> ) Entered on 2/19/2020. (Okafor, M.)). (Kass, Albert)
02/23/2020	<u>472</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>420</u> Application for compensation <i>Second Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2019 to 12/31/2019, Fee). (Hoffman, Juliana)
02/24/2020	<u>473</u> Agreed Order granting motion for relief from stay by Creditor Pension Danmark Pensjonsforsikringsaktieselskab (related document # <u>218</u> ) Entered on 2/24/2020. (Okafor, M.)
02/24/2020	<u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)
02/24/2020	<u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
02/24/2020	<u>476</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Chapter 11 Bankruptcy Case and Meeting of Creditors; to be Held on January 9, 2020 at 11:00 a.m.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>229</u> Meeting of creditors 341(a) meeting to be held on 1/9/2020 at 11:00 AM at Dallas, Room 976. Proofs of Claims due by 4/8/2020. Attorney(s)certificate of service of 341 meeting chapter 11 to be filed by 01/9/2020.). (Kass, Albert)
02/25/2020	

	<p><u>477</u> Order granting motion for expedited hearing (Related Doc# <u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.)</p>
02/25/2020	<p><u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, (Annable, Zachery)</p>
02/26/2020	<p><u>479</u> Transcript regarding Hearing Held 02/19/2020 (188 pgs.) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 2/19/2020. (RE: related document(s)<u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Evidentiary hearing. Court granted in part and denied in part. Foley is approved for representation of Highland in all Acis bankruptcy case and adversary proceeding matters; court does not approve Highland paying Foley for Foleys representation of Neutra in Neutras appeal of Acis involuntary order for relief; court will approve Foley representing Highland in its appeal of Acis confirmation order but fees for Foley in connection with this appeal will be allocated appropriately between Neutra and Highland, and Highland will not pay for Neutras allocated portion of fees. Court added that it is skeptical regarding likely benefits to Highland of the appeal of Acis confirmation order, even assuming success on appeal (in contrast to possible benefits to Neutra and HCLOF) since, among other things, reversal of confirmation order would not reinstate previously rejected contracts or remove the Chapter 11 trustee. Thus, the court will closely evaluate fees requested ultimately for likely benefit to Highland. Order should be submitted., Hearing held on 2/19/2020. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court heard reports that carryover issues are being resolved.), Hearing held on 2/19/2020. (RE: related document(s)<u>397</u> Motion to enforce(<i>Motion of the Debtor for the Entry of an Order Concerning the "Sealing Motion" and for a Conference Concerning the Substance, Scope and Intent of Certain Recent Rulings</i>) (related document(s): <u>382</u> Order on motion for protective order) Filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Discussion of prior order on sealing motion and court clarified its intent.), Hearing held on 2/19/2020. (RE: related document(s)<u>421</u> Motion for leave (<i>Debtor's Motion for an Order (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof</i>) filed by Debtor Highland Capital Management, L.P.) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for</p>

	<p><i>Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Motion granted. Counsel to upload order.), Hearing held on 2/19/2020. (RE: related document(s)218 Motion for relief from stay MOTION OF PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESELSKAB FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY TO TERMINATE INVESTMENT MANAGEMENT AGREEMENT, Filed by Creditor PensionDanmark Pensionsforsikringsaktieselskab) (Appearances: G. Demo, J. Pomeranz, J. Morris, M. Hayward, and Z. Annabel for Debtors; M. Clemente and J. Hoffman for Unsecured Creditors Committee; L. Lambert for UST; P. Lamberson, R. Patel, and A. Chiarello for Acis; M. Platt for Redeemer Committee; A. Anderson for certain issuers of CLOs; J. Bentley (telephonically) for certain CLO issuers; M. Hankin (telephonically) for Redeemer Committee. Nonevidentiary hearing. Court granted request to carry this matter to the 3/11/20 omnibus hearing.)). Transcript to be made available to the public on 05/26/2020. (Rehling, Kathy)</i></p>
02/26/2020	<p><u>480</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i>; 2) <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 1, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland Capital Management, L.P., Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$898,094.25, Expenses: \$28,854.75. Filed by Debtor Highland Capital Management, L.P. Objections due by 3/12/2020. filed by Debtor Highland Capital Management, L.P., <u>465</u> Application for compensation (<i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 12/31/2019, Fee: \$18,695.00, Expenses: \$80.60. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A December 2019 Fee Statement)). (Kass, Albert)</p>
02/26/2020	<p><u>481</u> Certificate of service re: <i>Notice of Debtor's Amended Operating Protocols</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>466</u> Notice (<i>Notice of Debtor's Amended Operating Protocols</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>339</u> Order Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course ( (related document <u>281</u>) Entered on 1/9/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Amended Operating Protocols # 2 Exhibit B—Redline of Amended Operating Protocols) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/26/2020	<p><u>482</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>473</u> Agreed Order granting motion for relief from stay by Creditor PensionDanmark Pensionsforsikringsaktieselskab (related document <u>218</u>) Entered on 2/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 02/26/2020. (Admin.)</p>
02/27/2020	<p><u>483</u> Application to employ Deloitte Tax LLP as Other Professional (<i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Crawford Declaration # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)</p>
02/28/2020	<p><u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause</i></p>

	<i>Distributions to Certain "Related Entities")</i> ). (Annable, Zachery)
02/28/2020	<u>485</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—OCP Tracking Report) (Annable, Zachery)
03/02/2020	<u>486</u> Response opposed to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party California Public Employees Retirement System (CalPERS). (Attachments: # <u>1</u> Exhibit A – Purchase and Sale Agreement # <u>2</u> Exhibit B – Assignment and Assumption Agreement) (Shriro, Michelle)
03/02/2020	<u>487</u> Objection to (related document(s): <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/02/2020	<u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document # <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)
03/02/2020	<u>489</u> Joinder by <i>Acis Capital Management, L.P. and Acis Capital Management GP, LLC to the Committee's Objection to the Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities," and Comment to the Same</i> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>487</u> Objection). (Enright, Jason)
03/02/2020	<u>490</u> Motion to appear pro hac vice for Louis J. Cisz, III. Fee Amount \$100 Filed by Interested Party California Public Employees Retirement System (CalPERS) (Shriro, Michelle)
03/02/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27511024, amount \$ 100.00 (re: Doc# <u>490</u> ). (U.S. Treasury)
03/02/2020	<u>491</u> Certificate of service re: 1) <i>Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ; 2) <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>474</u> Motion for authority to apply and disburse funds ( <i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>475</u> Motion for expedited hearing(related documents <u>474</u> Motion for authority to apply and disburse funds) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

03/02/2020	<p><u>492</u> Certificate of service re: 1) <i>Order Granting Debtor's Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; 2) <i>Notice of Hearing on the Motion of the Debtor for Entry of an Order Authorizing, But Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>; to be Held on March 4, 2020 at 1:30 p.m. (Prevailing Central Time) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>477</u> Order granting motion for expedited hearing (Related Doc<u>475</u>)(document set for hearing: <u>474</u> Motion for authority to apply and disburse funds) Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, Entered on 2/25/2020. (Okafor, M.), <u>478</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G)). Hearing to be held on 3/4/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>474</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>493</u> Certificate of service re: 1) <i>Witness and Exhibit List for March 4, 2020 Hearing</i>; 2) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>484</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). filed by Debtor Highland Capital Management, L.P., <u>485</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 through January 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit A—OCP Tracking Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/02/2020	<p><u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)(<i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/02/2020	<p><u>495</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>487</u> Objection). (Hoffman, Juliana)</p>
03/02/2020	<p><u>496</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>474</u> Motion for authority to apply and disburse funds (<i>Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities"</i>)). (Enright, Jason)</p>
03/03/2020	<p><u>497</u> Debtor-in-possession monthly operating report for filing period January 1, 2020 to January 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
03/03/2020	<p><u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>
03/04/2020	<p><u>499</u> Reply to (related document(s): <u>487</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>

03/04/2020	<u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document # <u>490</u> ) Entered on 3/4/2020. (Okafor, M.)
03/04/2020	<u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30. Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. (Hoffman, Juliana)
03/04/2020	Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.) (Edmond, Michael) (Entered: 03/05/2020)
03/04/2020	<u>504</u> Court admitted exhibits date of hearing March 4, 2020 (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") Filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, & #12) (Edmond, Michael) (Entered: 03/05/2020)
03/05/2020	<u>502</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>442</u> Application for compensation <i>Second Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 12/1/2019 to 12/31/2019, Fee: \$89,215.36, Expenses: \$3,955.12). (Hoffman, Juliana)
03/05/2020	<u>503</u> Request for transcript regarding a hearing held on 3/4/2020. The requested turn-around time is daily (Jeng, Hawaii)
03/06/2020	<u>505</u> Notice of Appearance and Request for Notice by John Y. Bonds III filed by Interested Party James Dondero. (Bonds, John)
03/06/2020	<u>506</u> Notice of Appearance and Request for Notice by Bryan C. Assink filed by Interested Party James Dondero. (Assink, Bryan)
03/06/2020	<u>507</u> Motion to appear pro hac vice for Jeffrey Bjork. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Hoffman, Juliana) Modified to correct attorney name on 3/6/2020 (Ecker, C.).
03/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27531772, amount \$ 100.00 (re: Doc# <u>507</u> ). (U.S. Treasury)
03/06/2020	<u>508</u> Witness and Exhibit List filed by Jennifer G. Terry, Joshua Terry (RE: related document(s) <u>451</u> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)

03/06/2020	<u>509</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>500</u> Order granting motion to appear pro hac vice adding Louis J. Cisz for California Public Employees Retirement System (CalPERS) (related document <u>490</u> ) Entered on 3/4/2020. (Okafor, M.) No. of Notices: 1. Notice Date 03/06/2020. (Admin.)
03/10/2020	<u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document # <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)
03/11/2020	<u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	<u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc # <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document # <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)
03/11/2020	<u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)
03/11/2020	Hearing held on 3/11/2020. (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (Appearances: M. Hayward for Debtor; B Shaw for Movants; J. Hoffman for UCC; M. Platt (and M. Hankin telephonically) for Redeemer Committee; J. Bonds for J. Dondero; A. Anderson for certain Issuers. Evidentiary hearing. Motion granted. Counsel to upload order.)(Edmond, Michael)
03/11/2020	<u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI January 2020 Staffing Report) (Annable, Zachery)
03/11/2020	<u>516</u> Court admitted exhibits date of hearing March 11, 2020 (RE: related document(s) <u>451</u> Motion for relief from stay, filed by Jennifer G. Terry, Joshua Terry.) (COURT ADMITTED PLAINTIFF EXHIBIT'S #M1, #M2 & #M3). (Edmond, Michael)
03/12/2020	<u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. (Hoffman, Juliana)
03/12/2020	<u>518</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>510</u> Order granting motion to appear pro hac vice adding Jeffrey E. Bjork for UBS AG London Branch and UBS Securities LLC (related document <u>507</u> ) Entered on 3/10/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 03/12/2020. (Admin.)

03/13/2020	<u>519</u> Order granting motion for relief from stay by Jennifer G. Terry , Joshua Terry (related document # <u>451</u> ) Entered on 3/13/2020. (Okafor, M.)
03/13/2020	<u>520</u> BNC certificate of mailing. (RE: related document(s) <u>511</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>68</u> Application/Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C – Proposed Order # 5 2016 Statement # 6 Declaration Frank Waterhouse # 7 Certificate of Service) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #69 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>521</u> BNC certificate of mailing. (RE: related document(s) <u>514</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors. Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order)) Responses due by 3/25/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>522</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/13/2020	<u>523</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 03/13/2020. (Admin.)
03/14/2020	<u>524</u> Certificate of service re: <i>Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>488</u> Order Granting Motion (i) Establishing Bar Dates for Filing Claims, Including 503(b)(9) Claims; and (ii) Approving the Form and Manner of Notice Thereof Filed by Debtor Highland Capital Management, L.P.(related document <u>421</u> ) The General Bar Date is April 8, 2020 at 5:00 p.m. Central Time; other dates per Order Entered on 3/2/2020. (Okafor, M.)). (Kass, Albert)
03/14/2020	<u>525</u> Certificate of service re: <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>494</u> Objection to (related document(s): <u>451</u> Motion for relief from stay Fee amount \$181, filed by Creditor Joshua Terry, Creditor Jennifer G. Terry)( <i>Debtor's Limited Objection to Motion for Relief from the Automatic Stay to Allow Pursuit of State Court Action Against Non-Debtors and Reservation of Rights</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/14/2020	<u>526</u> Certificate of service re: <i>Third Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 1/1/2020 to 1/31/2020, Fee: \$569,091.60, Expenses: \$12,673.30.</i> Filed by Attorney Juliana Hoffman, Creditor Committee Official Committee of Unsecured Creditors Objections due by 3/25/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)

03/16/2020	<u>527</u> Notice of Appearance and Request for Notice by David G. Adams filed by Creditor United States (IRS). (Adams, David)
03/16/2020	<u>528</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>464</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From January 1, 2020 through January 31, 2020</i> for Highland C). (Annable, Zachery)
03/17/2020	<u>529</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>465</u> Application for compensation ( <i>First Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from December 10, 2019 through December 31, 2019</i> ) for Hayward). (Annable, Zachery)
03/17/2020	<u>530</u> Certificate of service re: <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>531</u> Certificate of service re: <i>1) Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain Related Entities; 2) Order Authorizing the Retention and Employment of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel, Nunc Pro Tunc to the Petition Date; 3) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 Through January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>512</u> Order authorizing, but not directing, the debtor to cause distributions to certain 'related entities'. (Related Doc <u>474</u> ) Entered on 3/11/2020. (Bradden, T.), <u>513</u> Order granting application to employ Foley Gardere, Foley & Lardner LLP as Special Texas Counsel (related document <u>68</u> ) Entered on 3/11/2020. (Bradden, T.), <u>515</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2020 through January 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI January 2020 Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/17/2020	<u>532</u> Certificate of service re: <i>Third Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from January 1, 2020 to and Including January 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.</i> Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/18/2020	<u>533</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/18/2020	<u>534</u> Certificate of service re: Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/19/2020	

	<u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. (Pomerantz, Jeffrey)
03/19/2020	<u>536</u> Application for compensation ( <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—January 2020 Invoice) (Annable, Zachery)
03/19/2020	<u>537</u> Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
03/20/2020	<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
03/20/2020	<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020</i> , Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. (Hoffman, Juliana)
03/22/2020	

	<u>543</u> Stipulation by Highland Capital Management, L.P., UBS AG London Branch, UBS Securities LLC and. filed by Debtor Highland Capital Management, L.P., Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>488</u> Order on motion for leave). (Manns, Ryan)
03/23/2020	<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. (Hoffman, Juliana)
03/23/2020	<u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)
03/23/2020	<u>546</u> Certificate of service re: <i>(Supplemental) Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/25/2020	<u>547</u> Joint Stipulation and Order Extending Bar Date for UBS Securities LLC and UBS AG London Branch (RE: related document(s) <u>543</u> Stipulation filed by Debtor Highland Capital Management, L.P., Interested Party UBS Securities LLC, Interested Party UBS AG London Branch). Entered on 3/25/2020 (Okafor, M.)
03/25/2020	<u>548</u> Agreed Order Extending the Deadline to Object to the Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief (Related documents # <u>545</u> Motion to extend and <u>483</u> Application to employ Deloitte Tax LLP) Entered on 3/25/2020. (Okafor, M.)
03/26/2020	<u>549</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>501</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2020 to 1/31/2020, Fee: \$569). (Hoffman, Juliana)
03/26/2020	<u>550</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>483</u> Application to employ Deloitte Tax LLP as Other Professional ( <i>Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date;</i> ). (Annable, Zachery)
03/27/2020	<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document # <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)
03/27/2020	<u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
03/27/2020	<u>553</u> Certificate of service re: 1) <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 Through February 29, 2020</i> ; 2) <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 Through January 31, 2020</i> ; and 3) <i>Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 Through December 31, 2019</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski</i>

	<p><i>Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$941,043.50, Expenses: \$8,092.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/9/2020. filed by Debtor Highland Capital Management, L.P., <u>536</u> Application for compensation (<i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 1/1/2020 to 1/31/2020, Fee: \$75315.00, Expenses: \$2919.27. Filed by Attorney Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—January 2020 Invoice), <u>537</u> Notice of Filing of Compensation Report of Development Specialists, Inc. for the Period October 16, 2019 through December 31, 2019 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
03/27/2020	<p><u>554</u> Certificate of service re: <i>Documents Served on or Before March 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 11/30/2019, Fee: \$84,194.00, Expenses: \$4,458.87. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 1/1/2020 to 1/31/2020, Fee: \$88,520.60, Expenses: \$2,180.35. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 2/1/2020 to 2/29/2020, Fee: \$86,276.50, Expenses: \$1,994.83. Filed by Attorney Holland N. O'Neil Objections due by 4/10/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: \$457,155.72, Expenses: \$2,927.21. Filed by Attorney Juliana Hoffman Objections due by 4/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors).</i> (Kass, Albert)</p>
03/27/2020	<p><u>555</u> Certificate of service re: 1) <i>Fourth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from February 1, 2020 to and Including February 29, 2020;</i> 2) <i>Agreed Motion to Extend Objection Deadline for the Debtor's Application for Entry of an Order (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider to the Debtor Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI</p>

	Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/13/2020. filed by Financial Advisor FTI Consulting, Inc., <u>545</u> Motion to extend time to file objection (Agreed Motion) (RE: related document(s) <u>483</u> Application to employ) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/31/2020	<u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date (RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.)
03/31/2020	<u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/02/2020	<u>558</u> Debtor-in-possession monthly operating report for filing period 02/01/2020 to 02/29/2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/02/2020	<u>559</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Bar Dates for Filing Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.)
04/03/2020	<u>561</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>517</u> Application for compensation <i>Third Monthly Application for Allowance of Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2020 to 1/31/2020, Fee: \$411,407.28, Expenses: \$79.00.). (Hoffman, Juliana)
04/03/2020	<u>562</u> Notice of hearing( <i>Notice of May 26, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>563</u> Notice of hearing( <i>Notice of June 15, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/03/2020	<u>564</u> Certificate of service re: <i>1) Agreed Order: (A) Authorizing the Employment and Retention of Deloitte Tax LLP as Tax Services Provider Nunc Pro Tunc to the Petition Date; and (B) Granting Related Relief; 2) Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.), <u>552</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/03/2020	<u>565</u> Certificate of service re: <i>1) Order Approving Stipulation Permitting Brown Rudnick LLP to File a Proof of Claim After the General Bar Date; 2) Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>556</u> Order approving stipulation permitting Brown Rudnick LLP to file a proof of claim after general bar date

	(RE: related document(s) <u>552</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2020 (Okafor, M.), <u>557</u> Motion to extend time to (Debtor's Emergency Motion for an Order Extending Bar Date Deadline for Employees to File Claims) (RE: related document(s) <u>488</u> Order on motion for leave) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/06/2020	<u>566</u> Declaration re: ( <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
04/06/2020	<u>567</u> Notice ( <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Staffing Report) (Annable, Zachery)
04/07/2020	<u>568</u> Notice of hearing( <i>Notice of July 8, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
04/07/2020	<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. (Hoffman, Juliana)
04/07/2020	<u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. (Hoffman, Juliana)
04/08/2020	<u>571</u> Transcript regarding Hearing Held 03/04/20 RE: Motion hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 07/7/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber J&J Court Transcribers, Inc., Telephone number 609-586-2311. (RE: related document(s) Hearing held on 3/4/2020. (RE: related document(s) <u>474</u> Motion for authority to apply and disburse funds (Motion of the Debtor for Entry of an Order Authorizing, but Not Directing, the Debtor to Cause Distributions to Certain "Related Entities") filed by Debtor Highland Capital Management, L.P.) (Appearances (live): J. Pomeranz, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid, and J. Hoffman for UCC; M. Platt for Redeemer Committee; R. Patel and B. Shaw for ACIS; M. Shriro for CALPERS; A. Anderson for certain Cayman issuers; D.M. Lynn for J. Dondero. Appearances (telephonic): A. Attarwala for UBS; J. Bentley for certain Cayman issuers; E. Cheng for FTI Consulting; L. Cisz for CALPERS; T. Mascherin for Redeemer Committee. Evidentiary hearing. Motion resolved as follows: money owing to related entities will go into the registry of the court with the following exception—Mark Okada may be paid approximately \$2.876 (the \$4.176 million owing to him from the Dynamic Fund will be offset against his \$1.3 million demand note owing to the Debtor). All parties rights are reserved with regard to funds being put in the registry of the court. Debtors counsel should upload order.)). Transcript to be made available to the public on 07/7/2020. (Bowen, James)
04/08/2020	

	<u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s) <u>488</u> Order on motion for leave). (Bain, Joseph)
04/09/2020	<u>573</u> Application for compensation ( <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—February 2020 Fee Statement) (Annable, Zachery)
04/09/2020	<u>574</u> Certificate No Objection Regarding Fifth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period From February 1, 2020 Through February 29, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>535</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> for Jeffrey Nat). (Pomerantz, Jeffrey)
04/10/2020	<u>575</u> Certificate of service re: 1) <i>Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims</i> ; 2) <i>Notice of May 26, 2020 Omnibus Hearing Date; to be Held on May 26, 2020 at 9:30 a.m. (Central Time)</i> ; and 3) <i>Notice of June 15, 2020 Omnibus Hearing Date; to be Held on June 15, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>560</u> Order granting <u>557</u> Motion Extending Bar Date Deadline for Employees to File Claims. The General Bar Date is hereby extended, solely for the Debtors employees, to file claims that arose against the Debtor prior to the Petition Date through and including May 26, 2020 at 5:00 p.m. Entered on 4/3/2020. (Okafor, M.), <u>562</u> Notice of hearing( <i>Notice of May 26, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>563</u> Notice of hearing( <i>Notice of June 15, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>576</u> Certificate of service re: 1) <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>566</u> Declaration re: ( <i>First Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>567</u> Notice ( <i>Notice of Filing of Monthly Staffing Report By Development Specialists, Inc for the Period from February 1, 2020 through February 29, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring—Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Staffing Report) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/10/2020	<u>577</u> Certificate of service re: 1) <i>Summary Sheet and First Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019</i>

	<p><i>Through and Including February 29, 2020; and 2) Summary Sheet and First Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from October 29, 2019 Through and Including February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
04/10/2020	<p><u>578</u> Certificate of service re: <i>Notice of July 8, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>568</u> Notice of hearing(<i>Notice of July 8, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/10/2020	<p><u>579</u> Certificate of service re: <i>Joint Stipulation and [Proposed] Order Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>572</u> Stipulation by Issuer Group and Highland Capital Management, L.P.. filed by Creditor Issuer Group (RE: related document(s)<u>488</u> Order on motion for leave). filed by Creditor Issuer Group). (Kass, Albert)</p>
04/10/2020	<p><u>580</u> Objection to (related document(s): <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>539</u> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>540</u> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 20</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)</p>
04/11/2020	<p><u>581</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>542</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses for Sidley Austin LLP, Counsel</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2020 to 2/29/2020, Fee: &amp;#0). (Hoffman, Juliana)</p>
04/13/2020	<p><u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # <u>1</u> Proposed Order) (Skolnekovich, Nicole)</p>
04/14/2020	<p><u>583</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>544</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2020 to 2/29/2020, Fee: \$383,371.20, Expenses: \$59.62.). (Hoffman, Juliana)</p>

04/14/2020	<u>584</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>536</u> Application for compensation ( <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> ) for Hayward & Associates). (Annable, Zachery)
04/14/2020	<u>585</u> Notice of Appearance and Request for Notice Filed by Creditor American Express National Bank. (Bharatia, Shraddha)
04/14/2020	<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. (Pomerantz, Jeffrey)
04/15/2020	<u>587</u> Certificate of service re: <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>573</u> Application for compensation ( <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 2/1/2020 to 2/29/2020, Fee: \$39,087.50, Expenses: \$2,601.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—February 2020 Fee Statement) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
04/15/2020	<u>588</u> Certificate of service re: Omnibus Limited Objection to Applications for Compensation and Reimbursement of Expense of Foley Gardere, Foley & Lardner LLP as Special Counsel for the Period From October 16, 2019 Through February 29, 2020 filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>538</u> Amended application for compensation <i>Amended First Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through November, 539</i> Amended application for compensation <i>Amended Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through, 540</i> Application for compensation <i>Third Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from January 1, 2020 through January 31, 2020</i> <u>541</u> Application for compensation <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i> ). (Chiarello, Annmarie)
04/15/2020	<u>589</u> Notice of hearing filed by Interested Party Hunton Andrews Kurth LLP (RE: related document(s) <u>582</u> Motion for relief from stay – agreed Filed by Interested Party Hunton Andrews Kurth LLP (Attachments: # 1 Proposed Order)). Hearing to be held on 5/7/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>582</u> , (Skolnekovich, Nicole)
04/15/2020	<u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Proposed Order # <u>11</u> Service List) (Kane, John)
04/17/2020	<u>591</u> Certificate of service re: <i>1) Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>498</u> Notice of Bar Date for Filing Claims filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management,

	L.P.). (Kass, Albert)
04/17/2020	<u>592</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for March 2020) (Annable, Zachery)
04/17/2020	<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # <u>1</u> Exhibit 1 (Draft Motion Show Cause Motion) # <u>2</u> Exhibit 2 (DAF Complaint 1st case) # <u>3</u> Exhibit 3 (DAF Dismissal first case) # <u>4</u> Exhibit 4 (DAF Complaint 2nd case) # <u>5</u> Exhibit 5 (DAF Dismissal 2nd Case) # <u>6</u> Proposed Order) (Shaw, Brian)
04/17/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27675692, amount \$ 181.00 (re: Doc# <u>593</u> ). (U.S. Treasury)
04/20/2020	<u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. (Hoffman, Juliana)
04/21/2020	<u>595</u> Certificate of service re: <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$1,222,801.25, Expenses: \$18,747.77. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/5/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/21/2020	<u>596</u> Certificate of service re: <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 3/31/2020, Fee: \$476,836.20, Expenses: \$14,406.39. Filed by Attorney Juliana Hoffman Objections due by 5/11/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/21/2020	<u>597</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>592</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc for the Period from March 1, 2020 through March 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for March 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/22/2020	

	Receipt Number 00338531, Fee Amount \$3,601,018.59 (RE: Related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd,K) (Entered: 08/10/2020)
04/23/2020	Receipt Number 00338532, Fee Amount \$898,075.53 (RE: related document(s) <u>512</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
04/24/2020	<u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) (Annable, Zachery)
04/24/2020	<u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) (Annable, Zachery)
04/28/2020	<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
04/28/2020	<u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
04/28/2020	<u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)
04/28/2020	<u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ; and 2) <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A March 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>599</u> Notice ( <i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u> ) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/28/2020	

	<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Alexander McGeoch # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Declaration of Timothy Silva # <u>2</u> Exhibit B—Proposed Order) (Annable, Zachery)
04/28/2020	<u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
04/28/2020	<u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. (Pomerantz, Jeffrey)
04/28/2020	<u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A Fee Statements) (Annable, Zachery)
04/28/2020	<u>610</u> Notice of hearing <i>Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney

	<p>Jeffrey Nathan Pomerantz Objections due by 5/19/2020., <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc.</p> <p>Objections due by 5/19/2020., <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>569</u> and for <u>607</u> and for <u>609</u> and for <u>570</u> and for <u>602</u> and for <u>608</u>, (Pomerantz, Jeffrey)</p>
04/28/2020	<p><u>611</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, (Annable, Zachery)</p>
04/28/2020	<p><u>612</u> Certificate of service re: (<i>Supplemental</i>) 1) <i>Notice of Bar Dates for Filing Claims; and 2) [Customized] Official Form 410 Proof of Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>498</u> <i>Notice of Bar Date for Filing Claims</i> filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/29/2020	<p><u>613</u> Clerk's correspondence requesting a notice of hearing from attorney for debtor. (RE: related document(s)<u>394</u> Application for compensation <i>Second Monthly Application for Compensation and Reimbursement of Expenses of Foley Gardere, Foley &amp; Lardner LLP as Proposed Special Texas Counsel to the Debtor for the Period from December 1, 2019 through December 30, 2019</i> for Foley Gardere, Foley &amp; Lardner LLP f/k/a Gardere Wynne Sewell LLP, Special Counsel, Period: 12/1/2019 to 12/31/2019, Fee: \$143,328.50, Expenses: \$2,808.29. Filed by Attorney Holland N. O'Neil Objections due by 2/14/2020. (O'Neil, Holland)) Responses due by 5/13/2020. (Ecker, C.)</p>
04/29/2020	<p><u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.)</p>
04/29/2020	<p><u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)<u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
04/30/2020	<p><u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)</p>
05/01/2020	

	<p><u>617</u> Response unopposed to (related document(s): <u>593</u> Motion for relief from stay Fee amount \$181, filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)</p>
05/05/2020	<p><u>618</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
05/05/2020	<p><u>619</u> Certificate of service re: <i>Documents Served on April 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>600</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 3/1/2020 to 3/31/2020, Fee: \$82,270.50, Expenses: \$12.70. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>603</u> Certificate of service re: 1) <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020; and 2) Notice of Additional Services to Be Provided by Deloitte Tax LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>598</u> Application for compensation (<i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 3/1/2020 to 3/31/2020, Fee: \$35,307.50, Expenses: \$1,732.02. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A March 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC, <u>599</u> Notice (<i>Notice of Additional Services to Be Provided by Deloitte Tax LLP</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>551</u> Agreed Order granting application to employ Deloitte Tax LLP as tax services provider nunc pro tunc to the petition date (related document <u>483</u>) Entered on 3/27/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—Deloitte Tax Engagement Letters) filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>606</u> Motion to</p>

extend or limit the exclusivity period (RE: related document(s)460 Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020. filed by Debtor Highland Capital Management, L.P., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020. filed by Consultant Mercer (US) Inc., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements) filed by Other Professional Hayward & Associates PLLC, 610 Notice of hearing *Omnibus Notice of Hearing on First Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)569 Application for compensation *Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,154,959.45, Expenses: \$56,254.47. Filed by Objections due by 4/28/2020., 570 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 4/28/2020., 602 Application for compensation *First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland), 607 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/16/2019 to 3/31/2020, Fee: \$4,834,021.00, Expenses: \$118,198.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 5/19/2020., 608 Application for compensation *First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020* for Mercer (US) Inc., Consultant, Period: 11/15/2019 to 2/29/2020, Fee: \$113,804.64, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 5/19/2020., 609 Application for compensation (*Hayward & Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 12/10/2019 to 3/31/2020, Fee: \$168,405.00, Expenses: \$7,333.29. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Fee Statements)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for 569 and for 607 and for 609 and for 570 and for 602 and for 608, filed by Debtor Highland Capital Management, L.P., 611 Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)604 Application to employ Hunton Andrews Kurth LLP as Special Counsel (*Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date*) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Alexander McGeoch # 2 Exhibit B—Proposed Order), 605 Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (*Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules*

	<p><i>2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order), <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 5/22/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 5/26/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>605</u> and for <u>604</u> and for <u>606</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/05/2020	<p><u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>488</u> Order on motion for leave). (Attachments: # <u>1</u> Exhibit A—Employee Letter) (Annable, Zachery)</p>
05/05/2020	<p><u>621</u> Certificate of No Objection Regarding Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020 filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>573</u> Application for compensation (<i>Third Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from February 1, 2020 through February 29, 2020</i>) for Hayward &amp;). (Annable, Zachery)</p>
05/05/2020	<p><u>622</u> Certificate No Objection Regarding Sixth Monthly Application for Compensation and Reimbursement of Expenses Of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>586</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period From March 1, 2020 Through March 31, 2020</i> for Jeffrey Nathan Po). (Pomerantz, Jeffrey)</p>
05/06/2020	<p><u>623</u> Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer (related document # <u>582</u>) Entered on 5/6/2020. (Okafor, M.)</p>
05/06/2020	<p><u>624</u> Objection to (related document(s): <u>590</u> Motion to reclaim funds from the registry[<i>Motion for Remittance of Funds Held in Registry of Court</i>] filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
05/06/2020	<p><u>625</u> Certificate of service re: Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>624</u> Objection). (Hoffman, Juliana)</p>
05/06/2020	<p><u>626</u> Certificate of service re: 1) <i>Order Approving Second Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim after the General Bar Date</i>; and 2) <i>Agreed Motion to Extend by Sixty Days the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>614</u> Order approving second stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s)<u>600</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 4/29/2020 (Okafor, M.), <u>615</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease (RE: related document(s)<u>429</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
05/06/2020	<p><u>627</u> Certificate of service re: <i>Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Property Lease by Sixty Days</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>616</u> Agreed Order extending deadline to assume or reject unexpired nonresidential real property lease by sixty days (RE: <u>615</u> Motion to extend time.) Entered on 4/30/2020. (Okafor, M.)). (Kass, Albert)</p>

05/08/2020	<u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)
05/12/2020	<u>629</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>594</u> Application for compensation <i>Sidley Austin LLP's Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 3/31/2020, Fee: \$476.). (Hoffman, Juliana)
05/13/2020	<u>630</u> Reply to (related document(s): <u>624</u> Objection filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Service List) (Kane, John)
05/13/2020	<u>631</u> Certificate of service re: 1) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020</i> ; and 2) <i>Joint Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors Modifying the Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>618</u> <i>Notice (Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to March 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>620</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Attachments: # 1 Exhibit A—Employee Letter) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
05/13/2020	<u>632</u> Certificate of service re: <i>Stipulation and Agreed Order Permitting Hunton Andrew Kurth LLP to Apply Prepetition Retainer</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>623</u> <i>Stipulation and Agreed Order Permitting Hunton Andrews Kurth LLP to Apply Prepetition Retainer</i> (related document <u>582</u> ) Entered on 5/6/2020. (Okafor, M.) filed by Interested Party Hunton Andrews Kurth LLP). (Kass, Albert)
05/13/2020	<u>633</u> Certificate of service re: <i>Order Approving Joint Stipulation of the Debtor and the Official Committee of Unsecured Creditors Modifying Bar Date Order</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>628</u> Order approving joint stipulation of the Debtor and the Official Committee of the Unsecured Creditors modifying the Bar Date Order (RE: related document(s) <u>620</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/8/2020 (Okafor, M.)). (Kass, Albert)
05/14/2020	<u>634</u> Debtor-in-possession monthly operating report for filing period March 1, 2020 to March 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/15/2020	<u>635</u> Notice of hearing filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> <i>Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court]</i> Filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). Hearing to be held on 6/30/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>590</u> , (Attachments: # <u>1</u> Service List) (Kane, John)
05/19/2020	

	<u>636</u> Notice of Appearance and Request for Notice by Martin A. Sosland filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
05/19/2020	<u>637</u> Notice of Appearance and Request for Notice by Candice Marie Carson filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Carson, Candice)
05/19/2020	<u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)
05/19/2020	<u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. (Hoffman, Juliana)
05/19/2020	<u>641</u> Objection to (related document(s): <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere, filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
05/20/2020	<u>642</u> Trustee's Objection to <i>Foley &amp; Lardner, LLP's First Interim Application for Fees and Expenses</i> (RE: related document(s) <u>602</u> Application for compensation) (Lambert, Lisa)
05/20/2020	<u>643</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>598</u> Application for compensation ( <i>Fourth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> ) for Hayward & Asso). (Annable, Zachery)
05/20/2020	<u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K) (Sosland, Martin)
05/20/2020	<u>645</u> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K)). Hearing to be held on 6/15/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>644</u> , (Sosland, Martin)
05/20/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 27774088, amount \$ 181.00 (re: Doc# <u>644</u> ). (U.S. Treasury)

05/20/2020	<u>646</u> Order approving third stipulation permitting Brown Rudnick LLP to file proof of claims after the general bar date (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 5/20/2020 (Okafor, M.)
05/20/2020	<u>647</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>601</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from March 1, 2020 through March 31, 2020</i> for Foley Gardere,, <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 9 # <u>2</u> Exhibit 10 # <u>3</u> Exhibit 11 # <u>4</u> Exhibit 12 # <u>5</u> Exhibit 13 # <u>6</u> Exhibit 14 # <u>7</u> Exhibit 15 # <u>8</u> Exhibit 16 # <u>9</u> Exhibit 17 # <u>10</u> Exhibit 18 # <u>11</u> Exhibit 19 # <u>12</u> Exhibit 20 # <u>13</u> Exhibit 21 # <u>14</u> Exhibit 22 # <u>15</u> Exhibit 23 # <u>16</u> Exhibit 24 # <u>17</u> Exhibit 25) (Chiarello, Annmarie)
05/21/2020	<u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. (Pomerantz, Jeffrey)
05/22/2020	<u>649</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i> ). (Annable, Zachery)
05/22/2020	<u>650</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020</i> for Mercer (). (Annable, Zachery)
05/22/2020	<u>651</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3,</i> ). (Hoffman, Juliana)
05/22/2020	<u>652</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09</i> ). (Hoffman, Juliana)
05/22/2020	<u>653</u> Declaration re: ( <i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). (Annable, Zachery)
05/22/2020	<u>654</u> Witness and Exhibit List for <i>May 26, 2020 Hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to</i>

	<p>2/29/2020, Fee: \$3., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>, <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20</i>, <u>608</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's At). (Annable, Zachery)</p>
05/22/2020	<u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.)
05/22/2020	<u>656</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>609</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's At). (Annable, Zachery)
05/22/2020	<u>657</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)). (Annable, Zachery)
05/22/2020	<u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
05/23/2020	<u>659</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i> ). (Annable, Zachery)
05/25/2020	<u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)
05/26/2020	<u>661</u> Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>662</u> Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered

	on 5/26/2020. (Ecker, C.)
05/26/2020	<u>663</u> Order granting application for compensation (related document # <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>664</u> Order granting application for compensation (related document # <u>608</u> ) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>665</u> Amended Order granting application for compensation (related document # <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>666</u> Amended Order granting application for compensation (related document # <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>667</u> Order granting application for compensation (related document # <u>609</u> ) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document # <u>605</u> ) Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>670</u> Order granting application for compensation (related document # <u>602</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)
05/26/2020	<u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.) (Edmond, Michael) (Entered: 05/27/2020)
05/26/2020	<u>674</u> Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time)

	filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order. (Edmond, Michael) (Entered: 05/27/2020)
05/27/2020	<u>671</u> Request for transcript (ruling only) regarding a hearing held on 5/26/2020. The requested turn-around time is daily (Jeng, Hawaii)
05/28/2020	<u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95. Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. (Hoffman, Juliana)
05/28/2020	<u>676</u> Transcript regarding Hearing Held 05/26/2020 (7 pgs.) RE: Fee Applications, Applications to Employ Nunc Pro Tunc, Motion to Extend Exclusivity Period (Excerpt: 10:00–10:06 a.m. Only). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 08/26/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>672</u> Hearing held on 5/26/2020. (RE: related document(s) <u>602</u> First Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel,) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 80% of fees and 100% of expenses allowed on an interim basis with all rights of all parties reserved. Counsel to upload order.), <u>673</u> Hearing held on 5/26/2020. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date), filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Application granted. Counsel to upload order.), <u>674</u> Hearing held on 5/26/2020. (RE: related document(s) <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>460</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) (Appearances (all video or telephonic): J. Pomeranz and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis; H. ONiel, special counsel for Debtor; A. Attarwala for UBS; M. Hankin and T. Mascherin for Redeemer Committee; R. Matsumura for HCLOF; L. Lambert for UST. Nonevidentiary hearing. Agreed resolution accepted; 30 day extension. Counsel to upload order.). Transcript to be made available to the public on 08/26/2020. (Rehling, Kathy)
05/28/2020	<u>677</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>663</u> Order granting application for compensation (related document <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 05/28/2020. (Admin.)
06/01/2020	<u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion

	for leave). (Annable, Zachery)
06/01/2020	<u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # <u>1</u> Exhibit A—DSI Staffing Report for April 2020) (Annable, Zachery)
06/01/2020	<u>680</u> Certificate of service re: 1) <i>Third Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; 2) <i>Summary Sheet and Sixth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> ; and 3) <i>Summary Sheet and Fifth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from March 1, 2020 to and Including March 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>638</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.32, Expenses: \$5,765.07. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 6/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66. Filed by Attorney Juliana Hoffman Objections due by 6/9/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/01/2020	<u>681</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; and 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing [Attached hereto as Exhibit B]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>682</u> Certificate of service re: <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$1,113,522.50, Expenses: \$3,437.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 6/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/01/2020	<u>683</u> Certificate of service re: <i>Documents Served on May 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>653</u> Declaration re: ( <i>Second Supplemental Declaration of Bradley D. Sharp in Support of Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to</i>

	<p><i>Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>74</u> Application to employ Development Specialists, Inc as Financial Advisor). filed by Debtor Highland Capital Management, L.P., <u>654</u> Witness and Exhibit List for May 26, 2020 <i>Hearing</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>569</u> Application for compensation <i>Sidley Austin LLP's First Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/29/2019 to 2/29/2020, Fee: \$3., <u>570</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/29/2019 to 2/29/2020, Fee: \$1,757,835.90, Expenses: \$8,781.09., <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Ga, <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel (<i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i>), <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel (<i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment</i>, <u>606</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>460</u> Order on motion to extend/shorten time), <u>607</u> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP, as Counsel for the Debtor and Debtor in Possession, for the Period From October 16, 2019 Through March 31, 20, 608</i> Application for compensation <i>First Interim Application for Compensation and Reimbursement of Expenses of Mercer (US) Inc., as Compensation Consultant to the Debtor for the Period From November 15, 2019 Through February 29, 2020 for Mercer</i> (, <u>609</u> Application for compensation (<i>Hayward &amp; Associates PLLC's First Interim Application for Compensation and Reimbursement of Expenses for the Period from December 10, 2019 through March 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's At). filed by Debtor Highland Capital Management, L.P., <u>655</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON MAY 26, 2020 AT 9:30 a.m. (Ellison, T.), <u>658</u> Notice (Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/02/2020	<p><u>684</u> Clerk's correspondence requesting a notice of hearing from attorney for creditor. (RE: related document(s)<u>593</u> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)) Responses due by 6/9/2020. (Ecker, C.)</p>
06/02/2020	<p><u>685</u> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s)<u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)</p>
06/02/2020	<p><u>686</u> Debtor-in-possession monthly operating report for filing period April 1, 2020 to April 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
06/03/2020	<p><u>687</u> Response opposed to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
06/03/2020	<p><u>688</u> Support/supplemental document(<i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>687</u> Response). (Attachments: # <u>1</u></p>

	<p>Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # <u>2</u> Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # <u>3</u> Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # <u>4</u> Exhibit 4—NY D.I. 411: March 13, 2017 Decision # <u>5</u> Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # <u>6</u> Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # <u>7</u> Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # <u>8</u> Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # <u>9</u> Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # <u>10</u> Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # <u>11</u> Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # <u>12</u> Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only) (Annable, Zachery)</p>
06/03/2020	<p><u>689</u> Motion to file document under seal.(<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Protective Order Filed in State Court Litigation) (Annable, Zachery)</p>
06/03/2020	<p><u>690</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
06/03/2020	<p><u>691</u> Motion to file document under seal.<i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)</p>
06/03/2020	<p><u>692</u> Objection to (related document(s): <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)<i>Redacted Version (Pending Ruling on Motion to Seal at D.I. 691) of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A (slip sheet, pending ruling on motion to seal) # <u>2</u> Exhibit Exhibit B slip sheet (pending ruling on motion to seal) # <u>3</u> Exhibit Exhibit C slip sheet (pending ruling on motion to seal) # <u>4</u> Exhibit Exhibit D slip sheet (pending ruling on motion to seal) # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet (pending ruling on motion to seal) # <u>9</u> Exhibit Exhibit I slip sheet (pending ruling on motion to seal) # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit L # <u>12</u> Exhibit Exhibit M # <u>13</u> Exhibit Exhibit N) (Platt, Mark)</p>
06/03/2020	<p><u>693</u> Support/supplemental document<i>Exhibit K</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>692</u> Objection). (Platt, Mark)</p>
06/03/2020	<p><u>694</u> Joinder by filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<u>692</u> Objection). (Shaw, Brian)</p>
06/04/2020	<p><u>695</u> Motion to appear pro hac vice for Robert J. Feinstein. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
06/04/2020	<p>Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27814231, amount \$ 100.00 (re: Doc# <u>695</u>). (U.S. Treasury)</p>

06/04/2020	<u>696</u> Amended Motion to file document under seal.AMENDED MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OBJECTION TO UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO PROCEED WITH STATE COURT ACTION Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
06/04/2020	<u>697</u> Certificate of service re: <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>660</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>658</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on May 26, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P..) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/04/2020	<u>698</u> Certificate of service re: <i>Documents Served on May 26, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>661</u> Order granting application for compensation (related document <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>662</u> Order granting application for compensation (related document <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>663</u> Order granting application for compensation (related document <u>607</u> ) granting for Pachulski Stang Ziehl & Jones LLP, as Counsel for the Debtor and Debtor in Possession, fees awarded: \$4,834,021.00, expenses awarded: \$118,198.81 Entered on 5/26/2020. (Ecker, C.), <u>664</u> Order granting application for compensation (related document <u>608</u> ) granting for Mercer (US) Inc., fees awarded: \$113,804.64, expenses awarded: \$2,151.69 Entered on 5/26/2020. (Ecker, C.), <u>665</u> Amended Order granting application for compensation (related document <u>570</u> ) granting for FTI Consulting, Inc., fees awarded: \$1,757,835.90, expenses awarded: \$8,781.09 Entered on 5/26/2020. (Ecker, C.), <u>666</u> Amended Order granting application for compensation (related document <u>569</u> ) granting for Sidley Austin, attorney for Official Committee of Unsecured Creditors, fees awarded: \$3,154,959.45, expenses awarded: \$56,254.47 Entered on 5/26/2020. (Ecker, C.), <u>667</u> Order granting application for compensation (related document <u>609</u> ) granting for Hayward & Associates PLLC, fees awarded: \$168,405.00, expenses awarded: \$7,333.29 Entered on 5/26/2020. (Ecker, C.), <u>668</u> Order granting <u>606</u> Motion to extend or limit the exclusivity period. (Re: related document(s) Chapter 11 Plan due by 7/13/2020, Entered on 5/26/2020. (Ecker, C.), <u>669</u> Order granting application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Other Professional (related document <u>605</u> ) Entered on 5/26/2020. (Ecker, C.), <u>670</u> Order granting application for compensation (related document <u>602</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$387,672.08, expenses awarded: \$10,455.04 Entered on 5/26/2020. (Ecker, C.)). (Kass, Albert)
06/04/2020	<u>699</u> Certificate of service re: <i>Summary Sheet and Sixth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period from April 1, 2020 to and Including April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.</i> Filed by Attorney Juliana Hoffman Objections due by 6/18/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
06/04/2020	<u>700</u> Motion to redact/restrict Restrict From Public View (related document(s): <u>692</u> ) (Fee Amount \$25) Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark)
06/04/2020	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 25.00). Receipt number 27815698, amount \$ 25.00 (re: Doc# <u>700</u> ). (U.S. Treasury)

06/04/2020	<u>701</u> Objection to (related document(s): <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch)Redacted Version of Redeemer Committee Objection to UBS Motion for Relief from the Automatic Stay to Proceed with State Court Action filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit A # <u>2</u> Exhibit Exhibit B # <u>3</u> Exhibit Exhibit C # <u>4</u> Exhibit Exhibit D # <u>5</u> Exhibit Exhibit E # <u>6</u> Exhibit Exhibit F # <u>7</u> Exhibit Exhibit G # <u>8</u> Exhibit Exhibit H slip sheet # <u>9</u> Exhibit Exhibit I slip sheet # <u>10</u> Exhibit Exhibit J # <u>11</u> Exhibit Exhibit K # <u>12</u> Exhibit Exhibit L # <u>13</u> Exhibit Exhibit M # <u>14</u> Exhibit Exhibit N) (Platt, Mark)
06/04/2020	<u>702</u> Notice of Appearance and Request for Notice by Thomas M. Melsheimer filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent. (Melsheimer, Thomas)
06/04/2020	<u>703</u> Motion to appear pro hac vice for David Neier. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Melsheimer, Thomas)
06/04/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27816362, amount \$ 100.00 (re: Doc# <u>703</u> ). (U.S. Treasury)
06/05/2020	<u>704</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
06/05/2020	<u>705</u> Order granting motion to appear pro hac vice adding David Neier for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>703</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>706</u> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document # <u>695</u> ) Entered on 6/5/2020. (Okafor, M.)
06/05/2020	<u>707</u> Certificate of service re: 1) <i>Fourth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>678</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P., <u>679</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from April 1, 2020 through April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Attachments: # 1 Exhibit A—DSI Staffing Report for April 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/05/2020	<u>708</u> Certificate of service re: <i>Order Approving Fourth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent

	Kurtzman Carson Consultants LLC (related document(s) <a href="#">685</a> Order approving fourth stipulation permitting Brown Rudnick LLP to file proof of claims after general bar date (RE: related document(s) <a href="#">638</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/2/2020 (Okafor, M.)). (Kass, Albert)
06/05/2020	<a href="#">709</a> Certificate of service re: 1) <i>Debtor's Objection to UBS's Motion for Relief from the Automatic Stay to Proceed with State Court Action</i> ; 2) <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ; and 3) <i>Debtor's Motion for Entry of an Order Authorizing Filing Under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">687</a> Response opposed to (related document(s): <a href="#">644</a> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <a href="#">688</a> Support/supplemental document( <i>Appendix A of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">687</a> Response). (Attachments: # 1 Exhibit 1—UBS v. Highland Capital Mgmt., L.P., 2010 NY Slip Op 1436 (N.Y. App. Div.) # 2 Exhibit 2—UBS v. Highland Capital Mgmt., L.P., 86 A.D.3d 469 (N.Y. App. Div. 2011) # 3 Exhibit 3—UBS v. Highland Capital Mgmt., L.P., 93 A.D.3d 489 (N.Y. App. Div. 2012) # 4 Exhibit 4—NY D.I. 411: March 13, 2017 Decision # 5 Exhibit 5—NY D.I. 494: Transcript of May 1, 2018 Telephonic Hearing # 6 Exhibit 6—NY D.I. 472: UBSs Pre-Trial Brief in Support of Bifurcation # 7 Exhibit 7—Shira A. Scheindlin, U.S.D.J. (Ret.), Why Not Arbitrate? Breaking the Backlog in State and Federal Courts, 263 N.Y. L.J. 94 (May 15, 2020) # 8 Exhibit 8—December 2, 2019 Email from the Debtors Pre-Petition Counsel to Counsel for UBS # 9 Exhibit 9—March 6, 2020 Email Chain Between the Debtors Bankruptcy Counsel and Counsel for UBS # 10 Exhibit 10—NY D.I. 320: UBSs Note of Issue Without Jury # 11 Exhibit 11—March 22, 2020 New York Administrative Order AO/78/20 # 12 Exhibit 12—May 26, 2020 Law360 Article (Excerpt Only) filed by Debtor Highland Capital Management, L.P., <a href="#">689</a> Motion to file document under seal.( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of Appendix B of Exhibits to Debtor's Objection to UBS's Motion for Relief from the Automatic Stay</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Protective Order Filed in State Court Litigation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/07/2020	<a href="#">710</a> BNC certificate of mailing – PDF document. (RE: related document(s) <a href="#">706</a> Order granting motion to appear pro hac vice adding Robert J. Feinstein for Highland Capital Management, L.P. (related document <a href="#">695</a> ) Entered on 6/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/07/2020. (Admin.)
06/08/2020	<a href="#">711</a> Order granting motion to seal documents (related document # <a href="#">696</a> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<a href="#">712</a> Certificate of No Objection filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <a href="#">593</a> Motion for relief from stay Fee amount \$181.). (Shaw, Brian)
06/08/2020	<a href="#">713</a> Order granting Motion to Redact (Related Doc # <a href="#">700</a> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<a href="#">714</a> <b>SEALED document regarding: Redeemer Committee's Objection to UBS's Motion for Relief From The Automatic Stay (unredacted version) per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <a href="#">711</a> Order on motion to seal). (Platt, Mark)
06/08/2020	<a href="#">715</a> <b>SEALED document regarding: Exhibit A, Original Synthetic Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <a href="#">711</a> Order on motion to seal). (Platt, Mark)

06/08/2020	<b><u>716</u> SEALED document regarding: Exhibit B, Original Engagement Ltr. per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>717</u> SEALED document regarding: Exhibit C, Original Cash Warehouse Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>718</u> SEALED document regarding: Exhibit D, Expert Report of Louis G. Dudney per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>719</u> SEALED document regarding: Exhibit E, 3/20/2009 Termination, Settlement, and Release Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>720</u> SEALED document regarding: Exhibit H, UBS and Crusader Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<b><u>721</u> SEALED document regarding: Exhibit I, UBS and Credit Strategies Fund Settlement Agreement per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>711</u> Order on motion to seal). (Platt, Mark)
06/08/2020	<u>722</u> Order granting motion to seal documents (related document # <u>689</u> ) Entered on 6/8/2020. (Okafor, M.)
06/08/2020	<b><u>723</u> SEALED document regarding: Appendix B of Exhibits in Support of Debtor's Objection to UBS's Motion for Relief from the Automatic Stay per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>722</u> Order on motion to seal). (Annable, Zachery)
06/08/2020	<u>724</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>704</u> <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to April 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/10/2020	<u>725</u> Motion to appear pro hac vice for Sarah Tomkowiak. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
06/10/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27830926, amount \$ 100.00 (re: Doc# <u>725</u> ). (U.S. Treasury)
06/10/2020	<u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). (Annable, Zachery)

06/10/2020	<u>727</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>639</u> Application for compensation <i>Sixth Monthly Application of Sidley Austin LLP for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 4/1/2020 to 4/30/2020, Fee: \$438,619.). (Hoffman, Juliana)
06/10/2020	<u>728</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>640</u> Application for compensation <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 3/31/2020, Fee: \$477,538.20, Expenses: \$14,937.66.). (Hoffman, Juliana)
06/10/2020	<u>729</u> Notice of Subpoena of Highland Capital Management, L.P. filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/11/2020	<u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27834758, amount \$ 100.00 (re: Doc# <u>730</u> ). (U.S. Treasury)
06/11/2020	<u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document # <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)
06/11/2020	<u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.).
06/11/2020	<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Reply # <u>3</u> Exhibit 1 # <u>4</u> Exhibit 2 # <u>5</u> Exhibit 3 # <u>6</u> Exhibit 4 # <u>7</u> Exhibit 5 # <u>8</u> Exhibit 6 # <u>9</u> Exhibit 7 # <u>10</u> Exhibit 8 # <u>11</u> Exhibit 9 # <u>12</u> Exhibit 10 # <u>13</u> Exhibit 11 # <u>14</u> Exhibit 12 # <u>15</u> Exhibit 13 # <u>16</u> Exhibit 14) (Sosland, Martin)
06/11/2020	<u>734</u> INCORRECT EVENT USED: See # <u>746</u> for correction. Motion for leave to <i>File Documents Under Seal with UBS's Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>733</u> Motion for leave) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – State Court Protective Stipulation) (Sosland, Martin) Modified on 6/15/2020 (Ecker, C.).
06/11/2020	<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG London Branch , UBS Securities LLC (Ecker, C.) (Entered: 06/15/2020)
06/12/2020	<u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K)). (Ellison, T.)

06/12/2020	<u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document # <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)
06/12/2020	<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/12/2020	<u>738</u> Certificate of No Objection Regarding Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>648</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtors for the Period From April 1, 2020 Through April 30, 2020</i> for Jeffrey Nathan). (Annable, Zachery)
06/12/2020	<u>739</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>740</u> Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.).
06/12/2020	<u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , (Annable, Zachery)
06/12/2020	<u>742</u> Witness and Exhibit List <i>for June 15, 2020 Hearing</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>644</u> Motion for relief from stay ( <i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i> ) Fee amount \$181.). (Sosland, Martin)
06/12/2020	<u>743</u> Amended Witness and Exhibit List <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND FIRST AMENDED WITNESS AND EXHIBIT LIST FOR JUNE 15, 2020 HEARING ON UBS MOTION FOR RELIEF FROM THE AUTOMATIC STAY</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>740</u> List (witness/exhibit/generic)). (Platt, Mark)
06/13/2020	<u>744</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>731</u> Order granting motion to appear pro hac vice adding Sarah A. Tomkowiak for UBS AG London Branch and UBS Securities LLC (related document <u>725</u> ) Entered on 6/11/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/13/2020. (Admin.)
06/14/2020	<u>745</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u> ) Entered on 6/12/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 06/14/2020. (Admin.)
06/15/2020	<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule

	9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
06/15/2020	<u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u> , (Annable, Zachery)
06/15/2020	<u>754</u> Hearing held on 6/15/2020. (RE: related document(s) <u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez & Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 06/17/2020)
06/15/2020	<u>770</u> Court admitted exhibits date of hearing June 15, 2020 (RE: related document(s) <u>644</u> Motion for relief from stay (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC., (COURT ADMITTED ALL EXHIBIT'S TO ALL THE ATTACHED OBJECTOR'S OBJECTION ALL EXCEPT FOR EXHIBIT #D (EXPERT REPORT OF LOUIS G. DUDLEY; THAT IS FILED UNDER SEAL); ON THE REDEEMER COMMITTEE OBJECTION; THE FOLLOWING EXHIBIT'S ATTACHED TO THE MOTION OF UBS'S MOTION TO LIFT STAY ALL ADMITTED; # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K; ALSO PLEASE SEE WITNESS AND EXHIBIT LIST OF DEBTOR; CREDITOR UBS AND REDEEMER COMMITTEE) (Edmond, Michael) (Entered: 06/23/2020)
06/16/2020	<u>749</u> ENTER AN ERROR; NO PDF ATTACHED: Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily (Edmond, Michael) Modified on 6/16/2020 (Edmond, Michael).
06/16/2020	<u>750</u> Request for transcript regarding a hearing held on 6/15/2020. The requested turn-around time is daily. (Edmond, Michael)
06/16/2020	<u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
06/16/2020	<u>752</u> Notice of hearing( <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/16/2020	<u>753</u> Notice of hearing ( <i>Notice of July 14, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
06/17/2020	<u>755</u> Transcript regarding Hearing Held 06/15/2020 (127 pages) RE: Motion for Relief from the Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY

	<p>AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 754 Hearing held on 6/15/2020. (RE: related document(s) <u>644</u> (UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action), filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances (all via WebEx): M. Sosland, A. Clubok, and S. Tomkowiak for UBS; J. Pomerantz, R. Feinstein, G. Demo, A. Kornfeld, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; B. Shaw and R. Patel for Acis; M. Rosenthal for Alvarez &amp; Marsal. Evidentiary hearing. Motion denied. Debtors counsel to upload order.)). Transcript to be made available to the public on 09/15/2020. (Rehling, Kathy)</p>
06/17/2020	<p><u>756</u> Certificate of service re: <i>1) WebEx Meeting Invitation to participate electronically in the hearing on Monday, June 15, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; and 2) Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>735</u> COURT'S NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON JUNE 15, 2020 AT 1:30 p.m. (RE: related document(s) <u>644</u> Motion for relief from stay (<i>UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action</i>) Fee amount \$181, Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 6/3/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)). (Ellison, T.)). (Kass, Albert)</p>
06/17/2020	<p><u>757</u> Certificate of service re: <i>Fifth Stipulation by and Between the Debtor and Brown Rudnick LLP Extending the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>726</u> Stipulation by Highland Capital Management, L.P. and Brown Rudnick LLP. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>488</u> Order on motion for leave). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
06/17/2020	<p><u>758</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice of Alan J. Kornfeld to Represent Highland Capital Management, L.P.; and 2) Order Approving Fifth Stipulation Permitting Brown Rudnick LLP to File Proofs of Claim After the General Bar Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>730</u> Motion to appear pro hac vice for Alan J. Kornfeld. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>732</u> Order approving fifth stipulation permitting Brown Rudnick LLP to file proofs of claim after the general bar ate (RE: related document(s) <u>638</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 6/11/2020 (Okafor, M.) Modified text on 6/11/2020 (Okafor, M.)). (Kass, Albert)</p>
06/17/2020	<p><u>759</u> Certificate of service re: <i>Documents Served on June 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>736</u> Order granting motion to appear pro hac vice adding Alan J. Kornfeld for Highland Capital Management, L.P. (related document <u>730</u>) Entered on 6/12/2020. (Okafor, M.), <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>739</u> Witness and Exhibit List (<i>Debtor's Witness and Exhibit List for June 15, 2020 Hearing on UBS's Motion for Relief from the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (Related document(s) <u>644</u> UBS's Motion for Relief From the Automatic Stay to Proceed With State Court Action) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch. MODIFIED to correct linkage on 6/15/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>741</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit</p>

	A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>737</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>760</u> Certificate of service re: 1) <i>Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure</i> ; and 2) <i>Notice of Hearing Regarding Debtor's Motion for Entry of an Order Further Extending the Period Within Which it May Remove Actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure; to be Held on July 8, 2020 at 1:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>748</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 7/6/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 7/8/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>747</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/17/2020	<u>761</u> Certificate of service re: 1) <i>Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> ; 2) <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ; and 3) <i>Notice of July 14, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 4/30/2020, Fee: \$32,602.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 7/7/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>752</u> Notice of hearing( <i>Notice of August 6, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>753</u> Notice of hearing ( <i>Notice of July 14, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/18/2020	<u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
06/18/2020	<u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document # <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)
06/18/2020	<u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document # <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)
06/19/2020	<u>765</u> Order denying motion for relief from stay by Interested Parties UBS AG London Branch , UBS Securities LLC (related document # <u>644</u> ) Entered on 6/19/2020. (Okafor, M.)

06/20/2020	<u>766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>764</u> Order granting motion for relief from stay by Acis Capital Management GP, LLC , Acis Capital Management, L.P. (related document <u>593</u> ) Entered on 6/18/2020. (Bradden, T.)) No. of Notices: 1. Notice Date 06/20/2020. (Admin.) (Entered: 06/21/2020)
06/22/2020	<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. (Hoffman, Juliana)
06/22/2020	<u>768</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>675</u> Application for compensation <i>Sixth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 4/1/2020 to 4/30/2020, Fee: \$489,957.84, Expenses: \$6,702.95.). (Hoffman, Juliana)
06/22/2020	<u>769</u> Certificate of service re: 1) <i>Cover Sheet and Seventh Monthly Application for Compensation and Reimbursement of Expenses of Foley Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020</i> ; and 2) <i>Agreed Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 5/1/2020 to 5/31/2020, Fee: \$27,822.00, Expenses: \$489.80. Filed by Attorney Holland N. O'Neil Objections due by 7/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>763</u> Agreed Order granting application to employ Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (related document <u>604</u> ) Entered on 6/18/2020. (Bradden, T.)). (Kass, Albert)
06/23/2020	<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. (Annable, Zachery)
06/23/2020	<u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> . (Annable, Zachery)
06/23/2020	<u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. (Pomerantz, Jeffrey)
06/23/2020	<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
06/23/2020	<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

06/23/2020	<p><u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, (Annable, Zachery)</p>
06/23/2020	<p><u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u>, (Annable, Zachery)</p>
06/24/2020	<p><u>778</u> Certificate of service re: <i>Summary Sheet and Seventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>767</u> Application for compensation <i>Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$343,624.68, Expenses: \$2,758.75.</i> Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
06/24/2020	<p><u>779</u> Certificate of service re: <i>Documents Served on 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020. filed by Debtor Highland Capital Management, L.P., <u>772</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 8/6/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u>, filed by Debtor Highland Capital Management, L.P., <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$803,509.50, Expenses: \$4,372.94. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 7/14/2020. filed by Debtor Highland Capital Management, L.P., <u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring–Related Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>776</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>774</u> Application to employ James P. Seery, Jr. as Other Professional <i>Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>774</u>, filed by Debtor Highland Capital Management, L.P., <u>777</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>775</u> Application to employ Development Specialists, Inc. as Other Professional <i>Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring–Related</i></p>

	<i>Services, Nunc Pro Tunc to March 15, 2020</i> Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>775</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
06/25/2020	<u>780</u> Notice of Subpoena of David Klos filed by Creditor CLO Holdco, Ltd.. (Kane, John)
06/26/2020	<u>781</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 through May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
06/26/2020	<u>782</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 1-A # <u>3</u> Exhibit 1-B # <u>4</u> Exhibit 1-C # <u>5</u> Exhibit 1-D # <u>6</u> Exhibit 1-E # <u>7</u> Exhibit 1-F # <u>8</u> Exhibit 1-G # <u>9</u> Exhibit 1-H # <u>10</u> Exhibit 1-I # <u>11</u> Exhibit 2 # <u>12</u> Exhibit 3 # <u>13</u> Exhibit 4 # <u>14</u> Exhibit 5 # <u>15</u> Exhibit 6 # <u>16</u> Exhibit 7 # <u>17</u> Exhibit 8 # <u>18</u> Exhibit 9 # <u>19</u> Exhibit 10 # <u>20</u> Exhibit 11 # <u>21</u> Exhibit 12 # <u>22</u> Exhibit 13 # <u>23</u> Exhibit 14 # <u>24</u> Exhibit 15 # <u>25</u> Exhibit 16) (Kane, John)
06/26/2020	<u>783</u> <b>SEALED document regarding: Exhibit 11 – AROF MUFG Bank Statement June 2018_ Highland_PEO-032620 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>784</u> <b>SEALED document regarding: Exhibit 12 – GG and HCM Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>785</u> <b>SEALED document regarding: Exhibit 13 – GG and HCM Amendment to Purchase and Sale Agreement Loan Fund dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>786</u> <b>SEALED document regarding: Exhibit 14 – Exercise of Discretion by Trustee The Get Good Nonexempt Trust (Fully Executed) dated December 28, 2016 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>787</u> <b>SEALED document regarding: Exhibit 15 – Dynamic Income CLO Holdco Side Letter (\$2M Subscription) dated January 10, 2017 Highly Confidential per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/26/2020	<u>788</u> <b>SEALED document regarding: Exhibit 16 – Highland Capital Management, L.P. December 31, 2016 Final Opinion per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
06/27/2020	<u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ]). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Hoffman, Juliana)
06/29/2020	<u>790</u> COURTS NOTICE/VIDEO CONFERENCE INFORMATION FOR HEARING ON June 30, 2020 at 09:30 AM; (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [ <i>Motion for Remittance of Funds Held in Registry of Court</i> ] filed by Creditor CLO

	Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List)). (Edmond, Michael)
06/30/2020	<u>791</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>602</u> Application for compensation <i>First Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through March 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 3/31/2020, Fee: \$484,590.10, Expenses: \$10,455.04. Filed by Attorney Holland N. O'Neil Objections due by 5/19/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Proposed Order Exhibit C – Proposed Order) (O'Neil, Holland)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)
06/30/2020	<u>793</u> Hearing held on 6/30/2020. (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). (Edmond, Michael)
06/30/2020	<u>794</u> Court admitted exhibits date of hearing June 30, 2020 (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry [Motion for Remittance of Funds Held in Registry of Court] filed by Creditor CLO Holdco, Ltd. (COURT ADMITTED MOVANT'S CLO HOLDCO, LTD., EXHIBITS #1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15 & #16; ALSO ADMITTED DEFENDANT'S UNSECURED CREDITOR'S COMMITTEE EXHIBIT'S #1, #2 & #3) (Edmond, Michael)
06/30/2020	<u>795</u> Application for compensation ( <i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A April 2020 Invoice) (Annable, Zachery)
07/01/2020	<u>796</u> Request for transcript regarding a hearing held on 6/30/2020. The requested turn-around time is daily. (Edmond, Michael)
07/01/2020	<u>797</u> Certificate of service re: <i>re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from May 1, 2020 Through May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>781</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period</i>

	<p>from May 1, 2020 through May 31, 2020) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/01/2020	<p><u>798</u> Certificate of service re: <i>re: The Official Committee of Unsecured Creditors' Witness and Exhibit List for the June 30, 2020 Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>789</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>]). (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/01/2020	<p><u>799</u> Certificate of service re: <i>Cover Sheet and Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 Through April 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 4/30/2020, Fee: \$24877.50, Expenses: \$36.00. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A April 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
07/02/2020	<p><u>800</u> Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
07/02/2020	<p><u>801</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
07/02/2020	<p><u>802</u> Transcript regarding Hearing Held 06/30/2020 (100 pages) RE: Motion for Remittance of Funds (590). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 09/30/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 793 Hearing held on 6/30/2020. (RE: related document(s)<u>590</u> Motion to reclaim funds from the registry [<i>Motion for Remittance of Funds Held in Registry of Court</i>] filed by Creditor CLO Holdco, Ltd. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Proposed Order # 11 Service List). (Appearances: J. Kane and B. Clark for Movant; J. Pomeranz, J. Morris, G. Demo, and Z. Annabel for Debtor; M. Clemente for Unsecured Creditors Committee; M. Platt and M. Hankin for Redeemers Committee; R. Patel for Acis; A. Anderson and J. Bentley for certain CLO Issuers. Evidentiary hearing. Motion denied, but court ordered that funds in registry of court will be disbursed to CLO Holdco, Ltd. in 90 days unless an adversary proceeding has been filed against it and injunctive/equitable relief is sought and granted in such adversary proceeding, requiring further holding of the funds in the registry of the court (subject to requests/agreements for extension of this 90-day deadline). Also, court registry will be receiving further funds that Debtor is due to disburse to CLO Holdco and Highland Capital</p>

	Management Services, Inc. imminently (separate order is to be submitted by Debtors counsel; UCC counsel to submit an order on today's ruling on CLO Holdcos motion). Transcript to be made available to the public on 09/30/2020. (Rehling, Kathy)
07/02/2020	<u>803</u> BNC certificate of mailing. (RE: related document(s) <u>792</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>605</u> Application to employ Wilmer Cutler Pickering Hale and Dorr LLP as Special Counsel ( <i>Debtor's Application Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code and Bankruptcy Rules 2014(a) and 2016 for an Order Authorizing the Employment of Wilmer Cutler Pickering Hale and Dorr LLP as Regulatory and Compliance Counsel Nunc Pro Tunc to the Petition Date</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Declaration of Timothy Silva # 2 Exhibit B—Proposed Order)) Responses due by 7/14/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/02/2020. (Admin.)
07/03/2020	<u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
07/06/2020	<u>805</u> Notice of hearing ( <i>Notice of September 10, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/07/2020	<u>806</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Tuesday, May 26, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>801</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to May 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/07/2020	<u>807</u> Certificate of service re: <i>Statement of the Official Committee of Unsecured Creditors in Response to the Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016–1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>804</u> Response unopposed to (related document(s): <u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>668</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/08/2020	<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. (Montgomery, Paige)
07/08/2020	<u>809</u> Certificate of service re: <i>Notice of September 10, 2020 Omnibus Hearing Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>805</u> Notice of hearing ( <i>Notice of September 10, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

07/08/2020	<p><u>812</u> Hearing held on 7/8/2020. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day extension). Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)</p>
07/08/2020	<p><u>813</u> Hearing held on 7/8/2020. (RE: related document(s)<u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s)<u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.) (Edmond, Michael) (Entered: 07/09/2020)</p>
07/09/2020	<p><u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)</p>
07/09/2020	<p><u>811</u> Declaration re: (<i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>810</u> Motion for protective order (<i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i>). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G) (Annable, Zachery)</p>
07/09/2020	<p><u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Hoffman, Juliana)</p>
07/09/2020	<p><u>815</u> Request for transcript regarding a hearing held on 7/8/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
07/09/2020	<p><u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.)</p>
07/10/2020	<p><u>817</u> Transcript regarding Hearing Held 07/08/2020 (58 pages) RE: Motions to Extend Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/8/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>812</u> Hearing held on 7/8/2020. (RE: related document(s)<u>737</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>668</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted in part (30-day</p>

	extension). Debtors counsel to upload order.), 813 Hearing held on 7/8/2020. (RE: related document(s) <u>747</u> Motion to extend time to (Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure) (RE: related document(s) <u>459</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, M. Hayward, and Z. Annabel for Debtor; M. Clemente for Official Unsecured Creditors Committee; T. Mascherin, M. Platt, and M. Hankin for Redeemer Committee; R. Patel, A. Chiarello, and B. Shaw for Acis; M. Lynn for J. Dondero; J. Bjork for UBS. Evidentiary hearing. Motion granted. Debtors counsel to upload order.)). Transcript to be made available to the public on 10/8/2020. (Rehling, Kathy)
07/10/2020	<u>818</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>751</u> Application for compensation <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i> for Foley Gardere.). (O'Neil, Holland)
07/10/2020	<u>819</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>762</u> Application for compensation <i>Seventh Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
07/10/2020	<u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.)
07/10/2020	<u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc # <u>474</u> ) Entered on 7/10/2020. (Okafor, M.)
07/10/2020	<u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). (Annable, Zachery)
07/13/2020	<u>823</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
07/13/2020	<u>824</u> Certificate of service re: <i>Documents Served on July 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>811</u> Declaration re: ( <i>Declaration of John A. Morris in Support of Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> )).

	<i>(Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>816</u> Order granting <u>747</u> Motion to extend time to within which it may remove actions Pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>459</u> O) Entered on 7/9/2020. (Okafor, M.)). (Kass, Albert)</i>
07/13/2020	<u>825</u> Order denying motion to reclaim funds from the registry (Related Doc # <u>590</u> ) Entered on 7/13/2020. (Okafor, M.)
07/13/2020	<u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). (Annable, Zachery)</i>
07/13/2020	<u>827</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management, L.P. and Acis Capital Management GP, LLC.. Filed by Interested Party James Dondero. (Assink, Bryan)
07/13/2020	<u>828</u> Certificate of service re: 1) Order Granting Debtor's Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan; 2) Agreed Order Regarding Deposit of Funds into the Registry of the Court; and 3) Debtors Witness and Exhibit List with Respect to (A) the Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to May 15, 2020, and (B) the Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363 (b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring Related Services Nunc Pro Tunc to March 15 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>820</u> Order granting <u>737</u> Motion to extend or limit the exclusivity period. The Exclusive Filing Period is extended through and including August 12, 2020. Entered on 7/10/2020. (Okafor, M.), <u>821</u> Agreed order regarding deposit of funds into the registry of the Court. (Related Doc <u>474</u> ) Entered on 7/10/2020. (Okafor, M.), <u>822</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Repr, <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restruct). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
07/14/2020	<u>829</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>767</u> Application for compensation Sidley Austin LLP's Seventh Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 5/1/2020 to 5/31/2020, Fee: \$34). (Hoffman, Juliana)
07/14/2020	<u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. (Hoffman, Juliana)
07/14/2020	<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured

	Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F) (Hoffman, Juliana)
07/14/2020	<u>832</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
07/14/2020	<u>833</u> Request for transcript regarding a hearing held on 7/14/2020. The requested turn-around time is daily. (Edmond, Michael)
07/14/2020	<u>836</u> Court admitted exhibits date of hearing July 14, 2020 (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P., And <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020 filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED EXHIBIT'S #1, #2, #3, #4, #5, #6 & #7) (Edmond, Michael) (Entered: 07/15/2020)
07/14/2020	<u>862</u> Hearing held on 7/14/2020. (RE: related document(s) <u>774</u> Application to employ James P. Seery, Jr. as Other Professional Debtors Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/14/2020	<u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.) (Edmond, Michael) (Entered: 07/17/2020)
07/15/2020	<u>834</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>773</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> for Jeffrey Nathan P). (Annable, Zachery)
07/15/2020	<u>835</u> Motion to appear pro hac vice for James A. Wright III. Fee Amount \$100 Filed by Interested Parties NexPoint Real Estate Strategies Fund, Highland Global Allocation Fund, Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., Highland Total Return Fund, Highland Fixed Income Fund, Highland Socially Responsible Equity Fund, Highland Small-Cap Equity Fund, Highland Funds II and its series, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland/iBoxx Senior Loan ETF, Highland Healthcare Opportunities Fund, Highland Funds I and its series, NexPoint

	Advisors, L.P., Highland Capital Management Fund Advisors, L.P. (Varshosaz, Artoush)
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27927823, amount \$ 100.00 (re: Doc# <u>835</u> ). (U.S. Treasury)
07/15/2020	<u>837</u> Response opposed to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by John Honis, Rand PE Fund Management, LLC, Rand PE Fund I, LP, Rand Advisors, LLC, Hunter Mountain Investment Trust, Beacon Mountain, LLC, Atlas IDF, LP, Atlas IDF, GP, LLC. (Keiffer, Edwin)
07/15/2020	<u>838</u> INCORRECT ENTRY: Attorney to amend and refile. Motion to appear pro hac vice for Stephen G. Topetzes. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush) MODIFIED on 7/16/2020 (Ecker, C.).
07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928069, amount \$ 100.00 (re: Doc# <u>838</u> ). (U.S. Treasury)
07/15/2020	<u>839</u> Response opposed to (related document(s): <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/15/2020	<u>840</u> INCORRECT ENTRY: FILED WITHOUT EXHIBITS. Notice of Appearance and Request for Notice by Paul Richard Bessette filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul) Modified on 7/15/2020 (Rielly, Bill).
07/15/2020	<u>841</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/15/2020	<u>842</u> Notice of Appearance and Request for Notice by Amanda Melanie Rush filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>843</u> Motion to appear pro hac vice for Tracy K. Stratford. Fee Amount \$100 Filed by Interested Party CCS Medical, Inc. (Rush, Amanda)

07/15/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27928305, amount \$ 100.00 (re: Doc# <u>843</u> ). (U.S. Treasury)
07/15/2020	<u>844</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, L.P.</i> ) filed by Interested Party CCS Medical, Inc.. (Rush, Amanda)
07/15/2020	<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/15/2020	<u>846</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Attachments: # <u>1</u> Exhibit A) (Kane, John)
07/15/2020	<u>847</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Parties NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors, L.P., VineBrook Homes, Trust, Inc., NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Partners, LLC, NexPoint Hospitality Trust, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, NexPoint Real Estate Finance Inc.. (Drawhorn, Lauren)
07/15/2020	<u>848</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>845</u> Objection). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
07/16/2020	<u>849</u> Amended Motion to appear pro hac vice for Stephen G. Topetzes. (related document: <u>838</u> ) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
07/16/2020	<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u> , (Annable, Zachery)
07/16/2020	<u>851</u> Notice of hearing ( <i>Notice of September 17, 2020 Omnibus Hearing Date</i> ) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm (Annable, Zachery)
07/16/2020	

	<u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s) <u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.)
07/16/2020	<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document # <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)
07/16/2020	<u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u> ) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.).
07/16/2020	<u>855</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party MGM Holdings, Inc.. (Drawhorn, Lauren)
07/16/2020	<u>856</u> Notice of Appearance and Request for Notice by Artoush Varshosaz filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
07/16/2020	<u>857</u> Motion to appear pro hac vice for Mark M. Maloney. Fee Amount \$100 Filed by Interested Party Highland CLO Funding, Ltd. (Bessette, Paul)
07/16/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 27932614, amount \$ 100.00 (re: Doc# <u>857</u> ). (U.S. Treasury)
07/16/2020	<u>858</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party Highland CLO Funding, Ltd.. (Bessette, Paul)
07/16/2020	<u>859</u> Declaration re: <u>858</u> <i>Objection</i> filed by Interested Party Highland CLO Funding, Ltd. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. ). (Attachments: # <u>1</u> Exhibit A) (Bessette, Paul)
07/16/2020	<u>860</u> Certificate of service re: <i>1) Order Denying Motion for Remittance of Funds Held in Registry of Court; and 2) Stipulation by and Between the Debtor and the Official Committee of Unsecured Creditors</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>825</u> Order denying motion to reclaim funds from the registry (Related Doc <u>590</u> ) Entered on 7/13/2020. (Okafor, M.), <u>826</u> Stipulation by Highland Capital Management, L.P. and The Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>808</u> Motion to compel Production by the Debtor. , <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs, <u>814</u> Motion for expedited hearing(related documents <u>808</u> Motion to compel) ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i>
07/16/2020	<u>861</u> Certificate of service re: <i>1) Summary Sheet and Seventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from May 1, 2020 to and Including May 31, 2020; and 2) Summary Sheet and Second Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period</i>

	<p>from March 1, 2020 Through and Including May 31, 2020 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>830</u>) Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65. Filed by Attorney Juliana Hoffman Objections due by 8/4/2020. filed by Financial Advisor FTI Consulting, Inc., <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
07/17/2020	<p><u>864</u> Transcript regarding Hearing Held 07/14/2020 (134 pages) RE: Applications to Employ. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>863</u> Hearing held on 7/14/2020. (RE: related document(s) <u>775</u> Application to employ Development Specialists, Inc. as Other Professional Amended Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc to March 15, 2020, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, G. Demo, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and B. Shaw for Acis; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; D. Nier for various employees.. Evidentiary hearing. Application granted (bonuses request withdrawn, per negotiations with UCC, subject to possible later request). Debtors counsel to submit order.)). Transcript to be made available to the public on 10/15/2020. (Rehling, Kathy)</p>
07/17/2020	<p><u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document # <u>843</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>835</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetzes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document # <u>849</u>) Entered on 7/17/2020. (Ecker, C.)</p>
07/17/2020	<p><u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. (Annable, Zachery)</p>
07/17/2020	

	<u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) ( <i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
07/17/2020	<u>870</u> Declaration re: ( <i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs.</i> )). (Annable, Zachery)
07/17/2020	<u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>604</u> Application to employ Hunton Andrews Kurth LLP as Special Counsel ( <i>Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> )). (Hesse, Gregory)
07/17/2020	<u>872</u> Response opposed to (related document(s): <u>841</u> Objection filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>844</u> Objection filed by Interested Party CCS Medical, Inc., <u>845</u> Objection filed by Debtor Highland Capital Management, L.P., <u>846</u> Objection filed by Creditor CLO Holdco, Ltd., <u>847</u> Objection filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>855</u> Objection filed by Interested Party MGM Holdings, Inc., <u>858</u> Objection filed by Interested Party Highland CLO Funding, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
07/17/2020	<u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
07/19/2020	<u>874</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>865</u> Order granting motion to appear pro hac vice adding Tracy K. Stratford for CCS Medical, Inc. (related document <u>843</u> ) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)
07/19/2020	

	<p><u>875</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>866</u> Order granting motion to appear pro hac vice adding James A. Wright for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>835</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)</p>
07/19/2020	<p><u>876</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>867</u> Order granting motion to appear pro hac vice adding Stephen G. Topetztes for Highland Funds I and its series; Highland Funds II and its series; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland Income Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small–Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Total Return Fund; Highland/iBoxx Senior Loan ETF; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Real Estate Strategies Fund; Highland Capital Management Fund Advisors, L.P. and Highland Fixed Income Fund (related document <u>849</u>) Entered on 7/17/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 07/19/2020. (Admin.)</p>
07/20/2020	<p><u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. (Hoffman, Juliana)</p>
07/20/2020	<p><u>878</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)</p>
07/20/2020	<p><u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. (Pomerantz, Jeffrey)</p>
07/20/2020	<p><u>880</u> Certificate of service re: <i>1) Debtor's Objection to Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor; and 2) Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors Emergency Motion to Compel Production by the Debtor</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>845</u> Objection to (related document(s): <u>808</u> Motion to compel Production by the Debtor. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>848</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to the Official Committee of Unsecured Creditors' Emergency Motion to Compel Production by the Debtor</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>845</u> Objection). (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/20/2020	<p><u>881</u> Certificate of service re: <i>Documents Served on July 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>850</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 7/29/2020., <u>810</u> Motion for protective order (<i>Debtor's Motion</i></p>

	<p>for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 7/21/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>810</u> and for <u>808</u>, filed by Debtor Highland Capital Management, L.P., <u>851</u> Notice of hearing (<i>Notice of September 17, 2020 Omnibus Hearing Date</i>) filed by Debtor Highland Capital Management, L.P.. Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm filed by Debtor Highland Capital Management, L.P., <u>852</u> Order Approving Stipulation Resolving the Motion for Expedited Consideration of the Official Committee of the Unsecured Creditors' Motion to Compel Production by the Debtor (RE: related document(s)<u>826</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 7/16/2020 (Ecker, C.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.), <u>854</u> Order granting application to employ James P. Seery, Jr. as Chief Executive Officer, Chief Restructuring Officer and Foreign representative (related document <u>774</u>) Entered on 7/16/2020. (Ecker, C.) Modified on 7/16/2020 (Ecker, C.). (Kass, Albert)</p>
07/21/2020	<p><u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document # <u>857</u>) Entered on 7/21/2020. (Okafor, M.)</p>
07/21/2020	<p><u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. (Hoffman, Juliana)</p>
07/21/2020	<p>894 Hearing held on 7/21/2020. (RE: related document(s)<u>808</u> Motion to compel Production by the Debtor, filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion granted in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM communications, and as to Atlass communications with outside law firms. Counsel to submit order. ) (Edmond, Michael) (Entered: 07/24/2020)</p>
07/21/2020	<p>895 Hearing held on 7/21/2020. (RE: related document(s)<u>810</u> Motion for protective order (Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034), filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Motion denied in substantial part, but with special privilege review protections granted as to the three lawyer custodians, as to CCS Medical and MGM, and as to Atlass communications with outside law firms. Counsel to submit order.) (Edmond, Michael) (Entered: 07/24/2020)</p>
07/21/2020	<p>896 Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R.</p>

	Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.) (Edmond, Michael) (Entered: 07/24/2020)
07/22/2020	<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
07/22/2020	<u>885</u> INCORRECT ENTRY: EVENT CODE. Motion to extend or limit the exclusivity period Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) Modified on 7/22/2020 (Rielly, Bill).
07/22/2020	<u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery)
07/22/2020	<u>887</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
07/22/2020	<u>888</u> Request for transcript regarding a hearing held on 7/21/2020. The requested turn-around time is daily. (Edmond, Michael)
07/22/2020	<u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , (Annable, Zachery)
07/22/2020	<u>890</u> Certificate of service re: <i>Documents Served on July 17, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020. filed by Debtor Highland Capital Management, L.P., <u>869</u> Reply to (related document(s): <u>839</u> Response filed by Creditor Committee Official Committee of Unsecured Creditors) ( <i>Debtor's Reply to the Committee's Response to the Debtor's Discovery Motion</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>870</u> Declaration re: ( <i>Declaration of John A. Morris in Further Support of the Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs</i> ). filed by Debtor Highland Capital Management, L.P., <u>871</u> Declaration re: <i>First Supplemental Declaration of Alexander McGeoch in Support of Debtor's Application for an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>604</u> Application to

	<p><i>employ Hunton Andrews Kurth LLP as Special Counsel (Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date)). filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>873</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>868</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</i></p>
07/23/2020	<p><u>891</u> Objection to claim(s) 3 of Creditor(s) ACIS Capital Management L.P. and ACIS Capital Management GP, LLC.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
07/23/2020	<p><u>892</u> Certificate of service re: <i>Amended Ninth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended to include Exhibit)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$818,786.50, Expenses: \$3,205.81. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 8/10/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/23/2020	<p><u>893</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>882</u> Order granting motion to appear pro hac vice adding Mark M. Maloney for Highland CLO Funding, Ltd. (related document <u>857</u>) Entered on 7/21/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 07/23/2020. (Admin.)</p>
07/24/2020	<p><u>897</u> Transcript regarding Hearing Held 07/21/20 RE: DOCS 808 and 810. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 10/22/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Transcripts Plus, Inc., Telephone number 215-862-1115 CourtTranscripts@aol.com. (RE: related document(s) 896 Hearing held on 7/21/2020. (RE: related document(s)<u>1</u> Order transferring case number 19-12239 from U.S. Bankruptcy Court for the District of Delaware Filed by Highland Capital Management, L.P.) (Appearances: J. Morris, I. Karash, Z. Annabel, and M. Hayward for Debtors; M. Clemente and P. Montgomery for UCC; A. Clubok for UBS; R. Patel and A. Chiarello for Acis; T. Mascherin for Redeemer Committee; M. Lynn and J. Bonds for J. Dondero; L. Drawhorn for NexPoint funds and MGM; P. Keiffer for Atlas; S. Topetzes and J. Wright for Highland Capital Management Fund Advisors, L.P. and other funds; T. Stratford for CCS Medical; R. Matsumura and M. Maloney for HCLOF; J. Kane for CLO Holdco.; J. Slade for NexBank; K. Preston for certain employees sued by Acis. Nonevidentiary hearing. Scheduling discussed, including that there will be a setting on 9/17/20 on the objections to Aciss proof of claim for arguing certain issues of law and, perhaps, narrow issues for trial. Counsel to submit an interim scheduling order that memorializes dicussions.)). Transcript to be made available to the public on 10/22/2020. (Hartmann, Karen)</p>
07/24/2020	<p><u>898</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eighth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from June 1, 2020 to and Including June 30, 2020; and 2) Summary Cover Sheet and Second Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from March 1, 2020 Through and Including May 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of</i></p>

	<p><i>Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,788.96, Expenses: \$5,759.29. Filed by Objections due by 8/10/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)</p>
07/27/2020	<p><u>899</u> Certificate of No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>795</u> Application for compensation (<i>Fifth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from April 1, 2020 through April 30, 2020</i>) for Hayward &amp; Assoc). (Annable, Zachery)</p>
07/27/2020	<p><u>900</u> Certificate of service re: <i>Documents Served on July 22, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 6/1/2020 to 6/30/2020, Fee: \$21,242.00, Expenses: \$343.69. Filed by Attorney Holland N. O'Neil Objections due by 8/12/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>886</u> Motion to extend time to assume or reject unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>887</u> Notice of hearing (<i>Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/14/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>889</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
07/28/2020	<p><u>901</u> INCORRECT ENTRY: See # <u>902</u> for correction. Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.) Modified on 7/28/2020 (Ecker, C.).</p>
07/28/2020	<p><u>902</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>733</u> Motion for leave to <i>File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action</i> (related document(s) <u>687</u> Response, <u>690</u> Objection, <u>692</u> Objection, <u>694</u> Joinder, <u>701</u> Objection) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 7/2/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Reply # 3 Exhibit 1 # 4 Exhibit 2 # 5 Exhibit 3 # 6 Exhibit 4 # 7 Exhibit 5 # 8 Exhibit 6 # 9 Exhibit 7 # 10 Exhibit 8 # 11 Exhibit 9 # 12 Exhibit 10 # 13 Exhibit 11 # 14 Exhibit 12 # 15 Exhibit 13 # 16 Exhibit 14)) Responses due by 8/4/2020. (Ecker, C.)</p>
07/28/2020	<p><u>903</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>746</u> Motion to file document under seal. Filed by Interested Parties UBS AG</p>

	London Branch , UBS Securities LLC (Ecker, C.)) Responses due by 8/4/2020. (Ecker, C.)
07/28/2020	Receipt Number 00338615, Fee Amount \$30,715.92 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338617, Fee Amount \$20,830.29 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/28/2020	Receipt Number 00338616, Fee Amount \$84,062.32 (RE: related document(s) <u>821</u> Order on motion for authority to apply and disburse funds.) NOTE: Deposit of funds into the Registry of the Court. (Floyd, K). (Entered: 08/10/2020)
07/30/2020	<u>904</u> Notice of Appearance and Request for Notice <i>Chad Timmons, Emily M. Hahn, Larry R. Boyd</i> by Chad D. Timmons filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Timmons, Chad)
07/30/2020	<u>905</u> Amended Debtor-in-possession monthly operating report for filing period May 1, 2020 to May 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>800</u> Operating report). (Annable, Zachery)
07/30/2020	<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order and Schedules 1-7) (Annable, Zachery)
07/30/2020	<u>907</u> Notice of hearing ( <i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to

	<p>claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>. (Annable, Zachery)</p>
07/31/2020	<p><u>908</u> Response opposed to (related document(s): <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Patel, Rakhee)</p>
08/03/2020	<p><u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>910</u> Order granting motion for leave to File an Omnibus Reply to Objections to UBS's Motion for Relief from the Automatic Stay to Proceed With State Court Action (related document # <u>733</u>) Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>911</u> Order granting motion to seal documents (related document # <u>746</u>) Entered on 8/3/2020. (Okafor, M.)</p>
08/03/2020	<p><u>912</u> Order directing mediation (RE: related document(s)<u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)</p>
08/03/2020	<p><u>913</u> Debtor-in-possession monthly operating report for filing period June 1, 2020 to June 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
08/03/2020	<p><u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) Filed by Creditor CLO Holdco, Ltd. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Kane, John)</p>

08/04/2020	<p><u>915</u> Joinder by <i>NexPoint RE Entities' Joinder to CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s)<u>914</u> Motion for leave [<i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i>] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Drawhorn, Lauren)</p>
08/04/2020	<p><u>916</u> Certificate of service re: 1) <i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims; and 2) Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P., <u>907</u> Notice of hearing (<i>Notice of Hearing on Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation;</p>

	<p>Moody's Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>906</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/05/2020	<p><u>917</u> Application for compensation (<i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&amp;A May 2020 Invoice) (Annable, Zachery)</p>
08/05/2020	<p><u>918</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5). (Attachments: # <u>1</u> Exhibit) (Hoffman, Juliana)</p>
08/05/2020	<p><u>919</u> Certificate of service re: <i>1) Agreed Order Extending Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease by Sixty Days; and 2) Order Directing Mediation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>909</u> Agreed Order Granting <u>886</u> Motion to extend deadline to assume or reject unexpired nonresidential real property lease by sixty days. Entered on 8/3/2020. (Okafor, M.), <u>912</u> Order directing mediation (RE: related document(s)<u>3</u> Document filed by Debtor Highland Capital Management, L.P.). Entered on 8/3/2020 (Okafor, M.)). (Kass, Albert)</p>
08/05/2020	<p><u>920</u> Certificate of No Objection (Amended) filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>918</u> Certificate (generic)). (Hoffman, Juliana)</p>
08/05/2020	<p><u>921</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN</p>

	PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
08/06/2020	<u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
08/06/2020	<u>923</u> Notice of Appearance and Request for Notice by Jared M. Slade filed by Interested Party NexBank. (Slade, Jared)
08/06/2020	<u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # <u>1</u> Exhibit A – Invoices # <u>2</u> Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland)
08/06/2020	<u>925</u> Certificate of service re: <i>re: 1) Cover Sheet and Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 Through May 31, 2020; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 5/1/2020 to 5/31/2020, Fee: \$17,667.50, Expenses: \$37.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A May 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>921</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/06/2020	<u>926</u> Withdrawal of claim(s) Claim has been satisfied. Claim: 9 Filed by Creditor Gray Reed & McGraw LLP. (Brookner, Jason)
08/07/2020	<u>927</u> Joinder by filed by Interested Party NexBank (RE: related document(s) <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held)). (Slade, Jared)
08/07/2020	<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # <u>1</u> Exhibit 18 # <u>2</u> Exhibit 19) (Annable, Zachery)
08/07/2020	<u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital

	Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/07/2020	<u>930</u> Response opposed to (related document(s): <u>914</u> Motion for leave [ <i>CLO Holdco, Ltd.'s Motion for Clarification of Ruling</i> ] (related document(s) <u>808</u> Motion to compel, <u>846</u> Objection, <u>872</u> Response, 894 Hearing held) filed by Creditor CLO Holdco, Ltd.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Attachments: # <u>1</u> Exhibit A) (Montgomery, Paige)
08/07/2020	<u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A June 2020 Invoice) (Annable, Zachery)
08/07/2020	<u>932</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order Proposed Order Granting Motion to Seal) (Platt, Mark)
08/07/2020	<u>933</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # <u>2</u> Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # <u>3</u> Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # <u>4</u> Exhibit Exhibit 4 # <u>5</u> Exhibit Exhibit 5 # <u>6</u> Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # <u>7</u> Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # <u>8</u> Exhibit Exhibit 8 # <u>9</u> Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # <u>10</u> Exhibit Exhibit 10 # <u>11</u> Exhibit Exhibit 11 # <u>12</u> Exhibit Exhibit 12 # <u>13</u> Exhibit Exhibit 13 # <u>14</u> Exhibit Exhibit 14 # <u>15</u> Exhibit Exhibit 15 # <u>16</u> Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit Exhibit 17 # <u>18</u> Exhibit Exhibit 18 # <u>19</u> Exhibit Exhibit 19 # <u>20</u> Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # <u>21</u> Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # <u>22</u> Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) (Platt, Mark)
08/10/2020	<u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. (Hoffman, Juliana)
08/11/2020	<u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020 (Rielly, Bill)
08/11/2020	<u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for

	Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. (Pomerantz, Jeffrey)
08/11/2020	<u>937</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>879</u> Amended application for compensation <i>Amended Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020 (amended t)</i> . (Pomerantz, Jeffrey)
08/11/2020	<u>938</u> Certificate of service re: 1) <i>Cover Sheet and Ninth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 Through July 31, 2020</i> ; and 2) <i>Cover Sheet and Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>922</u> Application for compensation <i>Ninth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 7/1/2020 to 7/31/2020, Fee: \$6,264.50, Expenses: \$0.00. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/11/2020	<u>939</u> Certificate of service re: 1) <i>Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ; and 2) <i>Notice of Status Conference; to be Held on September 29, 2020 at 1:30 p.m. (Central Time)</i> ; and 3) <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>929</u> Notice of hearing ( <i>Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 9/29/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 6/1/2020 to 6/30/2020, Fee: \$18,025.00, Expenses: \$452.40. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A June 2020 Invoice) filed by Other Professional Hayward & Associates PLLC). (Kass, Albert)
08/11/2020	<u>940</u> Certificate of service re: 1) <i>Webex Meeting Invitation to participate electronically in the hearing on Friday, August 14, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Summary Cover Sheet and Eighth Monthly Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period From June 1, 2020 to and Including June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related

	document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 8/31/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
08/12/2020	<u>941</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>877</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Sidley Austin, LLP</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 6/30/2020, Fee: \$493,78). (Hoffman, Juliana)
08/12/2020	<u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> and <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Purs filed by Debtor Highland Capital Management, ) Entered on 8/12/2020. (Okafor, M.). Modified linkage on 10/1/2020 (Okafor, M.).</i>
08/12/2020	<u>943</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). (Annable, Zachery)
08/12/2020	<u>944</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/12/2020	<u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Plan)(Annable, Zachery)
08/13/2020	<u>946</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>884</u> Application for compensation <i>Eighth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> for Foley Garder). (O'Neil, Holland)
08/13/2020	<u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
08/13/2020	<u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/13/2020	<u>950</u> Order granting motion to seal documents (related document # <u>932</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<u>951</u> Order granting joint motion to continue hearing on (related document # <u>947</u> ) (related documents Objection to claim) Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.)

08/13/2020	<u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u> , (Annable, Zachery)
08/13/2020	<b><u>953</u> SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' OBJECTION TO THE PROOF OF CLAIM OF UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC AND JOINDER IN THE DEBTOR'S OBJECTION per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>950</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit Exhibit 1 – Original Synthetic Warehouse Agreement # <u>2</u> Exhibit Exhibit 2 Original Engagement Ltr. # <u>3</u> Exhibit Exhibit 3 Original Cash Warehouse Agreement # <u>4</u> Exhibit Exhibit 6 Expert Report of Louis G. Dudney # <u>5</u> Exhibit Exhibit 7 March 20, 2009 Termination Settlement and Release Agreement # <u>6</u> Exhibit Exhibit 9 UBS and Crusader Fund Settlement Agreement # <u>7</u> Exhibit Exhibit 16 Unredacted version of UBS's Second Amended Complaint # <u>8</u> Exhibit Exhibit 20 UBS's Pre-Trial Brief ISO Bifurcation # <u>9</u> Exhibit Exhibit 21 UBS and Credit Strategies Settlement Agreement # <u>10</u> Exhibit Exhibit 22 Crusader Fund scheme of Arrangement and Joint Plan of Distribution) (Platt, Mark)
08/13/2020	<u>954</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
08/13/2020	<u>955</u> Order granting motion to seal documents (related document # <u>948</u> ) Entered on 8/13/2020. (Okafor, M.)
08/13/2020	<b><u>956</u> SEALED document regarding: Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Annable, Zachery)
08/13/2020	<b><u>957</u> SEALED document regarding: Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P. per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>955</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A—Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
08/13/2020	<u>958</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>935</u> Order on Motion for Clarification of Ruling and the Joinders Thereto (RE: related document(s) <u>914</u> Motion for leave filed by Creditor CLO Holdco, Ltd., <u>915</u> Joinder filed by Interested Party NexPoint Real Estate Finance Inc., Interested Party Nexpoint Real Estate Capital, LLC, Interested Party NexPoint Residential Trust, Inc., Interested Party NexPoint Hospitality Trust, Interested Party NexPoint Real Estate Partners, LLC, Interested Party NexPoint Multifamily Capital Trust, Inc., Interested Party VineBrook Homes, Trust, Inc., Interested Party NexPoint Real Estate Advisors, L.P., Interested Party NexPoint Real Estate Advisors II, L.P., Interested Party NexPoint Real Estate Advisors III, L.P., Interested Party NexPoint Real Estate Advisors IV, L.P., Interested Party NexPoint Real Estate Advisors V, L.P., Interested Party NexPoint Real Estate Advisors VI, L.P., Interested Party NexPoint Real Estate Advisors VII, L.P., Interested Party NexPoint Real Estate Advisors VIII, L.P., <u>927</u> Joinder filed by Interested Party NexBank). Entered on 8/11/2020) No. of Notices: 2. Notice Date 08/13/2020. (Admin.)
08/14/2020	<u>959</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>830</u> Application for compensation <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 5/1/2020 to 5/31/2020, Fee: \$223,330.68, Expenses: \$1,874.65.). (Hoffman, Juliana)

08/14/2020	<u>960</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26.). (Hoffman, Juliana)
08/14/2020	<u>961</u> Certificate of service re: <i>Cover Sheet and Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$739,976.00, Expenses: \$1,189.12. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/1/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/14/2020	<u>962</u> Certificate of service re: 1) <i>Order Resolving Discovery Motions and Objections Thereto</i> ; and 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>942</u> Order resolving discovery motions and objections thereto (related document <u>808</u> ) Entered on 8/12/2020. (Okafor, M.), <u>943</u> <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from June 1, 2020 through June 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring–Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
08/17/2020	<u>963</u> Motion to file document under seal. Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Chiarello, Annmarie)
08/18/2020	<u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—Invoices) (Annable, Zachery)
08/18/2020	<u>965</u> Order granting motion to seal documents (related document # <u>963</u> ) Entered on 8/18/2020. (Okafor, M.)
08/18/2020	<u>966</u> <b>SEALED document regarding: email correspondence produced by Highland Capital Management, L.P. in connection with Acis's bankruptcy cases and bates labeled CONFIDENTIAL Highland0035395– Highland0035405 per court order</b> filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>965</u> Order on motion to seal). (Chiarello, Annmarie)
08/18/2020	<u>967</u> Certificate of service re: <i>Documents Served on August 13, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>947</u> Joint Motion to continue hearing on (related documents <u>771</u> Objection to claim) ( <i>Joint Motion to Continue Status Conference</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>948</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal of the Debtor's Plan of Reorganization and Disclosure Statement</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>951</u> Order granting joint motion to continue hearing on (related document <u>947</u> ) (related documents Objection to claim) Status Conference to be held on

	<p>8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 8/13/2020. (Okafor, M.), <u>952</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>949</u>, filed by Debtor Highland Capital Management, L.P., <u>954</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.). Status Conference to be held on 8/19/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>955</u> Order granting motion to seal documents (related document <u>948</u>) Entered on 8/13/2020. (Okafor, M.)). (Kass, Albert)</p>
08/19/2020	<p><u>968</u> Hearing held on 8/19/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.) (Edmond, Michael)</p>
08/19/2020	<p><u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. (Hoffman, Juliana)</p>
08/19/2020	<p><u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). (Annable, Zachery)</p>
08/19/2020	<p><u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. (Pomerantz, Jeffrey)</p>
08/19/2020	<p><u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. (Pomerantz, Jeffrey)</p>
08/19/2020	<p><u>973</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>
08/19/2020	<p><u>974</u> Support/supplemental document (<i>Notice of Filing of Executed Signature Pages to Disclosure Statement for the Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)</p>

08/19/2020	<p><u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit B) (Annable, Zachery)</p>
08/19/2020	<p><u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, (Annable, Zachery)</p>
08/20/2020	<p><u>977</u> Amended Notice of hearing (<i>Amended Notice of Status Conference</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)</p>
08/20/2020	<p><u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)</p>

08/20/2020	<p><u>979</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on Wednesday, August 19, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Notice of and Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 Through June 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
08/20/2020	<p><u>980</u> Certificate of service re: <i>Documents Served on August 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 7/1/2020 to 7/31/2020, Fee: \$531,094.32, Expenses: \$10,470.96. Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 9/9/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>970</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020. filed by Debtor Highland Capital Management, L.P., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020. filed by Consultant Mercer (US) Inc., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A—1 # 2 Exhibit A—2 # 3 Exhibit B), <u>976</u> Notice of hearing (<i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00,</p>

	<p>Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
08/21/2020	<u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
08/21/2020	<u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
08/21/2020	<u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.).
08/21/2020	<u>984</u> Motion to appear pro hac vice for Tracy M. O'Steen. Fee Amount \$100 Filed by Interested Party Integrated Financial Associates, Inc. (Bryant, M.)
08/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28037405, amount \$ 100.00 (re: Doc# <u>984</u> ). (U.S. Treasury)
08/23/2020	<u>985</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.) No. of Notices: 1. Notice Date 08/23/2020. (Admin.)
08/24/2020	<u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.)
08/24/2020	<u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
08/24/2020	<u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by

	Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland)
08/25/2020	<u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document # <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)
08/25/2020	<u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)
08/25/2020	<u>991</u> Certificate of service re: <i>1) Amended Notice of Status Conference; to be Held on October 6, 2020 at 1:30 p.m. (Central Time); and 2) Order Approving Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>977</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19)). Status Conference to be held on 10/6/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>978</u> Order approving joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>970</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/20/2020 (Okafor, M.)). (Kass, Albert)
08/25/2020	<u>992</u> Certificate of service re: <i>1) Affidavit of Service of Karina Yee re: Action by Written Consent of Stockholders in Lieu of Special Meeting (Cornerstone Healthcare Group Holding, Inc.); 2) Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal; and 3) Agreed Scheduling Order Regarding Objections to Proof of Claim of Acis Capital Management, L.P. and Acis Capital Management GP, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>981</u> Certificate (Affidavit of Service) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>982</u> Stipulation by Highland Capital Management, L.P. and Official Committee of Unsecured Creditors. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>983</u> Agreed Scheduling Order and Order setting hearing on any timely filed Summary Judgment Motion and Summary Judgment Response (RE: related document(s) <u>771</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>771</u> , Entered on 8/21/2020 (Okafor, M.) Modified text on 8/21/2020 (Okafor, M.)). (Kass, Albert)
08/26/2020	<u>993</u> Request for transcript regarding a hearing held on 8/19/2020. The requested turn-around time is daily. (Edmond, Michael)
08/26/2020	<u>994</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Dugan, S.) Filed by Creditor Paul N. Adkins (related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund

	<p>Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7) filed by Debtor Highland Capital Management, L.P.). (COURT NOTE: Signature of filer not included. Amended response with signature requested) (Dugan, S.)</p>
08/26/2020	<p><u>995</u> Adversary case 20–03105. Complaint by Highland Capital Management, L.P. against Hunter Mountain Investment Trust. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). 91 (Declaratory judgment). (Annable, Zachery)</p>
08/26/2020	<p><u>996</u> Objection to claim(s) of Creditor(s) Redeemer Committee of the Highland Crusader Fund – Proof of Claim No. 72.. Filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
08/26/2020	<p><u>997</u> Motion to file document under seal.(With the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order Ex A) (Sosland, Martin)</p>
08/26/2020	<p><u>998</u> Transcript regarding Hearing Held 08/19/2020 (20 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 11/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) 968 Hearing held on 8/19/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, I. Karesh, Z. Annabel, and M. Hayward for Debtors; R. Patel and B. Shaw for Acis; P. Montgomery for Unsecured Creditors Committee; J. Bonds for J. Dondero; A. Clubock for UBS; T. Masherin for Crusader Redeemer Committee. Nonevidentiary status conference. Court heard and approved concept for a partial scheduling order, contemplating cross motions for summary judgment and setting thereon for 10/20/20 at 9:30 am to the extend this matter is not resolved in mediation. Mr. Pomeranz to draft order consistent with the terms of what was announced.)). Transcript to be made available to the public on 11/24/2020. (Rehling, Kathy)</p>
08/27/2020	

	<u>999</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
08/27/2020	<u>1000</u> Certificate of service re: 1) <i>Order Approving Joint Stipulation Regarding Modification to Order Approving Ordinary Course Professionals for Robert Half Legal</i> ; 2) <i>Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ; and 3) <i>Supplement to the Second Interim Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April 1, 2020 Through July 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>986</u> Order approving joint stipulation regarding modification to order approving ordinary course professionals for Robert Half Legal (RE: related document(s) <u>982</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/24/2020 (Okafor, M.), <u>987</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>988</u> Support/supplemental document <i>Supplement to Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere). (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
08/27/2020	<u>1001</u> Certificate of service re: <i>Order Approving Second Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)). (Kass, Albert)
08/27/2020	<u>1002</u> Response unopposed to (related document(s): <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Chiarello, Annmarie)
08/27/2020	<u>1003</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>989</u> Order granting motion to appear pro hac vice adding Tracy M. O'Steen for Integrated Financial Associates, Inc. (related document <u>984</u> ) Entered on 8/25/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/27/2020	<u>1004</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>990</u> Order approving second joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>987</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 8/25/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 08/27/2020. (Admin.)
08/28/2020	<u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document # <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)
08/31/2020	<u>1006</u> Amended Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor Paul N. Adkins . (Rielly, Bill)

08/31/2020	<u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , (Annable, Zachery)
08/31/2020	<u>1008</u> Adversary case 20–03107. Complaint by Highland Capital Management, L.P. against Patrick Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 81 (Subordination of claim or interest). (Annable, Zachery)
08/31/2020	<u>1009</u> <b>SEALED document regarding: Exhibit 20 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1010</u> <b>SEALED document regarding: Exhibit 21 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1011</u> <b>SEALED document regarding: Exhibit 22 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1012</u> <b>SEALED document regarding: Exhibit 23 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
08/31/2020	<u>1013</u> <b>SEALED document regarding: Exhibit 24 to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1005</u> Order on motion to seal). (Annable, Zachery)
09/01/2020	<u>1014</u> Debtor–in–possession monthly operating report for filing period July 1, 2020 to July 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/01/2020	<u>1015</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
09/01/2020	<u>1016</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>917</u> Application for compensation ( <i>Sixth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from May 1, 2020 through May 31, 2020</i> ) for Hayward & Associate). (Annable, Zachery)
09/01/2020	<u>1017</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>931</u> Application for compensation ( <i>Seventh Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from June 1, 2020 through June 30, 2020</i> ) for Hayward & Assoc). (Annable, Zachery)
09/01/2020	<u>1018</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>934</u> Application for compensation <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor,

	Period: 6/1/2020 to 6/30/2020, Fee: \$328,185.72, Expenses: \$440.33.). (Hoffman, Juliana)
09/01/2020	<u>1019</u> Objection to (related document(s): <u>906</u> Objection to claim Filed by Debtor Highland Capital Management, L.P. filed by Creditor COLLIN COUNTY TAX ASSESSOR/COLLECTOR. (Lopez, Paul). MODIFIED to correct linkage on 9/2/2020 (Ecker, C.).
09/01/2020	<u>1020</u> Certificate of service re: <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>999</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/02/2020	<u>1021</u> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <u>1015</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)
09/02/2020	<u>1022</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>936</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from July 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, F). (Pomerantz, Jeffrey)
09/02/2020	<u>1023</u> Certificate of service re: <i>Order Granting Debtor's Motion for Entry of an Order Authorizing Filing Under Seal Certain of the Exhibits to Debtor's Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1005</u> Order granting motion to seal certain of the exhibits to proofs of claim 190 and 191 of UBS Securities and UBS AG, London Branch (related document <u>999</u> ) Entered on 8/28/2020. (Okafor, M.)). (Kass, Albert)
09/03/2020	<u>1024</u> Certificate of service re: <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.; to be Held on October 14, 2020 at 1:30 PM (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1007</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 8/19/2020.). Hearing to be held on 10/14/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>868</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/04/2020	<u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order # <u>2</u> Exhibit B—Settlement Agreement) (Annable, Zachery)
09/04/2020	<u>1026</u> Objection to (related document(s): <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
09/04/2020	<u>1027</u> Certificate of service re: <i>Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed

	by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1015</a> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">868</a> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/05/2020	<a href="#">1028</a> Witness and Exhibit List for Hearing on September 10, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">831</a> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <a href="#">883</a> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <a href="#">924</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <a href="#">949</a> Motion to extend or limit the exclusivity period (RE: related document(s) <a href="#">820</a> Order on motion to extend/shorten time), <a href="#">964</a> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <a href="#">971</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <a href="#">972</a> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US)</i> , <a href="#">975</a> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Hayward, Melissa)
09/08/2020	<a href="#">1029</a> Certificate of service re: <i>Order Approving Third Joint Stipulation Extending Response Deadline to Debtor's Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1021</a> Order approving third joint stipulation extending response deadline to Debtor's objection to proof of claim No. 93 of Integrated Financial Associates, Inc (RE: related document(s) <a href="#">1015</a> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 9/2/2020 (Okafor, M.)). (Kass, Albert)
09/08/2020	<a href="#">1030</a> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">176</a> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
09/09/2020	<a href="#">1031</a> Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/09/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28083098, amount \$ 100.00 (re: Doc# <a href="#">1031</a> ). (U.S. Treasury)
09/09/2020	<a href="#">1032</a> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">976</a> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim</i>

	<p><i>Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.). (Annable, Zachery)</p>
09/09/2020	<p><u>1033</u> Order granting motion to seal documents (related document # <u>997</u>) Entered on 9/9/2020. (Okafor, M.)</p>
09/09/2020	<p><u>1034</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i>). (Annable, Zachery)</p>
09/09/2020	<p><u>1035</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US)). (Annable, Zachery)</p>
09/09/2020	<p><u>1036</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020</i></p>

	<i>through July 31, 202).</i> (Annable, Zachery)
09/09/2020	<u>1037</u> Certificate No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn). (Annable, Zachery)
09/09/2020	<u>1038</u> Certificate of service re: <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1025</u> Motion to compromise controversy with Carey International, Inc.. ( <i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. Objections due by 9/28/2020. (Attachments: # 1 Exhibit A—Proposed Order # 2 Exhibit B—Settlement Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/10/2020	<u>1039</u> <b>SEALED document regarding: Exhibits B and C to the Objection to the Proof of Claim Filed by Redeemer Committee of the Highland Crusader Fund per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1033</u> Order on motion to seal). (Attachments: # <u>1</u> Part 2 # <u>2</u> Part 3 # <u>3</u> Part 4 # <u>4</u> Part 5 # <u>5</u> Part 6) (Sosland, Martin)
09/10/2020	<u>1040</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>969</u> Application for compensation <i>Sidley Austin, LLP's Ninth Monthly Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 7/1/2020 to 7/31/2020, Fee: \$531</i> ). (Hoffman, Juliana)
09/10/2020	<u>1041</u> Amended Notice ( <i>Amended Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>976</u> Notice of hearing ( <i>Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Aty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., <u>972</u> Application for compensation

	<p><i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., <u>975</u> Application for compensation (<i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>964</u> and for <u>831</u> and for <u>975</u> and for <u>972</u> and for <u>971</u> and for <u>924</u> and for <u>883</u>.) (Annable, Zachery)</i></p>
09/10/2020	<p>1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)<u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s)<u>820</u> Order on motion to extend/shorten time) filed by Debtor Highland Capital Management, L.P.,) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.) (Edmond, Michael) (Entered: 09/14/2020)</p>
09/10/2020	<p>1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.,) (Appearances: J. Pomeranz, J. Morris, and J. O'Neill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where</p>

	appropriate and seeking resettings where appropriate.) (Edmond, Michael) (Entered: 09/14/2020)
09/11/2020	<u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 9/11/2020 (Dugan, S.)
09/11/2020	<u>1043</u> Order granting application for compensation (related document # <u>971</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3470794.50, expenses awarded: \$12205.15 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1044</u> Order granting application for compensation (related document # <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)
09/11/2020	<u>1045</u> Order granting application for compensation (related document # <u>924</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$63144.80, expenses awarded: \$833.49 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1046</u> Order granting application for compensation (related document # <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1047</u> Order granting application for compensation (related document # <u>964</u> ) granting for Hayward & Associates PLLC, fees awarded: \$60210.00, expenses awarded: \$525.80 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1048</u> Order granting application for compensation (related document # <u>831</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1049</u> Request for transcript regarding a hearing held on 9/11/2020. The requested turn-around time is daily. (Edmond, Michael)
09/11/2020	<u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document # <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1051</u> Order granting application for compensation (related document # <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.)
09/11/2020	<u>1052</u> Motion to appear pro hac vice for Erica S. Weisgerber. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1053</u> Motion to appear pro hac vice for Daniel E. Stroik. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	<u>1054</u> Motion to appear pro hac vice for M. Natasha Labovitz. Fee Amount \$100 Filed by Creditor HarbourVest et al (Driver, Vickie)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1052</u> ). (U.S. Treasury)
09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1053</u> ). (U.S. Treasury)

09/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28091874, amount \$ 100.00 (re: Doc# <u>1054</u> ). (U.S. Treasury)
09/11/2020	<u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. (Hoffman, Juliana)
09/11/2020	<u>1056</u> Certificate of service re: 1) <i>Witness and Exhibit List for Hearing on September 10, 2020</i> ; 2) <i>WebEx Meeting Invitation to participate electronically in the hearing on Thursday, September 10, 2020 at 2:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; and 3) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1028</u> <i>Witness and Exhibit List for Hearing on September 10, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>831</u> Application for compensation <i>Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,5, <u>883</u> Application for compensation <i>Second Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26., <u>924</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020</i> for Foley Gardere, <u>949</u> Motion to extend or limit the exclusivity period (RE: related document(s) <u>820</u> Order on motion to extend/shorten time), <u>964</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorn, <u>971</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 202</i> , <u>972</u> Application for compensation <i>Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020</i> for Mercer (US), <u>975</u> Application for compensation ( <i>Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/11/2020	<u>1057</u> Response to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Attachments: # <u>1</u> Appendix Part 1 # <u>2</u> Appendix Part 2 # <u>3</u> Appendix Part 3 # <u>4</u> Appendix Part 4) (Driver, Vickie). Modified linkage on 9/14/2020 (Rielly, Bill).
09/13/2020	<u>1058</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1044</u> Order granting application for compensation (related document <u>975</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$615941.40, expenses awarded: \$2701.56 Entered on 9/11/2020. (Dugan, S.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1059</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1046</u> Order granting application for compensation (related document <u>972</u> ) granting for Mercer (US) Inc., fees awarded: \$54029.98, expenses awarded: \$297.68 Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/13/2020	<u>1060</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1050</u> Order granting motion to appear pro hac vice adding James E. O'Neill for Highland Capital Management, L.P. (related document <u>1031</u> ) Entered on 9/11/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 09/13/2020. (Admin.)
09/14/2020	

1063 Certificate of service re: 1) *Motion for Admission Pro Hac Vice of James E. O'Neill to Represent Highland Capital Management, L.P.*; and 2) *Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time)* Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)1031) Motion to appear pro hac vice for James E. O'Neill. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., 1032 *Notice (Notice of Agenda of Matters Scheduled for Hearing on September 10, 2020 at 2:30 p.m. (Central Time))* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)976) *Notice of hearing (Omnibus Notice of Hearing on Second Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals)* filed by Debtor Highland Capital Management, L.P. (RE: related document(s)831) *Application for compensation Sidley Austin LLP's Second Interim Application for Compensation and Reimbursement of Expenses for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 3/1/2020 to 5/31/2020, Fee: \$1,573,850.25, Expenses: \$22,930.21. Filed by Objections due by 8/4/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F), 883 Application for compensation *Second Interim Application for Compensation and Reimbursement of Expenses for FTI Consulting, Inc., Financial Advisor, Period: 3/1/2020 to 5/31/2020, Fee: \$1,488,533.4, Expenses: \$23,515.26. Filed by Objections due by 8/11/2020., 924 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from April, 2020 through July 31, 2020 for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 4/1/2020 to 7/31/2020, Fee: \$87,931.00, Expenses: \$833.49. Filed by Attorney Holland N. O'Neil Objections due by 8/27/2020. (Attachments: # 1 Exhibit A – Invoices # 2 Proposed Order Exhibit B – Proposed Order) (O'Neil, Holland), 964 Application for compensation (*Hayward & Associates PLLC's Second Interim Application for Compensation and Reimbursement of Expenses for the Period from April 1, 2020 through June 30, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 4/1/2020 to 6/30/2020, Fee: \$60,570.00, Expenses: \$525.80. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—Invoices), 971 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from April 1, 2020 through July 31, 2020 for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 4/1/2020 to 7/31/2020, Fee: \$3,475,794.50, Expenses: \$12,205.15. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 9/9/2020., 972 Application for compensation *Second Interim Application for Compensation and for Reimbursement of Expenses of Mercer (US) Inc. as Compensation Consultant for the Debtor for the Period from March 1, 2020 through May 31, 2020 for Mercer (US) Inc., Consultant, Period: 3/1/2020 to 5/31/2020, Fee: \$54,029.98, Expenses: \$2,151.69. Filed by Consultant Mercer (US) Inc. Objections due by 9/9/2020., 975 Application for compensation (*Consolidated Monthly and First Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period November 1, 2019 through June 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Special Counsel, Period: 11/1/2019 to 6/30/2020, Fee: \$615,941.40, Expenses: \$2,701.56. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A–1 # 2 Exhibit A–2 # 3 Exhibit B)). Hearing to be held on 9/10/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for 964 and for 831 and for 975 and for 972 and for 971 and for 924 and for 883.) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)*****

09/16/2020

1064 Transcript regarding Hearing Held 09/10/2020 (49 pages) RE: Fee Applications; Motion to Extend; Omnibus Objection to Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/15/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1061 Hearing held on 9/10/2020., Hearing continued (RE: related document(s)949 Motion to extend or limit the exclusivity period (RE: related document(s)820 Order on motion to extend/shorten time) filed by Debtor Highland Capital

	<p>Management, L.P.) Continued Hearing to be held on 9/17/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>949</u>, (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Evidentiary hearing. Motion continued to 9/17/20 at 9:30 am.), 1062 Hearing held on 9/10/2020. (RE: related document(s)<u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun &amp; Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood &amp; Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and J. ONeill for Debtor; M. Clemente for Official Unsecured Creditors Committee; R. Patel and B. Shaw for Acis; A. Clubok for UBS; T. Masherin, M. Hankin and M. Platt for Redeemer Committee; B. Assing for J. Dondero; L. Lambert for UST. Nonevidentiary hearing. Based on record presented by counsel, certain objections sustained, certain objections resolved, and certain ones carried to a date to be continued. Counsel to upload orders where appropriate and seeking resettings where appropriate.)). Transcript to be made available to the public on 12/15/2020. (Rehling, Kathy)</p>
09/16/2020	<p><u>1065</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
09/16/2020	<p><u>1066</u> Certificate of service re: <i>Documents Served on September 11, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1042</u> Agreed Order regarding first omnibus objection to certain claims – administrative claim of Internal Revenue Service (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Entered on 9/11/2020 (Dugan, S.), <u>1048</u> Order granting application for compensation (related document <u>831</u>) granting for Official Committee of</p>

	Unsecured Creditors, fees awarded: \$1573850.25, expenses awarded: \$22930.21 Entered on 9/11/2020. (Ecker, C.), <u>1051</u> Order granting application for compensation (related document <u>883</u> ) granting for FTI Consulting, Inc., fees awarded: \$1488533.40, expenses awarded: \$23515.26 Entered on 9/11/2020. (Ecker, C.)). (Kass, Albert)
09/16/2020	<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Rielly, Bill). (Entered: 10/19/2020)
09/17/2020	<u>1067</u> Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s) <u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s).) (Edmond, Michael)
09/17/2020	<u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document # <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document # <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document # <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)
09/17/2020	<u>1071</u> Certificate of service re: <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from July 1, 2020 to and Including July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77. Filed by Attorney Juliana Hoffman Objections due by 10/2/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
09/18/2020	<u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # <u>1</u> Exhibit A) (O'Neil, Holland)
09/18/2020	<u>1073</u> Order setting Disclosure Statement hearing and deadline to object (RE: related document(s) <u>945</u> Disclosure statement filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>945</u> . The deadline for any party wishing to object to the Disclosure Statement shall be October 19, 2020 at 5:00 p.m. Entered on 9/18/2020 (Okafor, M.)
09/19/2020	<u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08,

	Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. (Hoffman, Juliana)
09/19/2020	<u>1075</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1068</u> Order granting motion to appear pro hac vice adding Erica S. Weisgerber for HarbourVest et al (related document <u>1052</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1076</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1069</u> Order granting motion to appear pro hac vice adding Daniel E. Stroik for HarbourVest et al (related document <u>1053</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/19/2020	<u>1077</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1070</u> Order granting motion to appear pro hac vice adding M. Natasha Labovitz for HarbourVest et al (related document <u>1054</u> ) Entered on 9/17/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 09/19/2020. (Admin.)
09/21/2020	<u>1078</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s) <u>810</u> Motion for protective order ( <i>Debtor's Motion for Entry of (i) a Protective Order, or, in the Alternative, (ii) an Order Directing the Debtor to Comply with Certain Discovery Demands Tendered by the Official Committee of Unsecured Creditors Pursuant to Federal Rules of Bankruptcy Procedure 7026 and 7034</i> ) Filed by Debtor Highland Capital Management, L.P.) Responses due by 10/5/2020. (Ecker, C.)
09/21/2020	<u>1079</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan). (Annable, Zachery)
09/21/2020	<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)(Annable, Zachery)
09/21/2020	<u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # <u>1</u> Exhibit A—First Amended Plan of Reorganization # <u>2</u> Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , (Annable, Zachery)
09/22/2020	<u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors.). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E-F) (Annable, Zachery)
09/22/2020	Receipt of filing fee for Schedules(19-34054-sgj11) [misc,schedall] ( 31.00). Receipt number 28122241, amount \$ 31.00 (re: Doc# <u>1082</u> ). (U.S. Treasury)
09/22/2020	<u>1083</u> Certificate of service re: <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1030</u> Notice (generic)). (Annable, Zachery)
09/22/2020	<u>1084</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from July 1, 2020 through July 31, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1065</u> Notice (generic)). (Annable, Zachery)

09/22/2020	<u>1085</u> Certificate of service re: Orders of the Court filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1043</u> Order on application for compensation, <u>1044</u> Order on application for compensation, <u>1045</u> Order on application for compensation, <u>1046</u> Order on application for compensation, <u>1047</u> Order on application for compensation, <u>1050</u> Order on motion to appear pro hac vice). (Annable, Zachery)
09/22/2020	<u>1086</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1073</u> Order to set hearing, <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement, <u>1081</u> Notice of hearing). (Annable, Zachery)
09/23/2020	<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1088</u> Declaration re: ( <i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1—Settlement Agreement # <u>2</u> Exhibit 2—Release) (Annable, Zachery)
09/23/2020	<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
09/23/2020	<u>1090</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Annable, Zachery)
09/23/2020	<u>1091</u> Motion to file document under seal. ( <i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/24/2020	<u>1092</u> Order further extending the debtor's exclusive period for solicitation of acceptances of a chapter 11 plan <u>949</u> Motion to extend or limit the exclusivity period. Entered on 9/24/2020. (Ecker, C.)
09/24/2020	<u>1093</u> Request for transcript regarding a hearing held on 9/17/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael)
09/24/2020	<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/2020, Fee: \$672,815.00, Expenses: \$3,428.14. Filed by Attorney Jeffrey Nathan Pomerantz Objections

	due by 10/15/2020. (Pomerantz, Jeffrey)
09/24/2020	<u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
09/24/2020	<u>1096</u> Certificate of service re: <i>1) Cover Sheet and Tenth Monthly Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 Through August 31, 2020; and 2) Summary Cover Sheet and Tenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1072</u> Application for compensation <i>Tenth Monthly Application for Compensation and for Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 8/1/2020 to 8/31/2020, Fee: \$8,046.00, Expenses: \$31.90. Filed by Attorney Holland N. O'Neil Objections due by 10/9/2020. (Attachments: # 1 Exhibit A) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,533.08, Expenses: \$2,448.22. Filed by Attorney Juliana Hoffman Objections due by 10/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
09/24/2020	<u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1098</u> Certificate of service re: <i>Notice of Filing of Debtor's Amended Schedules</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1082</u> Amended Schedules: E/F, with Summary of Assets and Liabilities (Adding additional creditor or creditors) fee Amount \$31 (with Declaration Under Penalty of Perjury for Non-Individual Debtors,). Filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit 1—Amended Schedules of Assets and Liabilities – Schedule E–F) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
09/24/2020	<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List) (Kathman, Jason)
09/24/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28129975, amount \$ 181.00 (re: Doc# <u>1099</u> ). (U.S. Treasury)

09/25/2020	<p><u>1100</u> Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)</p>
09/25/2020	<p><u>1101</u> Transcript regarding Hearing Held 09/17/2020 (13 pages) RE: Status Conference, Objection to Proof of Claim, Motion to Extend Exclusivity. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 12/24/2020. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1067 Hearing held and conduct as as Status Conference on 9/17/2020. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz for Debtor; M. Clemente for Unsecured Creditors Committee; R. Patel for Acis. Nonevidentiary status conference and continued hearing on Debtors Exclusivity Motion. Court heard reports of continuation of negotiations with regard to Mr. Dondero and between Committee and Debtor with regard to Plan issues. Debtor will file a revised (unsealed) disclosure statement and plan on 9/21/20 and court orally agreed to extension of exclusivity for solicitation through 12/4/20. Court approved certain deadlines suggested for a motion to establish voting procedures (with a 10/22/20 hearing for such motion and the disclosure statement) and court orally approved using 10/20/20 for a hearing on two Rule 9019 motions that will be filed by 9/23/20 with regard to Acis settlement and Redeemer Committee settlement). Counsel to upload order(s)). Transcript to be made available to the public on 12/24/2020. (Rehling, Kathy)</p>
09/25/2020	<p><u>1102</u> Amended Notice of hearing filed by Creditor Patrick Daugherty (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Preliminary hearing to be held on 10/22/2020 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Clontz, Megan)</p>
09/25/2020	<p><u>1103</u> Certificate of service re: Order Further Extending the Debtor's Exclusive Period for Solicitation of Acceptances of a Chapter 11 Plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1092</u> Order on motion to extend/shorten time). (Annable, Zachery)</p>
09/25/2020	<p><u>1104</u> Certificate of service re: Eleventh Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Annable, Zachery)</p>
09/25/2020	<p><u>1105</u> Omnibus Response opposed to (related document(s): <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund) (<i>UBS's Omnibus Response to Objections to the UBS Proofs of Claim</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (related document(s)<u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/9/2020. (Attachments: # 1 Exhibit 18 # 2 Exhibit 19) filed by Debtor Highland Capital Management, L.P., <u>933</u> Objection to claim(s) of</p>

	<p>Creditor(s) UBS Securities LLC and UBS AG, London Branch.. Filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # 1 Exhibit Exhibit 1 (slip page – to be filed under seal upon order from Court)) # 2 Exhibit Exhibit 2 (slip page – to be filed under seal upon order from Court) # 3 Exhibit Exhibit 3 (slip page – to be filed under seal upon order from Court) # 4 Exhibit Exhibit 4 # 5 Exhibit Exhibit 5 # 6 Exhibit Exhibit 6 (slip page – to be filed under seal upon order from Court) # 7 Exhibit Exhibit 7 (slip page – to be filed under seal upon order from Court) # 8 Exhibit Exhibit 8 # 9 Exhibit Exhibit 9 (slip page – to be filed under seal upon order from Court) # 10 Exhibit Exhibit 10 # 11 Exhibit Exhibit 11 # 12 Exhibit Exhibit 12 # 13 Exhibit Exhibit 13 # 14 Exhibit Exhibit 14 # 15 Exhibit Exhibit 15 # 16 Exhibit Exhibit 16 (slip page – to be filed under seal upon order from Court) # 17 Exhibit Exhibit 17 # 18 Exhibit Exhibit 18 # 19 Exhibit Exhibit 19 # 20 Exhibit Exhibit 20 (slip page – to be filed under seal upon order from Court) # 21 Exhibit Exhibit 21 (slip page – to be filed under seal upon order from Court) # 22 Exhibit Exhibit 22 (slip page – to be filed under seal upon order from Court)) filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Sosland, Martin)</p>
09/25/2020	<p><u>1106</u> Exhibit List to <i>UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1105</u> Response to objection to claim). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44) (Sosland, Martin)</p>
09/25/2020	<p><u>1107</u> Motion to file document under seal.(<i>UBS's Motion for Leave to file Documents Under Seal with UBS's Omnibus Response to Objections to the UBS Proof of Claim</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
09/28/2020	<p><u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1–A—Forms of Ballots # <u>3</u> Exhibit 1–B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1–C—Notice of Non–Voting Status # <u>5</u> Exhibit 1–D—Notice of Assumption) (Annable, Zachery)</p>
09/28/2020	<p><u>1109</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit 1—Proposed Order # <u>2</u> Exhibit 1–A—Forms of Ballots # <u>3</u> Exhibit 1–B—Notice of Confirmation Hearing # <u>4</u> Exhibit 1–C—Notice of Non–Voting Status # <u>5</u> Exhibit 1–D—Notice of Assumption)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Annable, Zachery)</p>
09/28/2020	<p><u>1110</u> Certificate of service re: 1) <i>Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith; and 2) Declaration of Gregory V. Demo in Support of the Debtors' Motion for Entry of an Order Approving Settlement with (A) Acis Capital Management, L.P. and Acis Capital</i></p>

	<p><i>Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1088</u> Declaration re: (<i>Declaration of Gregory V. Demo in Support of the Debtor's Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # 1 Exhibit 1—Settlement Agreement # 2 Exhibit 2—Release) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
09/29/2020	<p><u>1111</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1025</u> Motion to compromise controversy with Carey International, Inc.. (<i>Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith</i>)). (Annable, Zachery)</p>
09/29/2020	<p><u>1112</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Conf, <u>1109</u> Notice of hearing</i>)). (Annable, Zachery)</p>
09/29/2020	<p><u>1113</u> Certificate of service re: <i>Documents Served on or Before September 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1090</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) filed by Debtor Highland Capital Management, L.P., <u>1091</u> Motion to file document under seal. (<i>Debtor's Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1095</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>

09/30/2020	<u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
09/30/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28143856, amount \$ 100.00 (re: Doc# <u>1114</u> ). (U.S. Treasury)
09/30/2020	<u>1115</u> Debtor-in-possession monthly operating report for filing period August 1, 2020 to August 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
09/30/2020	<u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
10/01/2020	<u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). (Annable, Zachery)
10/02/2020	<u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Hayward, Melissa)
10/02/2020	<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020. (Montgomery, Paige)
10/02/2020	<u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
10/05/2020	<u>1121</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
10/05/2020	<u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document # <u>1025</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document # <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1125</u> Order granting motion to seal exhibits (related document # <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A.

	Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.)
10/05/2020	<u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s) <u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.)
10/05/2020	<u>1127</u> <b>SEALED document regarding: Exhibit B—Cornerstone Monetization Schedule per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1128</u> <b>SEALED document regarding: Exhibit 2 – Partial Final Award dated March 6, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery) Modified docket entry text on 10/5/2020 in include exhibit number. (Ellison, T.).
10/05/2020	<u>1129</u> <b>SEALED document regarding: Exhibit 3—Disposition of Application of Modification of Award dated March 14, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/05/2020	<u>1130</u> <b>SEALED document regarding: Exhibit 4—Final Award dated April 29, 2019 per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1125</u> Order on motion to seal). (Annable, Zachery)
10/06/2020	<u>1131</u> Order granting motion to seal documents (related document # <u>1107</u> ) Entered on 10/6/2020. (Okafor, M.)
10/06/2020	<u>1132</u> INCORRECT ENTRY – REQUESTER CANCELLED REQUEST. Request for transcript regarding a hearing held on 9/23/2020. The requested turn-around time is 3-day expedited. (Edmond, Michael) Modified on 10/14/2020 (Edmond, Michael).
10/06/2020	<u>1133</u> <b>SEALED document regarding: UBS's Omnibus Response to Objections to the UBS Proofs of Claim per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1131</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 2 # <u>2</u> Exhibit 3 # <u>3</u> Exhibit 4 # <u>4</u> Exhibit 5 # <u>5</u> Exhibit 6 # <u>6</u> Exhibit 8 # <u>7</u> Exhibit 9 # <u>8</u> Exhibit 10 # <u>9</u> Exhibit 11 # <u>10</u> Exhibit 12 # <u>11</u> Exhibit 14 # <u>12</u> Exhibit 18 # <u>13</u> Exhibit 22 # <u>14</u> Exhibit 23 # <u>15</u> Exhibit 24 # <u>16</u> Exhibit 25 # <u>17</u> Exhibit 26 # <u>18</u> Exhibit 28 # <u>19</u> Exhibit 29 # <u>20</u> Exhibit 32 # <u>21</u> Exhibit 34 # <u>22</u> Exhibit 35 # <u>23</u> Exhibit 36 # <u>24</u> Exhibit 37 # <u>25</u> Exhibit 38 # <u>26</u> Exhibit 39 # <u>27</u> Exhibit 40 # <u>28</u> Exhibit 41 # <u>29</u> Exhibit 42 # <u>30</u> Exhibit 43) (Sosland, Martin)
10/06/2020	<u>1134</u> Motion to appear pro hac vice for Joseph L. Christensen. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	<u>1135</u> Motion to appear pro hac vice for Thomas A. Uebler. Fee Amount \$100 Filed by Creditor Patrick Daugherty (Kathman, Jason)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1134</u> ). (U.S. Treasury)
10/06/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28159068, amount \$ 100.00 (re: Doc# <u>1135</u> ).

	(U.S. Treasury)
10/06/2020	<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u> , (Hoffman, Juliana)
10/06/2020	<u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)(Edmond, Michael)
10/06/2020	<u>1138</u> Certificate of service re: <i>1) Motion for Admission Pro Hac Vice for Elissa A. Wagner to Represent Highland Capital Management, L.P.; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1114</u> Motion to appear pro hac vice for Elissa A. Wagner. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1116</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1139</u> Certificate of service re: <i>1) Webex Meeting Invitation to participate electronically in the hearing on October 6, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1117</u> Stipulation by Highland Capital Management, L.P. and Integrated Financial Associates, Inc.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>868</u> Objection to claim). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/06/2020	<u>1140</u> Request for transcript regarding a hearing held on 10/6/2020. The requested turn-around time is daily (Jeng, Hawaii) (Entered: 10/07/2020)
10/07/2020	<u>1141</u> Objection to (related document(s): <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/07/2020	<u>1142</u> Application for compensation ( <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A July 2020 Invoice) (Annable, Zachery)

10/07/2020	<u>1143</u> Certificate of service re: <i>Agreed Motion to Extend the Deadline to Assume or Reject Unexpired Nonresidential Real Property Lease</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/07/2020	<u>1144</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u> ) Entered on 10/5/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/07/2020. (Admin.)
10/08/2020	<u>1145</u> Transcript regarding Hearing Held 10/06/2020 (58 pages) RE: Status Conference on Objection to Claim. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1137</u> Status Conference Hearing held on 10/6/2020. (RE: related document(s) <u>928</u> Objection to claim(s) of Creditor(s) UBS Securities LLC and UBS AG, London Branch, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and R. Feinstein for Debtor; A. Clubok, S. Tomkowiak, and J. Bjork for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; M. Clemente for UCC. Nonevidentiary status conference. Court approved a schedule for motions for summary judgment and Rule 3018 motions to estimate claim of UBS. Counsel to upload order. Hearing to be 11/20/20 at 9:30 am.)). Transcript to be made available to the public on 01/6/2021. (Rehling, Kathy)
10/08/2020	<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document # <u>1134</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document # <u>1135</u> ) Entered on 10/8/2020. (Okafor, M.)
10/08/2020	<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/08/2020	<u>1149</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1148</u> Objection). (Attachments: # <u>1</u> Exhibit 1) (Annable, Zachery)
10/08/2020	<u>1150</u> Adversary case 20-03128. Complaint by Highland Capital Management, L.P. against Patrick Hagaman Daugherty. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Cover Sheet). Nature(s) of suit: 71 (Injunctive relief – reinstatement of stay). (Annable, Zachery)
10/08/2020	<u>1151</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1055</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 7/1/2020 to 7/31/2020, Fee: \$182,490.32, Expenses: \$1,392.77.). (Hoffman, Juliana)
10/08/2020	<u>1152</u> Certificate of service re: <i>Documents Served on October 5, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by

	<p>10/23/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1120</u> Motion for expedited hearing(related documents <u>1119</u> Motion to extend/shorten time) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1122</u> Agreed Order granting <u>1118</u> Motion to extend time to Assume or Reject Unexpired Nonresidential Real Property Lease Filed by Debtor Highland Capital Management, L.P. Entered on 10/5/2020. (Okafor, M.), <u>1123</u> Order granting motion to compromise controversy with Carey International, Inc.. (Motion of the Debtor for Entry of an Order Approving Settlement with Carey International, Inc. [Claim No. 68] and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (related document <u>1025</u>) Entered on 10/5/2020. (Okafor, M.), <u>1124</u> Order granting motion to appear pro hac vice adding Elissa A. Wagner for Highland Capital Management, L.P. (related document <u>1114</u>) Entered on 10/5/2020. (Okafor, M.), <u>1125</u> Order granting motion to seal exhibits (related document <u>1091</u> Motion for Entry of an Order Authorizing Filing under Seal Certain of the Exhibits to the Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlements with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. ) Entered on 10/5/2020. (Okafor, M.), <u>1126</u> Order approving stipulation regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc. (RE: related document(s)<u>1117</u> Stipulation filed by Debtor Highland Capital Management, L.P.). The hearing on the Debtors Objection to the IFA Claim currently scheduled to be held on October 14, 2020 at 1:30 p.m. (Central Time) is hereby CANCELLED. Entered on 10/5/2020 (Okafor, M.). (Kass, Albert)</p>
10/08/2020	<p><u>1153</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor The Dugaboy Investment Trust. (Attachments: # <u>1</u> Ex. A – Loan Agreement # <u>2</u> Ex.B – Account Summary) (Assink, Bryan)</p>
10/08/2020	<p><u>1164</u> Hearing held on 10/8/2020. (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors.) (Appearances: P. Montgomery for Official Committee of Unsecured Creditors; J. Kane for CLO Holdco. Nonevidentiary hearing. Announcement of an agreed 60–day extension. Counsel to upload order.) (Edmond, Michael) (Entered: 10/13/2020)</p>
10/09/2020	<p><u>1154</u> Motion for leave to Amend Certain Proofs of Claim Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)</p>
10/09/2020	<p><u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late–Filed Claims; (D) Satisfied Claims; (E) No–Liability Claims; and (F) Insufficient–Documentation Claims (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # <u>1</u> Schedules 1 – 6) Entered on 10/9/2020 (Okafor, M.)</p>
10/09/2020	<p><u>1156</u> Certificate of service re: <i>Notice of Hearing on PensionDanmarks Motion for Relief from the Automatic Stay and Extending the Objection Deadline</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1136</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.). Hearing to be held on 10/8/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1119</u>, filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
10/09/2020	<p><u>1157</u> Certificate of service re: <i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1142</u> Application for compensation</p>

	<p>(<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 7/31/2020, Fee: \$29,785.00, Expenses: \$980.60. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A July 2020 Invoice) filed by Other Professional Hayward &amp; Associates PLLC). (Kass, Albert)</p>
10/09/2020	<p><u>1158</u> Certificate of service re: <i>1) Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay; and 2) Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1148</u> Objection to (related document(s): <u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1149</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's (I) Objection to Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay and (II) Cross-Motion to Extend the Automatic Stay to, or Otherwise Enjoin, the Delaware Cases</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1148</u> Objection). (Attachments: # 1 Exhibit 1) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/09/2020	<p><u>1159</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/09/2020	<p><u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. (Hoffman, Juliana)</p>
10/10/2020	<p><u>1161</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1146</u> Order granting motion to appear pro hac vice adding Joseph L. Christensen for Patrick Daugherty (related document <u>1134</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>
10/10/2020	<p><u>1162</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1147</u> Order granting motion to appear pro hac vice adding Thomas A. Uebler for Patrick Daugherty (related document <u>1135</u>) Entered on 10/8/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/10/2020. (Admin.)</p>

10/12/2020	<u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.)
10/13/2020	<u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	<u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. (Gold, Matthew)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1165</u> ). (U.S. Treasury)
10/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28176112, amount \$ 25.00 (re: Doc# <u>1166</u> ). (U.S. Treasury)
10/13/2020	<u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdo, Ltd (RE: related document(s) <u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) filed by Creditor Committee Official Committee of Unsecured Creditors. Modified to correct linkage on 11/3/2020 (Ecker, C.).
10/14/2020	<u>1169</u> Agreed Supplemental Order authorizing the retention and employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the petition date (RE: related document(s) <u>763</u> Order on application to employ). Entered on 10/14/2020 (Okafor, M.)
10/14/2020	<u>1170</u> Certificate of service re: <i>Agreed Supplemental Order Authorizing the Retention and Employment of Hunton Andrews Kurth LLP as Special Counsel Nunc Pro Tunc to the Petition Date</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1169</u> Order (generic)). (Annable, Zachery)
10/14/2020	<u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/14/2020	<u>1172</u> Certificate of service re: <i>Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1155</u> Order sustaining first omnibus objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). (Attachments: # 1 Schedules 1 - 6) Entered on 10/9/2020 (Okafor, M.)). (Kass, Albert)
10/15/2020	<u>1173</u> Notice ( <i>Notice of Filing of (I) Liquidation Analysis and (II) Financial Projections as Exhibits to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit

	B—Organizational Chart)). (Attachments: # <u>1</u> Exhibit C/D to Debtor's Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.) (Annable, Zachery)
10/15/2020	<u>1174</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1074</u> Application for compensation <i>Sidley Austin LLP's Tenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 8/1/2020 to 8/31/2020, Fee: \$467,). (Hoffman, Juliana)
10/15/2020	<u>1175</u> Witness and Exhibit List filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Chiarello, Annmarie)
10/16/2020	<u>1176</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1173</u> Notice (generic)). (Annable, Zachery)
10/16/2020	<u>1177</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
10/16/2020	<u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
10/16/2020	<u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1182</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEES MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
10/16/2020	<u>1183</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1215 AND 1216. Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON</i>

	<i>PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Proposed Order) (Platt, Mark) Modified on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1184</u> Support/supplemental document ( <i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1185</u> Declaration re: ( <i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. ). (Annable, Zachery). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1186</u> Brief in support filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds'). (Platt, Mark). Modified linkage on 10/19/2020 (Rielly, Bill).
10/16/2020	<u>1187</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
10/16/2020	<u>1188</u> Motion to file document under seal.( <i>UBS's Motion for Leave to File Documents Under Seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81)</i> Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
10/16/2020	<u>1189</u> INCORRECT ENTRY: Attorney to refile. Support/supplemental document <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND, <u>1186</u> Brief</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page – to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip

	<i>page) # 20 Exhibit 20 (slip page) # 21 Exhibit 21 (slip page) # 22 Exhibit 22 (slip page) # 23 Exhibit 23 (slip page) # 24 Exhibit 24 (slip page) # 25 Exhibit 25 (slip page) # 26 Exhibit 26 (slip page) # 27 Exhibit 27 (slip page) # 28 Exhibit 28 (slip page) # 29 Exhibit 29 (slip page)) (Platt, Mark) Modified on 10/19/2020 (Ecker, C.).</i>
10/16/2020	<u>1190</u> Objection to (related document(s): <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Attachments: # <u>1</u> A–C) (Sosland, Martin)
10/16/2020	<u>1191</u> Response opposed to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Interested Party Highland CLO Funding, Ltd.. (Maloney, Mark)
10/16/2020	<u>1192</u> Declaration re: <i>W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81)</i> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1190</u> Objection). (Attachments: # <u>1</u> Exhibit 1–6 # <u>2</u> Attachments A–C) (Sosland, Martin)
10/16/2020	<u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # <u>1</u> Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u> , (Annable, Zachery)
10/16/2020	<u>1194</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Dondero Ex. A # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Dondero Ex. H # <u>9</u> Dondero Ex. I # <u>10</u> Dondero Ex. J # <u>11</u> Dondero Ex. K # <u>12</u> Dondero Ex. L # <u>13</u> Dondero Ex. M # <u>14</u> Dondero Ex. N # <u>15</u> Dondero Ex. O # <u>16</u> Dondero Ex. P # <u>17</u> Dondero Ex. Q # <u>18</u> Dondero Ex. R # <u>19</u> Dondero Ex. S # <u>20</u> Dondero Ex. T # <u>21</u> Dondero Ex. U # <u>22</u> Dondero Ex. V # <u>23</u> Dondero Ex. W # <u>24</u> Dondero Ex. X) (Assink, Bryan)
10/16/2020	<u>1195</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/16/2020	<u>1196</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Driver, Vickie)
10/16/2020	<u>1197</u> INCORRECT ENTRY: Attorney to refile. Notice <i>Response to Debtor's Omnibus Objection</i> filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC (RE: related document(s) <u>906</u> Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2

International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).

10/16/2020

1198 INCORRECT ENTRY: Attorney to refile. Notice *Response to Debtor's Omnibus Objection* filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC (RE: related document(s)906 Objection to claim(s) of Creditor(s) Daniel Sheehan and Associates, PLLC; Dun & Bradstreet; Eastern Point Trust Company, Inc.; Collin County Tax Assessor/Collector; Collin County Tax Assessor/Collector; Dallas County; Opus 2 International Inc.; Andrew Parmentier; 4CAST Inc.; Advent Software Inc.; ConvergeOne, Inc.; Denton County; Internal Revenue Service; Kaufman County; Maples and Calder; McLagen Partners, Inc.; Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation; Moodys Analytics, Inc.; Quintairos, Prieto, Wood & Boyer; Advisors Equity Group, LLC; Eagle Equity Advisors, LLC; HCRE Partner, LLC; Highland Capital Management Fund Advisors; Highland Capital Management Fund Advisors; Highland Capital Management Services, Inc.; Highland Capital Management Services, Inc.; Highland Energy MLP Fund; Highland Fixed Income Fund; Highland Floating Rate Fund; Highland Funds I; Highland Funds II; Highland Global Allocation Fund; Highland Healthcare Opportunities Fund; Highland iBoxx Senior Loan ETF; Highland Income Fund HFRO; Highland Long/Short Equity Fund; Highland Merger Arbitrage Fund; Highland Opportunistic Credit Fund; Highland Small-Cap Equity Fund; Highland Socially Responsible Equity Fund; Highland Tax-Exempt Fund; Highland Total Return Fund; NexBank SSB; NexPoint Advisors, L.P.; NexPoint Advisors, L.P.; NexPoint Capital, Inc.; NexPoint Capital, Inc.; NexPoint Discount Strategies Fund; NexPoint Energy and Material Opportunities Fund; NexPoint Event-Driven Fund; NexPoint Healthcare Opportunities Fund; NexPoint Latin America Opportunities Fund; NexPoint Real Estate Strategies Fund; NexPoint Strategic Opportunities Fund; The Dugaboy Investment Trust; The Dugaboy Investment Trust; Bentley Callan; City of Garland; Clay Callan; Eastern Point Trust Company, Inc.; Garland Independent School District; Grayson County; HarbourVest 2017 Global Fund L.P.; HarbourVest 2017 Global AIF L.P.; HarbourVest Partners L.P. on behalf of funds and accounts under management; HarbourVest Dover Street IX Investment L.P.; HarbourVest Skew Base AIF L.P.; Hartman Wanzor LLP; Irving ISD; John Morris; John R. Watkins; Linear Technologies, Inc.; Mass. Dept. of Revenue; Mediant Communications

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	Inc.; Oklahoma Tax Commission; Jun Park; Paul N. Adkins; Paul N. Adkins; Tarrant County; Theodore N. Dameris; Theodore N. Dameris; Weijun Zang; Anish Tailor; Mollie Boyce-Field; Charles Byrne; Donald Salvino; Ericka Garcia; Garman Turner Gordon; Joe Kingsley; Frederic Mason; TDA Associates, Inc.; Wilkinson Center.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 9/1/2020. (Attachments: # 1 Exhibit A—Proposed Order and Schedules 1–7)). (Drawhorn, Lauren) Modified on 10/19/2020 (Ecker, C.).
10/16/2020	<u>1199</u> Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (Sosland, Martin)
10/16/2020	<u>1200</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1094</u> Application for compensation <i>Eleventh Monthly Application for Compensation and for Reimbursement of Expenses for the Period from August 1, 2020 through August 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 8/31/). (Pomerantz, Jeffrey)
10/16/2020	<u>1201</u> Objection to (related document(s): <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). filed by Debtor Highland Capital Management, L.P.) filed by Creditor Patrick Daugherty. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Service List) (Kathman, Jason)
10/16/2020	<u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4) (Annable, Zachery)
10/16/2020	<u>1203</u> Certificate of service re: 1) <i>Summary Cover Sheet and Ninth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from August 1, 2020 to and Including August 31, 2020</i> ; 2) <i>Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ; and 3) <i>Scheduling Order with Respect to Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0. Filed by Financial Advisor FTI Consulting, Inc. Objections due by 10/30/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1163</u> Order setting hearing on any summary judgment motion and any 3018 Motion filed in accordance with this Order (RE: related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>928</u> , Entered on 10/12/2020 (Okafor, M.), <u>1167</u> Notice to take deposition of James P. Seery, Jr., CEO, Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/16/2020	<u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # <u>1</u> Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Rielly, Bill). (Entered: 10/19/2020)
10/16/2020	

	<u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # <u>1</u> Proposed Order) (Rielly, Bill) (Entered: 10/19/2020)
10/17/2020	<u>1204</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # <u>1</u> Exhibit PHD -1 # <u>2</u> Exhibit PHD - 2) (Kathman, Jason)
10/18/2020	<u>1205</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/18/2020	<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
10/18/2020	<u>1208</u> Declaration re: <i>/of Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1209</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Party Jefferies LLC. (Doherty, Casey)
10/19/2020	<u>1210</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Pension Benefit Guaranty Corporation. (Attachments: # <u>1</u> Exhibit # <u>2</u> Certificate of Service) (Baird, Michael)
10/19/2020	<u>1211</u> List <i>APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1183</u> Motion to disallow claims <i>REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LOND</i> ). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 (slip page - to be filed under seal upon order from Court) # <u>17</u> Exhibit 17 (slip page) # <u>18</u> Exhibit 18 (slip page) # <u>19</u> Exhibit 19 (slip page) # <u>20</u> Exhibit 20 (slip page) # <u>21</u> Exhibit 21 (slip page) # <u>22</u> Exhibit 22 (slip page) # <u>23</u> Exhibit 23 (slip page) # <u>24</u> Exhibit 24 (slip page) # <u>25</u> Exhibit 25 (slip page) # <u>26</u> Exhibit 26 (slip page) # <u>27</u> Exhibit 27 (slip page) # <u>28</u> Exhibit 28 (slip page) # <u>29</u> Exhibit 29 (slip page)) (Platt, Mark)
10/19/2020	<u>1212</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
10/19/2020	<u>1213</u> Response opposed to (related document(s): <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) filed by Advisors Equity Group, LLC, Eagle Equity Advisors, LLC. (Drawhorn, Lauren)

10/19/2020	<u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u> , (Annable, Zachery)
10/19/2020	<u>1218</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)
10/19/2020	<u>1219</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor HarbourVest et al. (Driver, Vickie)
10/19/2020	<u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/19/2020	<u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A) (Annable, Zachery)
10/19/2020	<u>1222</u> Notice of hearing filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order), <u>1208</u> Declaration re: <i>of Michael Pugatch in Support of 3018(A) Motion</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> )). Hearing to be held on 11/10/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> and for <u>1208</u> , (Driver, Vickie)
10/19/2020	<u>1223</u> Certificate of service re: Motion of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ). (Driver, Vickie)
10/19/2020	<u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u> , (Annable, Zachery)
10/19/2020	<u>1225</u> Amended Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1204</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PHD–1 # <u>2</u> Exhibit PHD–2 # <u>3</u> Exhibit PHD–3 # <u>4</u> Exhibit PHD–4 # <u>5</u> Exhibit PHD–5 # <u>6</u> Exhibit PHD–6 # <u>7</u> Exhibit PHD–7 # <u>8</u> Exhibit PHD–8 # <u>9</u> Exhibit PHD–9 # <u>10</u> Exhibit PHD–10 # <u>11</u> Exhibit PHD–11 # <u>12</u> Exhibit PHD–12 # <u>13</u> Exhibit PHD–13 # <u>14</u> Exhibit PHD–14 #

	<u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-22) (Kathman, Jason)
10/19/2020	<u>1226</u> Witness and Exhibit List filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Platt, Mark)
10/19/2020	<u>1227</u> Notice of hearing filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund)..., <u>1216</u> Joinder by filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1214</u> Motion for summary judgment). (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1215</u> and for <u>1216</u> , (Platt, Mark)
10/19/2020	<u>1228</u> Certificate of service re: <i>1) Order Granting Extension of Time to File an Adversary Proceeding Against CLO Holdco, Ltd.; and 2) Notice of Deposition of Professor Nancy B. Rapaport</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1168</u> Order granting extension of time to file an adversary proceeding against CLO Holdco, Ltd (RE: related document(s) <u>590</u> Motion to reclaim funds from the registry filed by Creditor CLO Holdco, Ltd.). Entered on 10/14/2020 (Okafor, M.), <u>1171</u> Notice to take deposition of Professor Nancy B. Rapaport filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/20/2020	<u>1229</u> Amended Witness and Exhibit List filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1199</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> 4 # <u>5</u> Exhibit 5 # <u>6</u> 6) (Sosland, Martin)
10/20/2020	<u>1230</u> Order granting motion to seal documents (related document # <u>1188</u> Motion for leave to file documents under seal with (I) the Objection and (II) the Declaration of W. Kevin Moentmann in Support of the Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72) and (B) the Highland Crusader Funds (Claim No. 81) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1231</u> <b>SEALED document regarding: Objection to the Debtor's Motion for Entry of an Order Approving Settlements With (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Sosland, Martin)
10/20/2020	<u>1232</u> <b>SEALED document regarding: Declaration of W. Kevin Moentmann in Support of Objection to the Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 7) and (B) the Highland Crusader Funds (Claim No. 81) per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1230</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 4 # <u>2</u> Exhibit 4 # <u>3</u> Exhibit 6 # <u>4</u> Attachment A # <u>5</u> Attachment B # <u>6</u> Attachment C) (Sosland, Martin)
10/20/2020	<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E)

	No–Liability Claims; and (F) Insufficient–Documentation Claims ( (RE: related document(s) <u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.)
10/20/2020	<u>1234</u> Order granting motion to seal documents (related document # <u>1182</u> Motion to seal regarding the Redeemer Committee of the Crusader Funds Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1235</u> Order granting motion to seal documents (related document # <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)
10/20/2020	<u>1236</u> <b>SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Platt, Mark)
10/20/2020	<u>1237</u> <b>SEALED document regarding: APPENDIX TO REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1234</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 16 (sealed) # <u>2</u> Exhibit 17 (sealed) # <u>3</u> Exhibit 18 (sealed) # <u>4</u> Exhibit 19 (sealed) # <u>5</u> Exhibit 20 (sealed) # <u>6</u> Exhibit 21 (sealed) # <u>7</u> Exhibit 22 (sealed) # <u>8</u> Exhibit 23 (sealed) # <u>9</u> Exhibit 24 (sealed) # <u>10</u> Exhibit 25 (sealed) # <u>11</u> Exhibit 26 (sealed) # <u>12</u> Exhibit 27 (sealed) # <u>13</u> Exhibit 28 (sealed) # <u>14</u> Exhibit 29 (sealed)) (Platt, Mark)
10/20/2020	<u>1238</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
10/20/2020	<u>1239</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
10/20/2020	<u>1240</u> Joinder by <i>META–E DISCOVERY, LLC TO THE OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE</i> filed by Interested Party Meta–e Discovery, LLC (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Umari, Basil)
10/20/2020	<u>1241</u> Objection to disclosure statement (RE: related document(s) <u>1080</u> Disclosure statement) filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Patel, Rakhee)

10/20/2020	<u>1242</u> Joinder by REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS JOINDER TO OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE ADEQUACY OF THE DISCLOSURE STATEMENT; (B) SCHEDULING A HEARING TO CONFIRM THE FIRST AMENDED PLAN OF REORGANIZATION; (C) ESTABLISHING DEADLINE FOR FILING OBJECTIONS TO CONFIRMATION OF PLAN; (D) APPROVING FORM OF BALLOTS, VOTING DEADLINE AND SOLICITATION PROCEDURES; AND (E) APPROVING FORM AND MANNER OF NOTICE filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s) <u>1239</u> Objection to disclosure statement). (Platt, Mark)
10/20/2020	1243 Hearing held and Continued (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (Continued Hearing to be held on 10/21/2020 at 10:00 AM Dallas Judge Jernigan Ctrm for <u>1087</u> .) (Edmond, Michael)
10/20/2020	<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. (Hoffman, Juliana)
10/20/2020	1256 Hearing held on 10/20/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	1257 Hearing held on 10/20/2020. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.) (Edmond, Michael) (Entered: 10/21/2020)
10/20/2020	<u>1303</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S EXHIBIT'S #1, #2, #3 & #4; COURT TOOK JUDICIAL NOTICE OF THE DECLARATION OF JOHN A. MORRIS; ADMITTED AS AN EXHIBIT #3; EXHIBITS #2 #3 AND #4 TO DECLARATION AND EXHIBIT #B TO EXHIBIT #1 FILED UNDER SEAL) (Edmond, Michael) (Entered: 10/28/2020)
10/20/2020	1304 DOCKET AN ERROR: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N.

	Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #Q, #R, #S, #T, #U, #V, #W & #X; NOTE* EXHIBIT #P (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	<u>1305</u> MODIFIED TEXT: Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (1304 Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE BY PATRICK DAUGHTERY COUNSEL JASON KATHMAN) (Edmond, Michael) Modified on 10/28/2020 (Edmond, Michael). Modified on 10/30/2020 (Edmond, Michael). (Entered: 10/28/2020)
10/20/2020	<u>1314</u> Court admitted exhibits date of hearing October 20, 2020 (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159) filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED JAMES DONDERO'S EXHIBIT'S #A, #B, #C, #D, #E, #F, #G, #H, #I, #J, #K, #L, #M, #N, #O, #P, #Q, #R, #S, #T, #U, #V, #W & #X; JASON KATHMAN ; COUNSEL FOR PATRICK DAUGHERTY EXHIBIT'S #1079 – AMENDED PLAN & #1080 – AMENDED DISCLOSURE STATEMENT ADMITTED INTO EVIDENCE). (Edmond, Michael) (Entered: 10/30/2020)
10/21/2020	<u>1245</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly. (Edmond, Michael)
10/21/2020	<u>1246</u> Request for transcript regarding a hearing held on 10/20/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/21/2020	<u>1247</u> Motion to appear pro hac vice for Faheem A. Mahmooth. Fee Amount \$100 Filed by Creditor Pension Benefit Guaranty Corporation (Webb, Donna)
10/21/2020	<u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.).
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 0.00). Receipt number KF: No Fee Due – Exempt U.S. Government Agency, amount \$ 0.00 (re: Doc <u>1247</u> ). (Floyd)
10/21/2020	<u>1249</u> SEALED document regarding: Debtor's Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)

10/21/2020	<b><u>1250</u> SEALED document regarding: Exhibit 2 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b><u>1251</u> SEALED document regarding: Exhibit 11 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b><u>1252</u> SEALED document regarding: Exhibit 12 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b><u>1253</u> SEALED document regarding: Exhibit 14 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b><u>1254</u> SEALED document regarding: Exhibit 15 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	<b><u>1255</u> SEALED document regarding: Exhibit 16 to Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1235</u> Order on motion to seal). (Annable, Zachery)
10/21/2020	1258 Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.) (Edmond, Michael)
10/21/2020	<b><u>1259</u> Notice of Appearance and Request for Notice</b> by Thomas G. Haskins Jr. filed by Creditor NWCC, LLC. (Haskins, Thomas)
10/21/2020	<b><u>1260</u> Motion to appear pro hac vice</b> for Jonathan Sundheimer. Fee Amount \$100 Filed by Creditor NWCC, LLC (Haskins, Thomas)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201179, amount \$ 100.00 (re: Doc# <u>1260</u> ). (U.S. Treasury)
10/21/2020	<b><u>1261</u> Certificate of service re: Joinder to Objection to Disclosure Statement</b> filed by Interested Party Meta-e Discovery, LLC (RE: related document(s) <u>1240</u> Joinder). (Umari,

	Basil)
10/21/2020	<u>1262</u> Motion to appear pro hac vice for Joseph T. Moldovan. Fee Amount \$100 Filed by Interested Party Meta-e Discovery, LLC (Umari, Basil)
10/21/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28201283, amount \$ 100.00 (re: Doc# <u>1262</u> ). (U.S. Treasury)
10/21/2020	<u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
10/21/2020	<u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.).
10/21/2020	<u>1265</u> Certificate of service re: <i>Documents Served on or Before October 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1178</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P., <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D. Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1180</u> INCORRECT ENTRY: EVENT CODE. SEE DOCUMENT 1214. Motion to disallow claims ( <i>Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) (Annable, Zachery) Modified on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1181</u> Brief in support filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1184</u> Support/supplemental document ( <i>Appendix of Exhibits in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19) (Annable, Zachery). Related document(s) <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P.. Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1185</u> Declaration re: ( <i>Declaration of Elissa A. Wagner in Support of Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P.)). (Annable, Zachery). Modified linkage on 10/19/2020. filed by Debtor Highland Capital Management, L.P., <u>1187</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>1193</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Omnibus Objection to claim(s) of Creditor(s) Crescent Research; Hedgeye Risk Management, LLC; James D.

	<p>Dondero; NexVest, LLC; James D. Dondero.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 11/18/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 12/14/2020 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1179</u>, filed by Debtor Highland Capital Management, L.P., <u>1202</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). ). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1266</u> Order granting motion to continue hearing on (related document # <u>1263</u>) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, Entered on 10/22/2020. (Ecker, C.)</p>
10/22/2020	<p><u>1267</u> Notice of change of address filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)</p>
10/22/2020	<p><u>1268</u> Amended Notice of hearing (<i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, (Annable, Zachery)</p>
10/22/2020	<p><u>1269</u> Certificate of service re: <i>Documents Served on or Before October 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1206</u> Notice to take deposition of W. Kevin Moentmann filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1217</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order), <u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P. Objections due by 10/19/2020. (Attachments: # 1 Exhibit A—Proposed Order)). Hearing to be held on 10/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1087</u> and for <u>1089</u>, filed by Debtor Highland Capital Management, L.P., <u>1220</u> Reply to (related document(s): <u>1190</u> Objection filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1221</u> Omnibus Reply to (related document(s): <u>1121</u> Response filed by Interested Party James Dondero, <u>1177</u> Response filed by Creditor CLO Holdco, Ltd., <u>1191</u> Response filed by Interested Party Highland CLO Funding, Ltd., <u>1195</u> Objection filed by Creditor HarbourVest et al, <u>1201</u> Objection filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A) filed by Debtor Highland Capital Management, L.P., <u>1224</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A – Proposed Order) (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1214</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/22/2020	<p><u>1270</u> Certificate of service re: <i>Documents Served on October 20, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1233</u> First Supplemental Order Sustaining First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F)</p>

	<p>Insufficient–Documentation Claims ( (RE: related document(s)<u>906</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 10/20/2020 (Okafor, M.), <u>1235</u> Order granting motion to seal documents (related document <u>1187</u> Debtor's Motion for Leave to File Certain Documents under Seal in Connection with Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch) Filed by Debtor Highland Capital Management, L.P.) Entered on 10/20/2020. (Okafor, M.)). (Kass, Albert)</p>
10/23/2020	<p><u>1271</u> Transcript regarding Hearing Held 10/20/2020 (256 pages) RE: Motions to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/21/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972–786–3063. (RE: related document(s) <u>1256</u> Hearing held on 10/20/2020. (RE: related document(s)<u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Court recessed after evidence closed and will reconvene at 10:00 am 10/21/20 for closing arguments.), <u>1257</u> Hearing held on 10/20/2020. (RE: related document(s)<u>1089</u> Motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; R. Patel and B. Shaw for Acis and Terrys; S. Tomkowiak, A. Clubok, and K. Posin for UBS; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST. Evidentiary hearing. Motion approved, based on reasoning given orally. Counsel to upload orders.)). Transcript to be made available to the public on 01/21/2021. (Rehling, Kathy)</p>
10/23/2020	<p><u>1272</u> Request for transcript regarding a hearing held on 10/21/2020. The requested turn–around time is hourly. (Edmond, Michael)</p>
10/23/2020	<p><u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document # <u>1089</u>) Entered on 10/23/2020. (Okafor, M.)</p>
10/23/2020	<p><u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, (Annable, Zachery)</p>
10/23/2020	<p><u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital</p>

	Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Annable, Zachery)
10/23/2020	<u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document # <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1277</u> Order granting motion to appear pro hac vice adding Jonathan D. Sundheimer for NWCC, LLC (related document <u>1260</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document # <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)
10/23/2020	<u>1279</u> Motion to file document under seal. – <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents Filed by Creditor Patrick Daugherty</i> (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Delaware Protective Order) (Kathman, Jason)
10/23/2020	<u>1280</u> Motion for leave to Amend Proof of Claim No. 77 Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # <u>1</u> Exhibit A – Proposed Order # <u>2</u> Exhibit B – Second Amended Proof of Claim) (Kathman, Jason)
10/23/2020	<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Kathman, Jason)
10/23/2020	<u>1282</u> Brief in support filed by Creditor Patrick Daugherty (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Kathman, Jason)
10/23/2020	<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. (Hoffman, Juliana)
10/23/2020	<u>1284</u> Support/supplemental document – <i>Appendix to Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1282</u> Brief). (Attachments: # <u>1</u> Appendix – Part 1 of 3 # <u>2</u> Appendix – Part 2 # <u>3</u> Appendix – Part 3) (Kathman, Jason)
10/24/2020	<u>1285</u> Transcript regarding Hearing Held 10/21/2020 (48 pages) RE: Motion to Compromise Controversy. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/22/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1258</u> Hearing held on 10/21/2020. (RE: related document(s) <u>1087</u> Motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159), filed by Debtor Highland Capital Management, L.P.) (Appearances: I. Kharasch, J. Morris, and G. Demo for Debtors; M. Clemente for Unsecured Creditors Committee; A. Chiarello for Acis and Terrys; M. Hankin, and M. Platt for Redeemer Committee; M. Lynn for J. Dondero; J. Kathman for P. Daugherty; R. Matsumura for HCLOF; J. Kane for CLO Holdco; E. Weisgerber for HarbourVest; L. Lambert for UST.

	Nonevidentiary closing arguments. Court granted motion, based on reasoning granted orally. Counsel to upload order.)). Transcript to be made available to the public on 01/22/2021. (Rehling, Kathy)
10/25/2020	<u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
10/25/2020	<u>1287</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1288</u> Support/supplemental document ( <i>Redline of Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1287</u> Chapter 11 plan). (Annable, Zachery)
10/25/2020	<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1290</u> Support/supplemental document ( <i>Redline of the Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/25/2020	<u>1291</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1276</u> Order granting motion to appear pro hac vice adding Faheem A. Mahmooth for Pension Benefit Guaranty Corporation (related document <u>1247</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/25/2020	<u>1292</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1278</u> Order granting motion to appear pro hac vice adding Joseph T. Moldovan for Meta-e Discovery, LLC (related document <u>1262</u> ) Entered on 10/23/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 10/25/2020. (Admin.)
10/26/2020	<u>1293</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1081</u> Notice of hearing ( <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit

	B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
10/26/2020	<u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl & Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/26/2020	<u>1295</u> Support/supplemental document ( <i>Notice of Supplemental Disclosures</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Disclosure statement). (Annable, Zachery)
10/27/2020	<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. (Hoffman, Juliana)
10/27/2020	<u>1297</u> Request for transcript regarding a hearing held on 10/27/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/27/2020	<u>1298</u> Certificate of service re: <i>Documents Served on or Before October 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1266</u> Order granting motion to continue hearing on (related document <u>1263</u> ) (related documents Disclosure statement) Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , Entered on 10/22/2020. (Ecker, C.), <u>1268</u> Amended Notice of hearing ( <i>Amended Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/27/2020	1307 Hearing held on 10/27/2020., Hearing continued (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> . (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth

	of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/27/2020	<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20.) (Edmond, Michael) (Entered: 10/28/2020)
10/28/2020	<u>1299</u> Request for transcript regarding a hearing held on 10/28/2020. The requested turn-around time is hourly (Jeng, Hawaii)
10/28/2020	<u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , (Annable, Zachery)
10/28/2020	<u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.)
10/28/2020	<u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document # <u>1087</u> ) Entered on 10/28/2020. (Okafor, M.)
10/28/2020	<u>1306</u> Hearing held on 10/28/2020. (RE: related document(s) <u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.) (Edmond, Michael)

10/28/2020	<p><u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Annable, Zachery)</p>
10/28/2020	<p><u>1310</u> Certificate of service re: 1) <i>Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith</i>; 2) <i>Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay</i>; and 3) <i>Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
10/28/2020	<p><u>1311</u> Certificate of service re: 1) <i>Summary Cover Sheet and Eleventh Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through September 30, 2020</i>; and 2) <i>Debtors Omnibus Reply to Objections to Approval of the Debtors Disclosure Statement for the Debtors First Amended Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1283</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: \$2,204.73. Filed by Attorney Juliana Hoffman Objections due by 11/13/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1286</u> Omnibus Response opposed to (related document(s): <u>1209</u> Objection to disclosure statement filed by Interested Party Jefferies LLC, <u>1210</u> Objection to disclosure statement filed by Creditor Pension Benefit Guaranty Corporation, <u>1218</u> Objection to disclosure statement filed by Creditor Patrick Daugherty, <u>1219</u> Objection to disclosure statement filed by Creditor HarbourVest et al, <u>1238</u> Objection to disclosure statement filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch, <u>1239</u> Objection to disclosure statement filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1241</u> Objection to disclosure statement filed by Creditor Acis Capital Management GP, LLC, Creditor Acis Capital Management, L.P.)</p>

	filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
10/29/2020	<p><u>1312</u> Transcript regarding Hearing Held 10/27/2020 (95 pages) RE: Amended Disclosure Statement, Motion for Entry of an Order Approving Adequacy of Disclosure Statement. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/27/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1308 Hearing held on 10/27/2020., Hearing continued (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)) Continued hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, (Appearances: J. Pomeranz, I. Kharasch, and G. Demo for Debtor; M. Clemente and P. Reid for Unsecured Creditors Committee; R. Patel and A. Chiarello for Acis and Terrys; T. Mascherin, M. Hankin, and M. Platt for Redeemer Committee; J. Kathman for P. Daugherty; K. Posin for UBS; D. Stroik for HarbourVest; M. Baird for SEC; L. Lambert for UST. Nonevidentiary hearing. Court sustained various objections to adequacy of certain provisions of disclosure statement, orally outlining both specific and general concerns (e.g., vagueness and breadth of releases; delay in Debtor providing certain important documents, such as Claimant Trust Agreement, until Plan Supplement; legal justification for an administrative convenience class at the \$1 million level, consisting mostly of prepetition lawyers fee claim; lack of clarity about assets that will be liquidated for Class 7, particularly in scenario where certain disputed claims are allowed (revenue streams from Debtors management of third-party assets?); lack of support of UCC for plan). Hearing continued to 11/23/20..). Transcript to be made available to the public on 01/27/2021. (Rehling, Kathy)</p>
10/29/2020	<p><u>1313</u> Certificate of service re: <i>Summary Cover Sheet and Third Interim Fee Application of Sidley Austin LLP, Attorneys for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from June 1, 2020 Through and Including August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
10/30/2020	<p><u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)</p>
10/30/2020	<p><u>1316</u> Certificate No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1160</u> Application for compensation <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 8/1/2020 to 8/31/2020, Fee: \$198,616.32, Expenses: \$0.). (Hoffman, Juliana)</p>
10/30/2020	<p><u>1317</u> Certificate of service re: <i>(Supplemental) Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing <i>(Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital</p>

	<p>Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P., <u>1097</u> Certificate of service re: <i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1081</u> Notice of hearing (<i>Notice of Hearing on Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1080</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement). (Attachments: # 1 Exhibit A—First Amended Plan of Reorganization # 2 Exhibit B—Organizational Chart)). Hearing to be held on 10/22/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1080</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
10/31/2020	<p><u>1318</u> Transcript regarding Hearing Held 10/28/2020 (32 pages) RE: Patrick Daugherty's Motion to Confirm Status of Automatic Stay. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 01/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1306</u> Hearing held on 10/28/2020. (RE: related document(s)<u>1099</u> Motion for relief from stay – Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay, filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman and T. Uebler for Movant, P. Daugherty; J. Morris for Debtor. Nonevidentiary hearing (Declaration only). Motion granted for reasons stated orally. Mr. Kathman to upload order.)). Transcript to be made available to the public on 01/29/2021. (Rehling, Kathy)</p>
11/01/2020	<p><u>1319</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1315</u> Order directing UBS' Offer of Proof (RE: related document(s)<u>1089</u> Motion to compromise controversy filed by Debtor Highland Capital Management, L.P.). Entered on 10/30/2020 (Okafor, M.)) No. of Notices: 2. Notice Date 11/01/2020. (Admin.)</p>
11/02/2020	<p><u>1320</u> Clerk's correspondence requesting an order from attorney for debtor. (RE: related document(s)<u>771</u> Objection to claim(s) 3 of Creditor(s) Acis Capital Management L.P. and Acis Capital Management GP, LLC.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 7/23/2020.) Responses due by 11/16/2020. (Ecker, C.)</p>
11/02/2020	<p><u>1321</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<u>1119</u> Motion to extend time to Deadline To File An Adversary Proceeding Against CLO Holdco, Ltd. (EMERGENCY) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 10/23/2020.) Responses due by 11/16/2020. (Ecker, C.)</p>
11/02/2020	<p><u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C)</p>

	<p>Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <a href="#">1087</a>) Entered on 10/28/2020. (Okafor, M.), <a href="#">1309</a> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1108</a> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1108</a>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/03/2020	<p><a href="#">1323</a> Certificate of service re: Daugherty's Objection to Approval of Debtor's Disclosure Statement filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1218</a> Objection to disclosure statement). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1324</a> Certificate of service re: Daugherty's Motion for Leave to File Under Seal filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1279</a> Motion to file document under seal.— <i>Daugherty's Motion for Leave to File Under Seal His Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 and Supporting Documents</i>). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1325</a> Certificate of service re: Daugherty's Motion for Leave to Amend Proof of Claim No. 77 filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1280</a> Motion for leave to <i>Amend Proof of Claim No. 77</i>). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1326</a> Certificate of service re: Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes, Brief and Appendix filed by Creditor Patrick Daugherty (RE: related document(s)<a href="#">1281</a> Motion for leave — <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018, 1282</i> Brief, <a href="#">1284</a> Support/supplemental document). (Kathman, Jason)</p>
11/03/2020	<p><a href="#">1327</a> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document # <a href="#">1099</a>) Entered on 11/3/2020. (Okafor, M.)</p>
11/03/2020	<p><a href="#">1328</a> Notice of Withdrawal of Motion for Relief from the Automatic Stay to Allow Pursuit of Motion for Order to Show Cause For Violations of the Acis Plan Injunction filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<a href="#">593</a> Motion for relief from stay Fee amount \$181, Filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. Objections due by 5/1/2020. (Attachments: # 1 Exhibit 1 (Draft Motion Show Cause Motion) # 2 Exhibit 2 (DAF Complaint 1st case) # 3 Exhibit 3 (DAF Dismissal first case) # 4 Exhibit 4 (DAF Complaint 2nd case) # 5 Exhibit 5 (DAF Dismissal 2nd Case) # 6 Proposed Order)). (Shaw, Brian)</p>
11/03/2020	<p><a href="#">1329</a> Debtor—in-possession monthly operating report for filing period September 1, 2020 to September 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
11/03/2020	<p><a href="#">1330</a> Certificate No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<a href="#">1142</a> Application for compensation (<i>Eighth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from July 1, 2020 through July 31, 2020</i>) for Hayward &amp; Associ). (Annable, Zachery)</p>

11/03/2020	<p><u>1331</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to September 30, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
11/04/2020	<p><u>1332</u> Certificate of service re: filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1331</u> Notice (generic)). (Annable, Zachery)</p>
11/05/2020	<p><u>1333</u> Stipulation by Highland Capital Management, L.P. and Acis Capital Management, L.P., Acis Capital Management GP, LLC, Joshua N. Terry, Jennifer G. Terry, and James Dondero. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1302</u> Order on motion to compromise controversy). (Annable, Zachery)</p>
11/05/2020	<p><u>1334</u> Certificate of service re: (<i>Amended</i>) <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl &amp; Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1294</u> Certificate of service re: <i>Documents Served on October 21, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Pachulski Stang Ziehl &amp; Jones, LLP, Debtor's Attorney, Period: 9/10/2020 to 9/30/2020, Fee: \$828,193.00, Expenses: \$7,707.11. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 11/12/2020. (Pomerantz, Jeffrey) MODIFIED to correct party requesting fees/expenses. on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., <u>1263</u> Emergency Motion to continue hearing on (related documents <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1264</u> Stipulation Resolving Proof of Claim No. 86 of NWCC, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED to correct text on 10/22/2020 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/05/2020	<p><u>1335</u> Certificate of service re: (<i>Amended</i>) 1) <i>Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith;</i> 2) <i>Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of</i></p>

	<p><i>Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>)) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1310</u> Certificate of service re: <i>1) Order Approving Debtor's Settlement with (A) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith; 2) Amended Notice of Hearing on Patrick Daugherty's Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay; and 3) Amended Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1273</u> Order granting motion to compromise controversy with (a) the Redeemer Committee of the Highland Crusader Fund (Claim No. 72), and (b) the Highland Crusader Funds (Claim No. 81). Filed by Debtor Highland Capital Management, L.P (related document <u>1089</u>) Entered on 10/23/2020. (Okafor, M.), <u>1274</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1099</u> Motion for relief from stay – <i>Daugherty's Motion to Confirm Status of Automatic Stay, or alternatively to Modify Automatic Stay</i> Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 10/8/2020. (Attachments: # 1 Exhibit Declaration of Patrick Daugherty in Support of Motion # 2 Service List)). Hearing to be held on 10/28/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1099</u>, filed by Debtor Highland Capital Management, L.P., <u>1275</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>)) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 10/27/2020 at 10:30 AM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/05/2020	<p><u>1336</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1327</u> Order on Creditor Patrick Daugherty's Motion to confirm status of automatic stay, or alternatively to modify automatic stay (related document <u>1099</u>) Entered on 11/3/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/05/2020. (Admin.)</p>
11/06/2020	<p><u>1337</u> Response opposed to (related document(s): <u>1214</u> Motion for summary judgment filed by Debtor Highland Capital Management, L.P., <u>1215</u> Motion for summary judgment filed by Interested Party Redeemer Committee of the Highland Crusader Fund) filed by</p>

	Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
11/06/2020	<u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # <u>1</u> Proposed Order) (Sosland, Martin)
11/06/2020	<u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # <u>1</u> Exhibit)(Sosland, Martin)
11/06/2020	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcap] ( 298.00). Receipt number 28246686, amount \$ 298.00 (re: Doc# <u>1339</u> ). (U.S. Treasury)
11/06/2020	<u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. (Hoffman, Juliana)
11/06/2020	<u>1341</u> Brief in opposition filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment). (Sosland, Martin)
11/06/2020	<u>1342</u> Brief in support filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Sosland, Martin)
11/06/2020	<u>1343</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1344</u> Motion to file document under seal.( <i>With UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
11/06/2020	<u>1345</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claims Nos. 190 and 191 and in Support of Rule 56(d) Request</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1337</u> Response). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9-21 # <u>10</u> Exhibit 22) (Sosland, Martin)
11/06/2020	<u>1346</u> Exhibit List ( <i>Appendix of Exhibits to UBS's Brief in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9-29) (Sosland, Martin)
11/09/2020	<u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # <u>1</u> Order)(Assink, Bryan)

11/09/2020	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28249949, amount \$ 298.00 (re: Doc# <a href="#">1347</a> ). (U.S. Treasury)
11/09/2020	<a href="#">1348</a> Motion to continue hearing on (related documents <a href="#">1207</a> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <a href="#">1</a> Proposed Order) (Driver, Vickie)
11/09/2020	<a href="#">1349</a> Objection to (related document(s): <a href="#">1281</a> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/09/2020	<a href="#">1350</a> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1349</a> Objection). (Attachments: # <a href="#">1</a> Exhibit 1 # <a href="#">2</a> Exhibit 2) (Annable, Zachery)
11/10/2020	<a href="#">1351</a> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <a href="#">1281</a> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # <a href="#">1</a> Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1281</a> , (Annable, Zachery)
11/10/2020	<a href="#">1352</a> Order granting motion to continue hearing on (related document # <a href="#">1348</a> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/2/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <a href="#">1207</a> , Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<a href="#">1353</a> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request (related document # <a href="#">1343</a> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<a href="#">1354</a> Order granting motion to seal documents with UBS's Brief and Appendix of Exhibits in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <a href="#">1344</a> ) Entered on 11/10/2020. (Okafor, M.)
11/10/2020	<a href="#">1355</a> <b>SEALED document regarding: UBS's Brief in Opposition to Motions for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 and in Support of Rule 56(d) Request per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">1353</a> Order on motion to seal). (Attachments: # <a href="#">1</a> Exhibit 9 # <a href="#">2</a> Exhibit 10 # <a href="#">3</a> Exhibit 11 # <a href="#">4</a> Exhibit 12 # <a href="#">5</a> Exhibit 13 # <a href="#">6</a> Exhibit 14 # <a href="#">7</a> Exhibit 15 # <a href="#">8</a> Exhibit 16 # <a href="#">9</a> Exhibit 17 # <a href="#">10</a> Exhibit 18 # <a href="#">11</a> Exhibit 19 # <a href="#">12</a> Exhibit 20 # <a href="#">13</a> Exhibit 21) (Sosland, Martin)
11/10/2020	<a href="#">1356</a> <b>SEALED document regarding: UBS's Brief in Support of Motion for Temporary Allowance of claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">1354</a> Order on motion to seal). (Attachments: # <a href="#">1</a> Exhibit 9 # <a href="#">2</a> Exhibit 10 # <a href="#">3</a> Exhibit 11 # <a href="#">4</a> Exhibit 12 # <a href="#">5</a> Exhibit 13 # <a href="#">6</a> Exhibit 14 # <a href="#">7</a> Exhibit 15 # <a href="#">8</a> Exhibit 16 # <a href="#">9</a> Exhibit 17 # <a href="#">10</a> Exhibit 18 # <a href="#">11</a> Exhibit 19 # <a href="#">12</a> Exhibit 20 # <a href="#">13</a> Exhibit 21 # <a href="#">14</a> Exhibit 22 # <a href="#">15</a> Exhibit 23 # <a href="#">16</a> Exhibit 24 # <a href="#">17</a> Exhibit 25 # <a href="#">18</a> Exhibit 26 # <a href="#">19</a> Exhibit 27 # <a href="#">20</a> Exhibit 28 # <a href="#">21</a> Exhibit 29) (Sosland, Martin)
11/10/2020	<a href="#">1357</a> Notice of hearing filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <a href="#">1338</a> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of</i>

	<i>Bankruptcy Procedure 3018</i> ) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC Objections due by 11/20/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 11/20/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1338</u> , (Sosland, Martin)
11/10/2020	<u>1358</u> Certificate of service re: <i>Eleventh Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from September 1, 2020 to and Including September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1340</u> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60. Filed by Attorney Juliana Hoffman Objections due by 11/30/2020. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
11/10/2020	<u>1359</u> Certificate of service re: 1) <i>Debtors Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ; and 2) <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1349</u> Objection to (related document(s): <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1350</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Hagaman Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1349</u> Objection). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/11/2020	<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/11/2020	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28256837, amount \$ 100.00 (re: Doc# <u>1360</u> ). (U.S. Treasury)
11/11/2020	<u>1361</u> Certificate of service re: 1) <i>Notice of Transfer for MCS Capital LLC c/o STC, Inc. re: Lynn Pinker Cox &amp; Hurst, LLP (Claim No. 148)</i> ; and 2) <i>Notice of Transfer for Argo Partners re: Stanton Advisors LLC (Scheduled Amount \$10,000.00)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1165</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 1 Transferors: Stanton Advisors LLC (Amount \$10,000.00) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1166</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Lynn Pinker Cox & Hurst, LLP (Claim No. 148, Amount \$507,430.34) To MCS Capital LLC c/o STC, Inc.. Filed by Creditor Argo Partners. filed by Creditor Argo Partners). (Kass, Albert)
11/12/2020	<u>1363</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/12/2020	<u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/12/2020	<u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s) <u>821</u> Agreed order regarding deposit of funds into the registry of

	the Court.). Entered on 11/12/2020 (Okafor, M.)
11/12/2020	<u>1366</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # <u>1</u> Exhibit A—DSI Monthly Staffing Report for August 2020) (Annable, Zachery)
11/12/2020	<u>1367</u> Certificate of service re: <i>Notice of Hearing on Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1351</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> Filed by Creditor Patrick Daugherty (Attachments: # 1 Exhibit A – Proposed Order)). Hearing to be held on 11/17/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1281</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/12/2020	<u>1368</u> Clerk's correspondence requesting to amend the notice of appeal from attorney for appellant. (RE: related document(s) <u>1339</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) Responses due by 11/16/2020. (Whitaker, Sheniqua)
11/12/2020	<u>1369</u> Amended notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1339</u> Notice of appeal). (Sosland, Martin)
11/12/2020	<u>1370</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03390-X. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)) (Whitaker, Sheniqua)
11/13/2020	<u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document # <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1372</u> Order granting motion to seal documents (related document # <u>1279</u> ) Entered on 11/13/2020. (Ecker, C.)
11/13/2020	<u>1374</u> INCORRECT ENTRY. Incomplete Form. Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua) Modified on 11/13/2020 (Whitaker, Sheniqua).
11/13/2020	<u>1375</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). Appellant Designation due by 11/20/2020. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
11/13/2020	

	<u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/13/2020	<u>1380</u> WITHDRAWN per # <u>1421</u> . Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas) Modified on 11/19/2020 (Ecker, C.).
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1377</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1378</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1379</u> ). (U.S. Treasury)
11/13/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28267014, amount \$ 25.00 (re: Doc# <u>1380</u> ). (U.S. Treasury)
11/13/2020	<u>1381</u> Notice of docketing notice of appeal. Civil Action Number: 3:20-cv-03408-G. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
11/13/2020	<u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> ). (Annable, Zachery)
11/13/2020	<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). (Annable, Zachery)
11/13/2020	<u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). (Annable, Zachery)
11/13/2020	<u>1385</u> Support/supplemental document ( <i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Chapter 11 plan). (Annable, Zachery)

11/13/2020	<p><u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1384</u> Disclosure statement). (Annable, Zachery)</p>
11/13/2020	<p><u>1387</u> Certificate of service re: (<i>Supplemental Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/13/2020	<p><u>1388</u> Witness and Exhibit List for <i>Hearing on Motion for Allowance of Claim</i> filed by Creditor Patrick Daugherty (RE: related document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6 # <u>7</u> Exhibit PHD-7 # <u>8</u> Exhibit PHD-8 # <u>9</u> Exhibit PHD-9 # <u>10</u> Exhibit PHD-10 # <u>11</u> Exhibit PHD-11 # <u>12</u> Exhibit PHD-12 # <u>13</u> Exhibit PHD-13 # <u>14</u> Exhibit PHD-14 # <u>15</u> Exhibit PHD-15 # <u>16</u> Exhibit</p>

	PHD-16 # <u>17</u> Exhibit PHD-17 # <u>18</u> Exhibit PHD-18 # <u>19</u> Exhibit PHD-19 # <u>20</u> Exhibit PHD-20 # <u>21</u> Exhibit PHD-21 # <u>22</u> Exhibit PHD-22 # <u>23</u> Exhibit PHD-23 # <u>24</u> Exhibit PHD-24 # <u>25</u> Exhibit PHD-25 # <u>26</u> Exhibit PHD-26 # <u>27</u> Exhibit PHD-27 # <u>28</u> Exhibit PHD-28 # <u>29</u> Exhibit PHD-29 # <u>30</u> Exhibit PHD-30 # <u>31</u> Exhibit PHD-31 # <u>32</u> Exhibit PHD-32 # <u>33</u> Exhibit PHD-33 # <u>34</u> Exhibit PHD-34 # <u>35</u> Exhibit PHD-35 # <u>36</u> Exhibit PHD-36 # <u>37</u> Exhibit PHD-37 # <u>38</u> Exhibit PHD-38 # <u>39</u> Exhibit PHD-39 # <u>40</u> Exhibit PHD-40 # <u>41</u> Exhibit PHD-41 # <u>42</u> Exhibit PHD-42) (Kathman, Jason)
11/13/2020	<u>1389</u> Notice ( <i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan)). (Attachments: # <u>1</u> Exhibit A—Form of Claimant Trust Agreement # <u>2</u> Exhibit B—Form of New GP LLC Documents # <u>3</u> Exhibit C—Form of Reorganized Limited Partnership Agreement # <u>4</u> Exhibit D—Form of Litigation Sub-Trust Agreement # <u>5</u> Exhibit E—Schedule of Retained Causes of Action # <u>6</u> Exhibit F—Form of New Frontier Note # <u>7</u> Exhibit G—Schedule of Employees # <u>8</u> Exhibit H—Form of Senior Employee Stipulation) (Annable, Zachery)
11/14/2020	<u>1390</u> BNC certificate of mailing. (RE: related document(s) <u>1364</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1347</u> Notice of appeal . filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order))) No. of Notices: 1. Notice Date 11/14/2020. (Admin.)
11/15/2020	<u>1391</u> BNC certificate of mailing. (RE: related document(s) <u>1376</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1339</u> Notice of appeal . filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Attachments: # 1 Exhibit))) No. of Notices: 2. Notice Date 11/15/2020. (Admin.)
11/15/2020	<u>1392</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.)) No. of Notices: 1. Notice Date 11/15/2020. (Admin.)
11/16/2020	<u>1393</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1248</u> Application for compensation <i>Cover Sheet and Twelfth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from September 1, 2020 through September 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Peri). (Pomerantz, Jeffrey)
11/16/2020	<u>1394</u> <b>SEALED</b> document regarding: <b>Exhibit 1 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1395</u> <b>SEALED</b> document regarding: <b>Exhibit 26 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<u>1396</u> <b>SEALED</b> document regarding: <b>Exhibit 27 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)

11/16/2020	<b><u>1397</u> SEALED document regarding: Exhibit 36 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<b><u>1398</u> SEALED document regarding: Exhibit 37 to Appendix to Patrick Hagaman Daugherty's Memorandum of Law and Brief in Support of Motion for Temporary Allowance for Voting Purposes Pursuant to Bankruptcy Rule 3018 per court order</b> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1372</u> Order on motion to seal). (Kathman, Jason)
11/16/2020	<b><u>1399</u> Notice (<i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>)</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
11/16/2020	<b><u>1400</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>)</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
11/16/2020	<b><u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2</b> Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. (Schneller, Douglas)
11/16/2020	<b><u>1402</u> Reply to (related document(s): <u>1337</u> Response</b> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 25.00). Receipt number 28270620, amount \$ 25.00 (re: Doc# <u>1401</u> ). (U.S. Treasury)
11/16/2020	<b><u>1403</u> Exhibit List (<i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>)</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1402</u> Reply). (Annable, Zachery)
11/16/2020	<b><u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)</b> filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

11/16/2020	<u>1405</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTORS MOTION FOR PARTIAL SUMMARY JUDGEMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1406</u> Motion to file document under seal. <i>MOTION FOR AN ORDER GRANTING LEAVE TO FILE DOCUMENTS UNDER SEAL REGARDING REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS OBJECTION AND JOINDER TO DEBTORS OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES LLCS MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018</i> Filed by Interested Party Redeemer Committee of the Highland Crusader Fund (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Proposed Order) (Platt, Mark)
11/16/2020	<u>1407</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10.). (Hoffman, Juliana)
11/16/2020	<u>1408</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1409</u> Objection to (related document(s): <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> ) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Interested Party Redeemer Committee of the Highland Crusader Fund. (Attachments: # <u>1</u> Exhibit A (slip sheet only) # <u>2</u> Exhibit B (slip sheet only) # <u>3</u> Exhibit C (slip sheet only) # <u>4</u> Exhibit D (slip sheet only)) (Platt, Mark)
11/16/2020	<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic)). (Hoffman, Juliana)
11/16/2020	<u>1411</u> Reply to (related document(s): <u>1349</u> Objection filed by Debtor Highland Capital Management, L.P.) – <i>Daugherty's Reply in Support of Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Bankruptcy Rule 3018</i> filed by Creditor Patrick Daugherty. (Kathman, Jason)
11/16/2020	<u>1412</u> Declaration re: <i>Michael S. Colvin in Support of Motion for Temporary Allowance of Claims for Voting Purposes</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1411</u> Reply). (Kathman, Jason)
11/17/2020	<u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # <u>1</u> Exhibit 30) (Annable, Zachery)
11/17/2020	

	<p><u>1414</u> Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Platt, Mark)</p>
11/17/2020	<p><u>1415</u> Request for transcript regarding a hearing held on 11/17/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
11/17/2020	<p><u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86). (Hoffman, Juliana)</p>
11/17/2020	<p><u>1417</u> Certificate of service re: 1) <i>Motion for Admission Pro Hac Vice of Hayley R. Winograd to Represent Highland Capital Management, L.P.</i>; 2) <i>Agreed Supplemental Order Regarding Deposit of Funds Into the Registry of the Court</i>; and 3) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 Through August 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1360</u> Motion to appear pro hac vice for Hayley R. Winograd. Fee Amount \$100 Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1365</u> Agreed supplemental order regarding deposit of funds into the registry of the court (RE: related document(s)<u>821</u> Agreed order regarding deposit of funds into the registry of the Court.). Entered on 11/12/2020 (Okafor, M.), <u>1366</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from August 1, 2020 through August 31, 2020)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Attachments: # 1 Exhibit A—DSI Monthly Staffing Report for August 2020) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/17/2020	<p><u>1418</u> Witness and Exhibit List (<i>UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s)<u>1214</u> Motion for summary judgment, <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>)). (Attachments: # <u>1</u> Exhibit 26 – 28 # <u>2</u> Exhibit 29 # <u>3</u> Exhibit 30 # <u>4</u> Exhibit AG30 # <u>5</u> Exhibit AG31 # <u>6</u> Exhibit AG32 – AG46) (Sosland, Martin)</p>
11/17/2020	<p><u>1419</u> Court admitted exhibits date of hearing November 17, 2020 (RE: related document(s)<u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty., (COURT ADMITTED THE FOLLOWING EXHIBIT'S; PLAINTIFF'S PATRICK H. DAUGHERTY EXHIBIT'S #1 THROUGH #41 BY THOMAS UEBLER AND DEFENDANT DEBTOR'S EXHIBIT'S #A THROUGH #V &amp; EXHIBIT'S #X1 &amp; #X2 BY JOHN MORRIS) (Edmond, Michael) (Entered: 11/18/2020)</p>
11/17/2020	<p><u>1422</u> Hearing held on 11/17/2020. (RE: related document(s)<u>1281</u> Motion for leave – Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.) (Edmond, Michael) (Entered: 11/18/2020)</p>

11/18/2020	<u>1420</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u> ) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
11/18/2020	<u>1421</u> Withdrawal [ <i>Notice of Withdrawal of Notice of Transfer of Claim From Debevoise &amp; Plimpton LLP to Contrarian Funds, LLC</i> ] Filed by Creditor Contrarian Funds LLC (related document(s) <u>1380</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLC (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Schneller, Douglas)
11/18/2020	<u>1423</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1382</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit X-1 # <u>24</u> Exhibit X-2) (Annable, Zachery)
11/18/2020	<u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery)
11/18/2020	<u>1425</u> Motion for expedited hearing(related documents <u>1424</u> Motion for leave) ( <i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/18/2020	<u>1426</u> Transcript regarding Hearing Held 11/17/2020 (90 pages) RE: Motion for Temporary Allowance of Claim (#1281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/16/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1422</u> Hearing held on 11/17/2020. (RE: related document(s) <u>1281</u> Motion for leave - Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 filed by Creditor Patrick Daugherty) (Appearances: T. Uebler, J. Christensen, and J. Kathman for P. Daugherty; J. Morris and J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Claim estimated for voting purposes at \$9,134,019 for reasons stated on the record. Counsel to upload order.)). Transcript to be made available to the public on 02/16/2021. (Rehling, Kathy)
11/18/2020	<u>1427</u> Certificate of service re: <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from September 1, 2020 through September 30, 2020</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1420</u> Notice (generic)). (Annable, Zachery)
11/18/2020	<u>1428</u> Certificate of service re: <i>Documents Served on or Before November 14, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1371</u> Order granting motion to appear pro hac vice adding Hayley R. Winograd for Highland Capital Management, L.P. (related document <u>1360</u> ) Entered on 11/13/2020. (Ecker, C.), <u>1382</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related

	<p>document(s)<u>1281</u> Motion for leave – <i>Daugherty's Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018</i>). filed by Debtor Highland Capital Management, L.P., <u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1385</u> Support/supplemental document (<i>Redline Comparison of Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1386</u> Support/supplemental document (<i>Redline Comparison of Disclosure Statement for the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1384</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1389</u> Notice (<i>Debtor's Notice of Filing of Supplement to the Third Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1383</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan).). (Attachments: # 1 Exhibit A—Form of Claimant Trust Agreement # 2 Exhibit B—Form of New GP LLC Documents # 3 Exhibit C—Form of Reorganized Limited Partnership Agreement # 4 Exhibit D—Form of Litigation Sub-Trust Agreement # 5 Exhibit E—Schedule of Retained Causes of Action # 6 Exhibit F—Form of New Frontier Note # 7 Exhibit G—Schedule of Employees # 8 Exhibit H—Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/18/2020	<p><u>1429</u> Expedited Motion to file document under seal. (<i>UBS's Expedited Motion for Leave to File Documents Under Seal With UBS's Witness and Exhibit List for November 20, 2020 Hearing</i>) Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)</p>
11/19/2020	<p><u>1430</u> Order granting motion to seal documents regarding the Redeemer Committee of the Highland Crusader Funds and Crusader Funds Reply Brief in Support of their Motion for Partial Summary Judgment and Joinder in the Debtors Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC. (related document # <u>1405</u>) Entered on 11/19/2020. (Okafor, M.)</p>
11/19/2020	<p><u>1431</u> Order granting motion to seal documents regarding the Redeemer Committee of the Crusader Fund and the Crusader Funds Objection and Joinder to Debtors Objection to UBS AG, London Branch and UBS Securities LLCs Motion for Temporary Allowance of Claims for Voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018 (related document # <u>1406</u>) Entered on 11/19/2020. (Okafor, M.)</p>
11/19/2020	<p><u>1432</u> <b>SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUND AND THE CRUSADER FUNDS' OBJECTION AND JOINDER TO DEBTOR'S OBJECTION TO UBS AG, LONDON BRANCH AND UBS SECURITIES, LLC'S MOTION FOR TEMPORARY ALLOWANCE OF CLAIMS FOR VOTING PURPOSES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 3018 per court order</b> filed by Interested Party Redeemer Committee of the Highland Crusader Fund (RE: related document(s)<u>1431</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D) (Platt, Mark)</p>
11/19/2020	<p><u>1433</u> <b>SEALED document regarding: REDEEMER COMMITTEE OF THE HIGHLAND CRUSADER FUNDS AND THE CRUSADER FUNDS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT AND JOINDER IN THE DEBTOR'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON PROOF OF CLAIM NOS. 190 AND 191 OF UBS AG, LONDON BRANCH AND UBS SECURITIES LLC per court order</b> filed by Interested Party Redeemer Committee</p>

	of the Highland Crusader Fund (RE: related document(s) <u>1430</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit B) (Platt, Mark)
11/19/2020	<u>1434</u> Notice of hearing ( <i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , (Annable, Zachery)
11/19/2020	<u>1435</u> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1166</u> Assignment/Transfer of claim (Claims Agent)). (Annable, Zachery)
11/19/2020	<u>1436</u> Order granting motion for expedited hearing (Related Doc# <u>1425</u> )(document set for hearing: <u>1424</u> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1424</u> , Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1437</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/19/2020	<u>1438</u> Notice ( <i>Reservation of Rights of UBS Regarding Debtor's Motion for Approval of the Debtor's Proposed Disclosure Statement and Certain Solicitation and Notice Procedures</i> ) filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption), <u>1384</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement).). (Sosland, Martin)
11/19/2020	<u>1439</u> WITHDRAWN per docket # <u>1622</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
11/19/2020	<u>1440</u> Order granting motion to seal documents with UBSs Witness and Exhibit List for November 20, 2020 Hearing (related document # <u>1429</u> ) Entered on 11/19/2020. (Okafor, M.)
11/19/2020	<u>1441</u> <b>SEALED document regarding: UBS's Witness and Exhibit List for November 20, 2020 Hearing per court order</b> filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1440</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 26 # <u>2</u> Exhibit 27 # <u>3</u> Exhibit 28 # <u>4</u> Exhibit 30 # <u>5</u> Exhibit AG32 # <u>6</u> Exhibit AG33 # <u>7</u> Exhibit AG34 # <u>8</u> Exhibit AG35 # <u>9</u> Exhibit AG36 # <u>10</u> Exhibit AG37 # <u>11</u> Exhibit AG38 # <u>12</u> Exhibit AG39 # <u>13</u> Exhibit AG40 # <u>14</u> Exhibit AG41 # <u>15</u> Exhibit AG42 # <u>16</u> Exhibit AG43 # <u>17</u> Exhibit AG44 # <u>18</u> Exhibit AG45 # <u>19</u> Exhibit AG46) (Sosland, Martin)
11/19/2020	

	<p><u>1442</u> Certificate of service re: <i>Documents Served on November 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1399</u> Notice (<i>Notice of Filing of Fourth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.), <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1400</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1402</u> Reply to (related document(s): <u>1337</u> Response filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1403</u> Exhibit List (<i>Appendix of Exhibits to Debtor's Reply in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1402</u> Reply). filed by Debtor Highland Capital Management, L.P., <u>1404</u> Objection to (related document(s): <u>1338</u> Motion to allow claims(<i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i>) filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/19/2020	<p><u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) (<i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)</p>
11/20/2020	<p><u>1444</u> Notice (<i>Revised Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1437</u> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P..). (Annable, Zachery)</p>
11/20/2020	<p><u>1445</u> Objection to disclosure statement (RE: related document(s)<u>1384</u> Disclosure statement) filed by Creditor Patrick Daugherty. (Kathman, Jason)</p>
11/20/2020	<p><u>1446</u> Request for transcript regarding a hearing held on 11/20/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
11/20/2020	<p><u>1447</u> WITHDRAWN per # <u>1460</u> Response opposed to (related document(s): <u>1424</u> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Bonds, John) Modified on 11/23/2020 (Ecker, C.).</p>

11/20/2020	<u>1448</u> Application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. (Pomerantz, Jeffrey)
11/20/2020	<u>1450</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1451</u> Support/supplemental document ( <i>Interim Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1452</u> Support/supplemental document ( <i>Cumulative Redline of Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/20/2020	<u>1453</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1454</u> Support/supplemental document ( <i>Interim Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1455</u> Support/supplemental document ( <i>Cumulative Redline of Disclosure Statement for the Fourth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1453</u> Disclosure statement). (Annable, Zachery)
11/20/2020	<u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020. (Sosland, Martin)
11/20/2020	<u>1457</u> Certificate of service re: ( <i>Supplemental Documents Served on October 28, 2020</i> ) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> )) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u>

	<p>Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
11/20/2020	<p>1462 Hearing held on 11/20/2020. (RE: related document(s)<u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)</p>
11/20/2020	<p>1463 Hearing held on 11/20/2020. (RE: related document(s)<u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.) (Edmond, Michael) (Entered: 11/23/2020)</p>
11/20/2020	<p>1464 Hearing held on 11/20/2020. (RE: related document(s)<u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.) (Edmond, Michael) (Entered: 11/23/2020)</p>

11/23/2020	<u>1458</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1456</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1369</u> Amended notice of appeal). Appellee designation due by 12/4/2020.) Responses due by 11/25/2020. (Blanco, J.)
11/23/2020	<u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1460</u> Withdrawal filed by Interested Party James Dondero (RE: related document(s) <u>1447</u> Response). (Assink, Bryan)
11/23/2020	<u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
11/23/2020	<u>1465</u> Reply to (related document(s): <u>1461</u> Objection filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
11/23/2020	<u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020. (Assink, Bryan)
11/23/2020	<u>1467</u> Notice of hearing filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Assink, Bryan)
11/23/2020	<u>1468</u> Certificate of service re: <i>re: 1) WebEx Meeting Invitation to participate electronically in the hearing on Tuesday, November 20, 2020 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan; 2) Instructions for any counsel and parties who wish to participate in the Hearing; and 3) Debtors Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1413</u> Witness and Exhibit List ( <i>Debtor's Witness and Exhibit List for November 20, 2020 Hearing on Motions for Partial Summary Judgment on the UBS Claim and Motion for Temporary Allowance of the UBS Claim</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1214</u> Motion for summary judgment, <u>1215</u> Motion for summary judgment, <u>1338</u> Motion to allow claims( <i>Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018</i> )). (Attachments: # 1 Exhibit 30) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/23/2020	<u>1469</u> Certificate of service re: <i>1) Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreement</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1424</u> Motion for leave ( <i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital

	<p>Management, L.P., <a href="#">1425</a> Motion for expedited hearing(related documents <a href="#">1424</a> Motion for leave) (<i>Debtor's Motion for an Expedited Hearing on the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreement</i>) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/23/2020	<p><a href="#">1470</a> Certificate of service re: <i>Documents Served on November 19, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">1434</a> Notice of hearing (<i>Notice of Hearing on Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1424</a> Motion for leave (<i>Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1424</a>, filed by Debtor Highland Capital Management, L.P., <a href="#">1435</a> Stipulation by Highland Capital Management, L.P. and MCS Capital, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1166</a> Assignment/Transfer of claim (Claims Agent)). filed by Debtor Highland Capital Management, L.P., <a href="#">1436</a> Order granting motion for expedited hearing (Related Doc<a href="#">1425</a>)(document set for hearing: <a href="#">1424</a> Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1424</a>, Entered on 11/19/2020. (Okafor, M.), <a href="#">1437</a> Notice (<i>Notice of Agenda of Matters Scheduled for Hearing on November 20, 2020 at 9:30 a.m. (Central Time)</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
11/23/2020	<p><a href="#">1478</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1424</a> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/23/2020	<p><a href="#">1479</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1473</a> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">945</a> Disclosure statement, <a href="#">1080</a> Disclosure statement, <a href="#">1289</a> Disclosure statement, <a href="#">1384</a> Disclosure statement, <a href="#">1453</a> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/23/2020	<p><a href="#">1480</a> Hearing held on 11/23/2020. (RE: related document(s)<a href="#">1108</a> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.) (Edmond, Michael) (Entered: 11/24/2020)</p>
11/24/2020	<p><a href="#">1471</a> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<a href="#">1154</a> Motion for leave <i>to Amend Certain Proofs of Claim</i> Filed by Creditor The Dugaboy Investment Trust Objections due by 10/30/2020. (Attachments: # 1 Proposed</p>

	Order)) Responses due by 12/8/2020. (Ecker, C.)
11/24/2020	<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). (Annable, Zachery)
11/24/2020	<u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). (Annable, Zachery)
11/24/2020	<u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document # <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	<u>1475</u> Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document # <u>1424</u> ) Entered on 11/24/2020. (Okafor, M.)
11/24/2020	<u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)
11/24/2020	<u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)
11/25/2020	<u>1481</u> Clerk's correspondence requesting Amended designation from attorney for creditor. (RE: related document(s) <u>1466</u> Appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1347</u> Notice of appeal). Appellee designation due by 12/7/2020.) Responses due by 12/2/2020. (Blanco, J.)
11/25/2020	<u>1482</u> Transcript regarding Hearing Held 11/20/2020 (223 pages) RE: Motions for Partial Summary Judgment; Motion to Allow Claims for Voting Purposes. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/23/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1462</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1214</u> Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS Securities LLC and UBS AG, London Branch filed by Debtor Highland Capital Management, L.P., (RE: Related document(s) <u>928</u> Objection to claim filed by Debtor Highland Capital Management, L.P.,) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1463</u> Hearing held on 11/20/2020. (RE: related document(s) <u>1215</u> Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Motion for partial summary judgment on proof of claim(s) 190 and 191 of UBS AG, London Branch and UBS Securities LLC filed by Interested Party Redeemer Committee of the Highland Crusader Fun and the Crusader's Funds' (Attachments: # 1 Proposed Order) (RE: Related document(s) <u>933</u> Objection to claim filed by Interested Party Redeemer Committee of the Highland Crusader Fund). (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as announced on the record. Counsel to submit an Order and Judgment.), <u>1464</u> Hearing held

	on 11/20/2020. (RE: related document(s) <u>1338</u> Motion to allow claims (Motion for Temporary Allowance of Claims for voting Purposes Pursuant to Federal Rule of Bankruptcy Procedure 3018) filed by Interested Parties UBS AG London Branch, UBS Securities LLC.) (Appearances: R. Feinstein and J. Pomeranz for Debtor; T. Mascherin, M. Hankin, and M. Platt for Crusader Funds; A. Clubok K. Posin and S. Tomkowiak for UBS. Motion granted as follows: UBS shall have a voting claim estimated at \$94.76 million. Counsel for UBS to submit an Order.)). Transcript to be made available to the public on 02/23/2021. (Rehling, Kathy)
11/25/2020	<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B/Proposed Order # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H) (O'Neil, Holland)
11/25/2020	<u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal). (Sosland, Martin)
11/25/2020	<u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
11/26/2020	<u>1486</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/26/2020	<u>1487</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)) No. of Notices: 1. Notice Date 11/26/2020. (Admin.)
11/27/2020	<u>1488</u> Certificate of service re: <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from October 1, 2020 through October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 10/1/2020 to 10/31/2020, Fee: \$1,119,675.50, Expenses: \$19,132.28. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/11/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
11/30/2020	<u>1489</u> Order granting motion to continue hearing on (related document # <u>1485</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 11/30/2020. (Ecker, C.)
11/30/2020	<u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. (Hoffman, Juliana)
11/30/2020	

	<u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay) (Kathman, Jason)
12/01/2020	<u>1492</u> Clerk's correspondence requesting exhibits from attorney for plaintiff. (RE: related document(s) <u>1484</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1456</u> Appellant designation, Statement of issues on appeal).) Responses due by 12/14/2020. (Blanco, J.)
12/01/2020	<u>1493</u> Debtor-in-possession monthly operating report for filing period October 1, 2020 to October 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/01/2020	<u>1494</u> Notice of hearing on <i>Daugherty's Motion to Lift the Automatic Stay</i> filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181, Filed by Creditor Patrick Daugherty Objections due by 12/14/2020. (Attachments: # <u>1</u> Exhibit Declaration of Patrick Daugherty in Support of Motion to Lift the Automatic Stay)). Preliminary hearing to be held on 12/17/2020 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Creditor Matrix) (Kathman, Jason)
12/01/2020	<u>1495</u> Certificate of service re: <i>1) Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements; and 2) Debtors Objection to Request for Emergency Hearing Filed by James Dondero [Docket No. 1443]</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1459</u> Reply to (related document(s): <u>1447</u> Response filed by Interested Party James Dondero) ( <i>Debtor's Reply in Support of the Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1461</u> Objection to (related document(s): <u>1443</u> Motion for expedited hearing(related documents <u>1439</u> Motion for leave) ( <i>Request for Emergency Hearing on James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Co</i> filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/01/2020	<u>1496</u> Certificate of service re: <i>1) Order Granting Patrick Hagaman Daughertys Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018; 2) Pursuant to 11 U.S.C. §§ 105(a) and 363(b) for Authority to Enter Into Sub-Servicer Agreements; and 3) Order Approving Stipulation Resolving Proof of Claim No. 148 Filed by Lynn Pinker Cox &amp; Hurst, LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1474</u> Order Granting Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Filed by Creditor Patrick Daugherty (related document <u>1281</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1475</u> Order Granting Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements (related document <u>1424</u> ) Entered on 11/24/2020. (Okafor, M.), <u>1477</u> Order approving stipulation resolving proof of claim no. 148 filed by Lynn Pinker Cox & Hurst, LLP (RE: related document(s) <u>1435</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)
12/01/2020	<u>1497</u> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. , Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1466</u> Appellant designation, Statement of issues on appeal). (Assink, Bryan)
12/02/2020	Receipt of filing fee for Motion for relief from stay(19-34054-sgj11) [motion,mrlfsty] ( 181.00). Receipt number 28309234, amount \$ 181.00 (re: Doc# <u>1491</u> ). (U.S. Treasury)
12/02/2020	

	<p><u>1498</u> Notice of hearing filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1483</u>, (O'Neil, Holland)</p>
12/02/2020	<p><u>1499</u> Certificate of service re: 1) <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 Through October 31, 2020</i>; and 2) <i>Joint Motion to Continue Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP, <u>1485</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/03/2020	<p><u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Kesha)</p>
12/03/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28312406, amount \$ 26.00 (re: Doc# <u>1500</u>). (U.S. Treasury)</p>
12/03/2020	<p><u>1501</u> Request for transcript regarding a hearing held on 11/23/2020. The requested turn-around time is hourly. (Edmond, Michael)</p>
12/03/2020	<p><u>1502</u> Stipulation by James Dondero and Highland Capital Management, L.P.. filed by Interested Party James Dondero (RE: related document(s)<u>1179</u> Objection to claim). (Assink, Bryan)</p>
12/03/2020	<p><u>1503</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>342</u> Order granting application to employ Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services for Such Debtor, Nunc Pro Tunc as of the Petition Date (related document <u>74</u>) Entered on 1/10/2020. (Okafor, M.), <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
12/03/2020	<p><u>1504</u> Certificate of service re: Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from October 1, 2020 through October 31, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1503</u> Notice (generic)). (Annable, Zachery)</p>
12/03/2020	

	<p><u>1505</u> Certificate of service re: <i>Debtor's Notice of Affidavit of Publication of the Notice of (I) Entry of Order Approving Disclosure Statement; (II) Hearing to Confirm Plan; and (III) Related Important Dates in the New York Times</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)</p>
12/03/2020	<p><u>1506</u> Certificate of service re: <i>1) Order Granting Joint Motion to Continue Hearing; and 2) Twelfth Monthly Application of Sidley Austin for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1489</u> Order granting motion to continue hearing on (related document <u>1485</u>) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i>) Hearing to be held on 12/10/2020 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, Entered on 11/30/2020. (Ecker, C.), <u>1490</u> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$537,841.80, Expenses: \$3,125.47. Filed by Objections due by 12/21/2020. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
12/03/2020	<p><u>1507</u> Transcript regarding Hearing Held 11/23/2020 (42 pages) RE: Disclosure Statement Hearing; Motion to Enter into Sub-Servicer Agreements; Motion for Order Shortening Time. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/3/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1478</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1424</u> Motion for leave (Motion of the Debtor Pursuant to 11 U.S.C. 105(a) and 363(b) for Authority to Enter into Sub-Servicer Agreements) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Counsel to upload order.), <u>1479</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement).) (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Disclosure Statement approved as adequate. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.), <u>1480</u> Hearing held on 11/23/2020. (RE: related document(s)<u>1108</u> Motion for leave (Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz and G. Demo for Debtor; M. Clemente for UCC; J. Kathman for P. Daugherty; B. Assink for J. Dondero. Nonevidentiary hearing. Court heard report of various amendments that have been negotiated. Motion granted. Confirmation hearing will be held 1/13/21 at 9:30 am and continuing on 1/14/21 at 9:30 (if necessary). Counsel to upload order.)). Transcript to be made available to the public on 03/3/2021. (Rehling, Kathy)</p>
12/03/2020	

	<u>1883</u> INCORRECT ENTRY – Agreed Notice of voluntary dismissal of appeals filed by Allied World Assurance Company (RE: related document(s) <u>1347</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). Appellant Designation due by 11/23/2020. (Attachments: # 1 Order)). (Blanco, J.) Modified on 2/2/2021 (Blanco, J.). (Entered: 02/02/2021)
12/04/2020	<u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	<u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1508</u> ). (U.S. Treasury)
12/04/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28315512, amount \$ 26.00 (re: Doc# <u>1509</u> ). (U.S. Treasury)
12/04/2020	<u>1510</u> Order approving stipulation and agreed order authorizing withdrawal of proofs of claim 138 and 188 (RE: related document(s) <u>1502</u> Stipulation filed by Interested Party James Dondero). Entered on 12/4/2020 (Ecker, C.)
12/04/2020	<u>1511</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1309</u> Amended Notice of hearing ( <i>Second Amended Notice of Hearing</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1108</u> Motion for leave ( <i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i> ) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u> , filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1300</u> Notice of hearing ( <i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u> , filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s) <u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP

	<p>LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <a href="#">1087</a>) Entered on 10/28/2020. (Okafor, M.), <a href="#">1309</a> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1108</a> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <a href="#">1079</a> Chapter 11 plan, <a href="#">1080</a> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <a href="#">1108</a>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/07/2020	<p><a href="#">1512</a> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. (Rapoport, Amanda)</p>
12/07/2020	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28320856, amount \$ 26.00 (re: Doc# <a href="#">1512</a>). (U.S. Treasury)</p>
12/07/2020	<p><a href="#">1513</a> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. (Hoffman, Juliana)</p>
12/07/2020	<p><a href="#">1514</a> Adversary case 20-03190. Complaint by Highland Capital Management, L.P. against James D. Dondero. Fee Amount \$350 (Attachments: # <a href="#">1</a> Adversary Cover Sheet). Nature(s) of suit: 72 (Injunctive relief – other). (Annable, Zachery)</p>
12/07/2020	<p><a href="#">1515</a> Amended appellant designation of contents for inclusion in record on appeal and statement of issues on appeal. filed by Interested Party James Dondero (RE: related document(s)<a href="#">1466</a> Appellant designation, Statement of issues on appeal, <a href="#">1497</a> Appellant designation, Statement of issues on appeal). (Assink, Bryan)</p>
12/07/2020	<p><a href="#">1516</a> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<a href="#">1347</a> Notice of appeal, Modified LINKAGE AND TEXT on 3/12/2021 (Blanco, J.).</p>
12/07/2020	<p><a href="#">1517</a> Appellee designation of contents for inclusion in record of appeal filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P. (RE: related document(s)<a href="#">1347</a> Notice of appeal). (Chiarello, Annmarie)</p>
12/08/2020	<p><a href="#">1518</a> Order temporarily granting UBS' motion to allow claim number(s) (related document # <a href="#">1338</a>) Entered on 12/8/2020. (Ecker, C.)</p>
12/08/2020	<p><a href="#">1519</a> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s)<a href="#">1280</a> Motion for leave <i>to Amend Proof of Claim No. 77</i> Filed by Creditor Patrick Daugherty Objections due by 11/16/2020. (Attachments: # 1 Exhibit A – Proposed Order # 2 Exhibit B – Second Amended Proof of Claim)) Responses due by 12/22/2020. (Ecker, C.)</p>
12/08/2020	<p><a href="#">1520</a> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp;</p>

	Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—August 2020 Invoice) (Annable, Zachery)
12/08/2020	<u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. (Pomerantz, Jeffrey)
12/08/2020	<u>1522</u> INCORRECT EVENT: See # <u>1528</u> for correction. Motion to compel Temporary Restriction of Sales by Non-Debtors CLOs. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Attachments: # <u>1</u> Affidavit # <u>2</u> Proposed Order) (Varshosaz, Artoush) Modified on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1523</u> Motion for expedited hearing(related documents <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund. Modified linkage on 12/9/2020 (Ecker, C.).
12/08/2020	<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund . (Ecker, C.) (Entered: 12/09/2020)
12/09/2020	<u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/09/2020	<u>1525</u> Request for transcript regarding a hearing held on 1/9/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/09/2020	<u>1526</u> Order granting partial summary judgment (related document # <u>1214</u> ) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1527</u> Order granting joint motion to continue hearing on (related document # <u>1524</u> ) (related documents Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan) Entered on 12/9/2020. (Ecker, C.)
12/09/2020	<u>1529</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1179</u> Objection to claim). (Annable, Zachery)
12/09/2020	<u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. (Montgomery, Paige)
12/09/2020	<u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&A September 2020 Invoice) (Annable, Zachery)

12/09/2020	<u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/10/2020	<u>1533</u> Order granting motion to amend proof of claim #77 and to file supporting documents under seal. (related document # <u>1280</u> ) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.)
12/10/2020	<u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
12/10/2020	<u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). (Annable, Zachery)
12/10/2020	<u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)
12/10/2020	<u>1539</u> Notice of hearing on <i>Motion Imposing Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Ecker, C.)). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , (Varshosaz, Artoush)
12/10/2020	<u>1540</u> Certificate of service re: <i>Twelfth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from October 1, 2020 to and Including October 31, 2020; and 2) Appellees Counter-Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23. Filed by Attorney Juliana Hoffman Objections due by 12/28/2020. filed by Financial Advisor FTI Consulting, Inc., <u>1516</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1347</u> Notice of appeal, <u>1369</u> Amended notice of appeal). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/10/2020	<u>1541</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1518</u> Order temporarily granting UBS' motion to allow claim number(s) (related document <u>1338</u> ) Entered on 12/8/2020. (Ecker, C.)) No. of Notices: 2. Notice Date 12/10/2020. (Admin.)
12/11/2020	

	<p><u>1542</u> Support/supplemental document/<i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Proposed Order /Exhibit E) (O'Neil, Holland)</p>
12/11/2020	<p><u>1543</u> Transcript regarding Hearing Held 01/09/2020 (91 pages) RE: Motion to Compromise Controversy (#281). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/11/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) Hearing held on 1/9/2020. (RE: related document(s)<u>281</u> Motion to compromise controversy with Official Committee of Unsecured Creditors, filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomerantz, I. Kharasch, G. Demo, M. Hayward, and Z. Annabel for Debtor; M. Clemente, P. Reid and D. Tumi for Unsecured Creditors Committee; A. Chiarello and R. Patel for Asic; L. Lambert for UST; J. Bentley and J. Bain (both telephonically) for CLO and CDO Issuer Group; T. Mascherin and M. Hankin (telephonically) for Redeemer Committee; P. Maxcy (telephonically) for Jeffries. Evidentiary hearing. Motion granted. Counsel to upload appropriate form of order.)). Transcript to be made available to the public on 03/11/2021. (Rehling, Kathy)</p>
12/11/2020	<p><u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP (Hesse, Gregory)</p>
12/11/2020	<p><u>1545</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # <u>1</u> Exhibit A—H&amp;A Invoices for July, August, and September 2020) (Annable, Zachery)</p>
12/11/2020	<p><u>1546</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/11/2020	<p><u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. (Pomerantz, Jeffrey)</p>
12/11/2020	<p><u>1548</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	<p><u>1549</u> Notice to take deposition of John Dubel filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	<p><u>1550</u> Notice to take deposition of Russell Nelms filed by Interested Party James Dondero. (Assink, Bryan)</p>
12/11/2020	

	<p><u>1551</u> Objection to (related document(s): <u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)</p>
12/11/2020	<p><u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Annable, Zachery)</p>
12/11/2020	<p><u>1553</u> Omnibus Notice of hearing (<i>Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1410</u> Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., <u>1407</u> Certificate (generic))., <u>1416</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86)., <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Gardere, Foley &amp; Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), <u>1542</u> Support/supplemental document/<i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley &amp; Lardner LLP (RE: related document(s)<u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), <u>1544</u> Application for compensation (<i>First Interim Application</i>) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation (<i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i>) for Hayward &amp; Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward &amp; Associates PLLC (Attachments: # 1 Exhibit A—H&amp;A Invoices for July, August, and September 2020), <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., <u>1552</u> Application for compensation (<i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020</i>) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM</p>

	Dallas Judge Jernigan Ctrm for <u>1483</u> and for <u>1544</u> and for <u>1545</u> and for <u>1547</u> and for <u>1552</u> and for <u>1410</u> and for <u>1416</u> and for <u>1542</u> , (Annable, Zachery)
12/11/2020	<u>1554</u> Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1555</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/11/2020	<u>1556</u> Certificate of service re: <i>1) Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020; and 2) Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1520</u> Application for compensation ( <i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 8/1/2020 to 12/31/2020, Fee: \$27,465.00, Expenses: \$859.43. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—August 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 11/1/2020 to 11/30/2020, Fee: \$759,428.00, Expenses: \$1,672.80. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 12/29/2020. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1557</u> Certificate of service re: <i>Documents Served on December 9, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1524</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1526</u> Order granting partial summary judgment (related document <u>1214</u> ) Entered on 12/9/2020. (Ecker, C.), <u>1527</u> Order granting joint motion to continue hearing on (related document <u>1524</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Entered on 12/9/2020. (Ecker, C.), <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic)) Filed by Creditor Committee Official Committee of Unsecured Creditors Objections due by 12/30/2020. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 9/1/2020 to 9/30/2020, Fee: \$25,075.00, Expenses: \$132.60. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A September 2020 Invoice) filed by Other Professional Hayward & Associates PLLC, <u>1532</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 164 Filed by Berkeley Research Group, LLC</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
12/11/2020	<u>1639</u> Hearing set (RE: related document(s) <u>1244</u> Application for compensation <i>Third Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10. Filed by Attorney Juliana Hoffman Objections due by 11/10/2020., <u>1296</u> Application for compensation <i>Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,865,520.45, Expenses: \$18,678.47. Filed by Attorney Juliana Hoffman Objections due by 11/17/2020.)

	Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for <u>1296</u> and for <u>1244</u> , (Ellison, T.) (Entered: 12/29/2020)
12/12/2020	<u>1558</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/13/2020	<u>1559</u> WITHDRAWN per # <u>1622</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Sevilla Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1560</u> WITHDRAWN per # <u>1622</u> Subpoena on Russell Nelms filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Nelms Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/13/2020	<u>1561</u> WITHDRAWN per # <u>1622</u> Subpoena on Fred Caruso filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Caruso Subpoena) (Assink, Bryan) Modified on 12/28/2020 (Ecker, C.).
12/14/2020	<u>1562</u> Order granting motion for expedited hearing (Related Doc# <u>1523</u> )(document set for hearing: <u>1528</u> Generic motion) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1528</u> , Entered on 12/14/2020. (Ecker, C.)
12/14/2020	<u>1563</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Assink, Bryan)
12/14/2020	<u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1566</u> Notice to take deposition of James P. Seery, Jr. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Varshosaz, Artoush)
12/14/2020	<u>1567</u> Motion for expedited hearing(related documents <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
12/14/2020	<u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s) <u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.)
12/14/2020	<u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
12/14/2020	<u>1570</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1569</u> Objection). (Attachments: # <u>1</u> Exhibit A #

	<u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E) (Annable, Zachery)
12/14/2020	<u>1571</u> Objection to (related document(s): <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena file filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
12/14/2020	<u>1572</u> Witness and Exhibit List filed by Creditor Patrick Daugherty (RE: related document(s) <u>1491</u> Motion for relief from stay Fee amount \$181.). (Attachments: # <u>1</u> Exhibit PHD-1 # <u>2</u> Exhibit PHD-2 # <u>3</u> Exhibit PHD-3 # <u>4</u> Exhibit PHD-4 # <u>5</u> Exhibit PHD-5 # <u>6</u> Exhibit PHD-6) (Kathman, Jason)
12/14/2020	<u>1573</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit) (Varshosaz, Artoush)
12/14/2020	<u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). (Annable, Zachery)
12/15/2020	<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1564</u> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , (Annable, Zachery)
12/15/2020	<u>1576</u> Order granting motion for expedited hearing (Related Doc# <u>1567</u> )(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u> , Entered on 12/15/2020. (Okafor, M.)
12/15/2020	<u>1577</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
12/15/2020	<u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland

	Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A-1 # <u>2</u> Exhibit A-2 # <u>3</u> Exhibit A-3 # <u>4</u> Exhibit B-1 # <u>5</u> Exhibit B-2 # <u>6</u> Exhibit B-3 # <u>7</u> Exhibit C (Part 1) # <u>8</u> Exhibit C (Part 2) # <u>9</u> Exhibit C (Part 3) # <u>10</u> Exhibit D (Part 1) # <u>11</u> Exhibit D (Part 2) # <u>12</u> Exhibit D (Part 3) # <u>13</u> Exhibit E # <u>14</u> Exhibit F # <u>15</u> Exhibit G) (Annable, Zachery)
12/15/2020	<u>1579</u> Amended Witness and Exhibit List ( <i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1574</u> List (witness/exhibit/generic)). (Annable, Zachery)
12/15/2020	<u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
12/15/2020	<u>1581</u> INCORRECT ENTRY: See # <u>1580</u> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1578</u> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). (Entered: 12/16/2020)
12/16/2020	<u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
12/16/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims.trclmagt] ( 26.00). Receipt number 28347173, amount \$ 26.00 (re: Doc# <u>1582</u> ). (U.S. Treasury)
12/16/2020	<u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time) Filed by Debtor Highland Capital Management, L.P. Objections due by 1/6/2021. (Annable, Zachery)
12/16/2020	<u>1584</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1449</u> Amended application for compensation <i>Thirteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from October 1, 2020 through October 31, 2020 (amended solely to include Exhibit A)</i> for Jeffrey Nathan Pomer). (Pomerantz, Jeffrey)
12/16/2020	<u>1585</u> Court admitted exhibits date of hearing December 16, 2020 (RE: related document(s) <u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund. (COURT ADMITTED EXHIBIT'S #A & #B BY JAMES WRIGHT) (Edmond, Michael)
12/16/2020	<u>1586</u> Request for transcript regarding a hearing held on 12/16/2020. The requested turn-around time is hourly. (Edmond, Michael)
12/16/2020	<u>1587</u> Certificate of service re: Debtor's Motion for Entry of an Order Further Extending the Period Within Which It May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management,

	L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
12/16/2020	<u>1588</u> Certificate of service re: <i>Documents Served on December 10, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1534</u> Order granting <u>1530</u> Motion to extend time. (Re: related document(s) <u>1530</u> Motion to extend time to Time to File An Adversary Proceeding Against CLO Holdco, Ltd. (Agreed) (RE: related document(s) <u>1168</u> Order (generic))) Entered on 12/10/2020. (Ecker, C.), <u>1535</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1207</u> , filed by Debtor Highland Capital Management, L.P., <u>1536</u> Stipulation by Highland Capital Management, L.P. and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>906</u> Objection to claim). filed by Debtor Highland Capital Management, L.P., <u>1537</u> Order regarding objection to claim number(s) (RE: related document(s) <u>1179</u> Objection to claim filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.), <u>1538</u> Order approving stipulation resolving proof of claim #164 (RE: related document(s) <u>1532</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/10/2020 (Ecker, C.)). (Kass, Albert)
12/16/2020	<u>1589</u> Certificate of service re: <i>Documents Served on or Before December 12, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1542</u> Support/supplemental document/ <i>Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor</i> filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP, <u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP filed by Interested Party Hunton Andrews Kurth LLP, Spec. Counsel Hunton Andrews Kurth LLP, <u>1545</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020) filed by Other Professional Hayward & Associates PLLC, <u>1546</u> Objection to (related document(s): <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James Dondero) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021. filed by Debtor Highland Capital Management, L.P., <u>1551</u> Objection to (related document(s): <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) filed by Interested Party James Dondero) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1552</u> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of</i>

*Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B) filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP, 1553 Omnibus Notice of hearing (*Omnibus Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses of Estate Professionals*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1410 Certificate Amended Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)1244 Application for compensation *Third Interim Application for Compensation and Reimbursement of Expenses* for FTI Consulting, Inc., Financial Advisor, Period: 6/1/2020 to 8/31/2020, Fee: \$886,615.45, Expenses: \$1,833.10., 1407 Certificate (generic)), 1416 Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)1296 Application for compensation *Sidley Austin LLP's Third Interim Application for Compensation and Reimbursement of Expenses* for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 6/1/2020 to 8/31/2020, Fee: \$1,86), 1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Gardere, Foley & Lardner LLP, Special Counsel, Period: 10/16/2019 to 10/31/2020, Fee: \$599,126.60, Expenses: \$11,433.73. Filed by Attorney Holland N. O'Neil Objections due by 12/16/2020. (Attachments: # 1 Exhibit A # 2 Exhibit B/Proposed Order # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H) (O'Neil, Holland), 1542 Support/supplemental document/*Supplement to the Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor* filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s)1483 Application for compensation *Third and Final Application for Compensation and Reimbursement of Expenses of Foley & Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020* for Foley Ga). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Proposed Order /Exhibit E) (O'Neil, Holland), 1544 Application for compensation (*First Interim Application*) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52. Filed by Spec. Counsel Hunton Andrews Kurth LLP, 1545 Application for compensation (*Hayward & Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020*) for Hayward & Associates PLLC, Debtor's Attorney, Period: 7/1/2020 to 9/30/2020, Fee: \$82,325.00, Expenses: \$1,972.63. Filed by Other Professional Hayward & Associates PLLC (Attachments: # 1 Exhibit A—H&A Invoices for July, August, and September 2020), 1547 Application for compensation *Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl & Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30, 2020* for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 8/1/2020 to 11/30/2020, Fee: \$3,380,111.50, Expenses: \$31,940.33. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 1/4/2021., 1552 Application for compensation (*Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period from July 1, 2020 through November 30, 2020*) for Wilmer Cutler Pickering Hale and Dorr LLP, Debtor's Attorney, Period: 7/1/2020 to 11/30/2020, Fee: \$709,256.22, Expenses: \$0.00. Filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (Attachments: # 1 Exhibit A # 2 Exhibit B)). Hearing to be held on 1/6/2021 at 02:30 PM Dallas Judge Jernigan Ctrm for 1483 and for 1544 and for 1545 and for 1547 and for 1552 and for 1410 and for 1416 and for 1542, filed by Debtor Highland Capital Management, L.P., 1554 Notice to take deposition of Dustin Norris filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1555 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., 1558 Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

12/16/2020	1596 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1528</a> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P. , Highland Fixed Income Fund , NexPoint Advisors, L.P. , NexPoint Capital, Inc. , NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary hearing. Motion denied. Counsel to upload order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1597 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1564</a> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1598 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1565</a> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/16/2020	1599 Hearing held on 12/16/2020. (RE: related document(s) <a href="#">1439</a> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.) (Edmond, Michael) (Entered: 12/18/2020)
12/17/2020	<a href="#">1590</a> Motion to pay ( <i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <a href="#">1</a> Exhibit A # <a href="#">2</a> Exhibit B # <a href="#">3</a> Exhibit C) (Annable, Zachery)
12/17/2020	<a href="#">1591</a> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
12/17/2020	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28350580, amount \$ 26.00 (re: Doc# <a href="#">1591</a> ). (U.S. Treasury)
12/17/2020	<a href="#">1592</a> Certificate of service re: <i>Documents Served on or Before December 16, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <a href="#">1564</a> Motion to quash ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">1565</a> Motion for protective order ( <i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i> ) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <a href="#">1567</a> Motion for expedited hearing(related documents <a href="#">1564</a> Motion to quash, <a href="#">1565</a> Motion for protective order) Filed by Debtor Highland Capital Management, L.P. filed by Debtor

	<p>Highland Capital Management, L.P., <u>1568</u> Order approving stipulation and pre-trial schedule concerning Proof of Claim No. 146 filed by HCRE Partners, LLC (RE: related document(s)<u>1536</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 12/14/2020 (Okafor, M.), <u>1569</u> Objection to (related document(s): <u>1491</u> Motion for relief from stay Fee amount \$181, filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P., filed by Debtor Highland Capital Management, L.P., <u>1570</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Objection to Patrick Daugherty's Motion to Lift the Automatic Stay</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1569</u> Objection). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E) filed by Debtor Highland Capital Management, L.P., <u>1574</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>), <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/17/2020	<p><u>1593</u> Certificate of service re: <i>Documents Served on December 15, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1575</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1564</u> Motion to quash (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) (related documents <u>1559</u> Subpoena filed by Interested Party James Dondero, <u>1560</u> Subpoena filed by Interested Party James Dondero, <u>1561</u> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P., <u>1565</u> Motion for protective order (<i>Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment</i>) Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u>, filed by Debtor Highland Capital Management, L.P., <u>1576</u> Order granting motion for expedited hearing (Related Doc<u>1567</u>)(document set for hearing: <u>1564</u> Motion to quash, <u>1565</u> Motion for protective order) Hearing to be held on 12/16/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1564</u> and for <u>1565</u>, Entered on 12/15/2020. (Okafor, M.), <u>1577</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to October 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1578</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A-1 # 2 Exhibit A-2 # 3 Exhibit A-3 # 4 Exhibit B-1 # 5 Exhibit B-2 # 6 Exhibit B-3 # 7 Exhibit C (Part 1) # 8 Exhibit C (Part 2) # 9 Exhibit C (Part 3) # 10 Exhibit D (Part 1) # 11 Exhibit D (Part 2) # 12 Exhibit D (Part 3) # 13 Exhibit E # 14 Exhibit F # 15 Exhibit G) filed by Debtor Highland Capital Management, L.P., <u>1579</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to Be Held on December 16, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1574</u> List (witness/exhibit/generic)). filed by Debtor Highland Capital Management, L.P., <u>1580</u> Objection to (related document(s): <u>1528</u> Motion by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Fixed Income Fund, Interested Party NexPoint Capital, Inc., Interested Party</p>

	NexPoint Strategic Opportunities Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
12/17/2020	<u>1594</u> Adversary case 20–03195. Complaint by Official Committee of Unsecured Creditors against CLO Holdco, Ltd., Charitable DAF Holdco, Ltd., Charitable DAF Fund, LP, Highland Dallas Foundation, Inc., The Dugaboy Investment Trust, Grant James Scott III, James D. Dondero. Fee Amount \$350. Nature(s) of suit: 13 (Recovery of money/property – 548 fraudulent transfer). 91 (Declaratory judgment). 72 (Injunctive relief – other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Montgomery, Paige)
12/17/2020	1600 Hearing held on 12/17/2020. (RE: related document(s) <u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.) (Edmond, Michael) (Entered: 12/18/2020)
12/18/2020	<u>1595</u> Notice of Appearance and Request for Notice <i>with Certificate of Service</i> by Douglas S. Draper filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
12/18/2020	<u>1601</u> Request for transcript regarding a hearing held on 12/17/2020. The requested turn-around time is daily. (Edmond, Michael)
12/18/2020	<u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1590</u> Motion to pay ( <i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u> , (Annable, Zachery)
12/18/2020	<u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s) <u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , Entered on 12/18/2020 (Ecker, C.)
12/18/2020	<u>1604</u> Certificate of No Objection filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (O'Neil, Holland)
12/18/2020	<u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager , to initiate sales by non-debtor CLO Vehicles (related document # <u>1528</u> ) Entered on 12/18/2020. (Okafor, M.)
12/18/2020	<u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit I—Schedule of Contracts and Leases to Be Assumed # <u>2</u> Exhibit J—Amended Form of Senior Employee Stipulation # <u>3</u> Exhibit K—Redline of Form of Senior Employee Stipulation) (Annable, Zachery)
12/18/2020	<u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> ) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u> , (Annable, Zachery)

12/18/2020	<p><u>1608</u> Certificate of service re: <i>(Supplemental) Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1322</u> Certificate of service re: <i>Documents Served on October 28, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1300</u> Notice of hearing (<i>Notice of Continued Hearing on Disclosure Statement for the Second Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1289</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement).). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1289</u>, filed by Debtor Highland Capital Management, L.P., <u>1301</u> Order approving stipulation resolving Proof of Claim No. 86 of NWCC, LLC (RE: related document(s)<u>1264</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 10/28/2020 (Okafor, M.), <u>1302</u> Order granting motion to compromise controversy with (A) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (B) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (C) Acis Capital Management, L.P. (Claim No. 159). Filed by Debtor Highland Capital Management, L.P. (related document <u>1087</u>) Entered on 10/28/2020. (Okafor, M.), <u>1309</u> Amended Notice of hearing (<i>Second Amended Notice of Hearing</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1108</u> Motion for leave (<i>Debtor's Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice</i>) (related document(s) <u>1079</u> Chapter 11 plan, <u>1080</u> Disclosure statement) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit 1—Proposed Order # 2 Exhibit 1—A—Forms of Ballots # 3 Exhibit 1—B—Notice of Confirmation Hearing # 4 Exhibit 1—C—Notice of Non-Voting Status # 5 Exhibit 1—D—Notice of Assumption)). Hearing to be held on 11/23/2020 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1108</u>, filed by Debtor Highland Capital Management, L.P.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
12/19/2020	<p><u>1609</u> Transcript regarding Hearing Held 12/17/2020 (38 pages) RE: Motion for Relief from Stay (#1491). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1600</u> Hearing held on 12/17/2020. (RE: related document(s)<u>1491</u> Motion for relief from stay filed by Creditor Patrick Daugherty.) (Appearances: J. Kathman. J. Pomerantz and J. Morris for debtor. Motion denied.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><u>1610</u> Transcript regarding Hearing Held 12/16/2020 (66 pages) RE: Motions. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 03/19/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1596</u> Hearing held on 12/16/2020. (RE: related document(s)<u>1528</u> Motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles. Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wright for Movants; M. Clemente for UCC; R. Matsumura for HCLOF; J. Bain for CLO Issuers. Evidentiary</p>

	<p>hearing. Motion denied. Counsel to upload order.), 1597 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1564</a> Motion to quash (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) (related documents <a href="#">1559</a> Subpoena filed by Interested Party James Dondero, <a href="#">1560</a> Subpoena filed by Interested Party James Dondero, <a href="#">1561</a> Subpoena filed by Interested Party James Dondero) Filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1598 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1565</a> Motion for protective order (Debtor's Emergency Motion to Quash Subpoena and for Entry of a Protective Order or, in the Alternative, for an Adjournment) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Motion is moot and/or resolved. Counsel to upload agreed order.), 1599 Hearing held on 12/16/2020. (RE: related document(s)<a href="#">1439</a> Motion for leave (James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business) filed by Interested Party James Dondero.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; M. Lynn and B. Assink for J. Dondero; M. Clemente for UCC. Nonevidentiary announcement of an agreement and, with agreement, Movant will withdraw this order. Counsel to upload agreed order.)). Transcript to be made available to the public on 03/19/2021. (Rehling, Kathy)</p>
12/19/2020	<p><a href="#">1611</a> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<a href="#">1340</a> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 9/30/2020, Fee: \$170,859.60, Expenses: \$806.60.). (Hoffman, Juliana)</p>
12/21/2020	<p><a href="#">1612</a> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document # <a href="#">1491</a>) Entered on 12/21/2020. (Okafor, M.)</p>
12/21/2020	<p><a href="#">1613</a> Certificate of service re: <i>re: 1) Instructions for any counsel and parties who wish to participate in the Hearing; 2) Joinder of the Official Committee of Unsecured Creditors to Debtor's Response to Motion for Order Imposing Temporary Restrictions on Debtor's Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles; and 3) Debtors Motion Pursuant to the Protocols for Authority for Highland and Multi</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<a href="#">1581</a> INCORRECT ENTRY: See <a href="#">1580</a> for correction. Joinder to debtor's response to motion for order imposing temporary restrictions on debtor's ability to initial sales by non-debtor CLO vehicles filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1578</a> Objection). (Ecker, C.) Modified on 12/16/2020 (Ecker, C.). filed by Creditor Committee Official Committee of Unsecured Creditors, <a href="#">1590</a> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/22/2020	<p><a href="#">1614</a> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i>) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
12/22/2020	<p><a href="#">1615</a> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1490</a> Application for compensation <i>Sidley Austin LLP's Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 10/1/2020 to 10/31/2020, Fee: \$). (Hoffman, Juliana)</p>
12/22/2020	<p><a href="#">1616</a> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<a href="#">1283</a> Application for compensation <i>Eleventh Monthly Application for Compensation and Reimbursement of Expenses</i> for Official</p>

	Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 9/30/2020, Fee: \$356,889.96, Expenses: &#03). (Hoffman, Juliana)
12/23/2020	<u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE: related document(s) <u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.)
12/23/2020	<u>1618</u> Notice ( <i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2) (Annable, Zachery)
12/23/2020	<u>1619</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1620</u> Motion to appear pro hac vice for A. Lee Hogewood. Fee Amount \$100 Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Varshosaz, Artoush)
12/23/2020	Receipt of filing fee for Motion to Appear pro hac vice(19–34054–sgj11) [motion,mprohac] ( 100.00). Receipt number 28366971, amount \$ 100.00 (re: Doc# <u>1620</u> ). (U.S. Treasury)
12/23/2020	<u>1621</u> Declaration re: ( <i>Disclosure Declaration of Ordinary Course Professional</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> Document). (Annable, Zachery)
12/23/2020	<u>1622</u> Withdrawal ( <i>Notice of Withdrawal of James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business and Related Notices of Subpoena</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1439</u> Motion for leave ( <i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i> )). (Assink, Bryan)
12/23/2020	<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Proposed Order) (Hayward, Melissa)
12/23/2020	<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)

12/23/2020	<p><u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, (Annable, Zachery)</p>
12/23/2020	<p><u>1627</u> Certificate of service re: <i>Documents Served on December 18, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1602</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1590</u> Motion to pay (<i>Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan</i>) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1590</u>, filed by Debtor Highland Capital Management, L.P., <u>1603</u> Order resolving motions and adjourning evidentiary hearing (RE: related document(s)<u>1439</u> Motion for leave filed by Interested Party James Dondero). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, Entered on 12/18/2020 (Ecker, C.), <u>1605</u> Order denying motion for order imposing temporary restrictions on Debtor's ability, as portfolio manager, to initiate sales by non-debtor CLO Vehicles (related document <u>1528</u>) Entered on 12/18/2020. (Okafor, M.), <u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation) filed by Debtor Highland Capital Management, L.P., <u>1607</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1439</u> Motion for leave (<i>James Dondero's Motion for Entry of an Order Requiring Notice and Hearing for Future Estate Transactions Occurring Outside the Ordinary Course of Business</i>) Filed by Interested Party James Dondero (Attachments: # 1 Proposed Order)). Hearing to be held on 1/4/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1439</u>, filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/23/2020	<p><u>1628</u> Certificate of service re: <i>Order Denying Patrick Daughertys Motion to Lift the Automatic Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1612</u> Order denying motion for relief from stay by Creditor Patrick Daugherty (related document <u>1491</u>) Entered on 12/21/2020. (Okafor, M.) filed by Creditor Patrick Daugherty). (Kass, Albert)</p>
12/23/2020	<p><u>1629</u> Certificate of service re: <i>Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1614</u> Notice (<i>Notice of Stipulation Resolving Proof of Claim No. 99 Filed by Hunton Andrews Kurth LLP</i>) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/23/2020	<p><u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). (Kass, Albert)</p>

12/24/2020	<u>1631</u> Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7) (Annable, Zachery)
12/24/2020	<u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. (Hoffman, Juliana)
12/24/2020	<u>1634</u> Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Annable, Zachery)
12/26/2020	<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i> ). (Hoffman, Juliana)
12/28/2020	<u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)
12/28/2020	<u>1637</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
12/28/2020	<u>1638</u> Certificate of service re: <i>Documents Served on December 23, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1617</u> Order approving stipulation resolving Proof of Claim No. 99 filed by Hunton Andrews Kurth LLP (RE:

	<p>related document(s)<u>1614</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 12/23/2020 (Okafor, M.), <u>1618</u> Notice (<i>Notice of Filing of Fifth Amended Exhibit B to Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>75</u> Motion to Authorize /Motion for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business Filed by Highland Capital Management, L.P.. Hearing scheduled for 11/19/2019 at 12:00 PM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #6, Wilmington, Delaware. Objections due by 11/12/2019. (Attachments: # 1 Notice # 2 Exhibit A – Proposed Order # 3 Exhibit B – OCP List # 4 Exhibit C – Form of Declaration of Disinterestedness # 5 Certificate of Service and Service List) (O'Neill, James) [ORIGINALLY FILED AS DOCUMENT #76 ON 10/29/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) filed by Debtor Highland Capital Management, L.P., <u>1619</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1621</u> Declaration re: (<i>Disclosure Declaration of Ordinary Course Professional</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> Document). filed by Debtor Highland Capital Management, L.P., <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/29/2020	<p><u>1640</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>1513</u> Application for compensation <i>Twelfth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 10/1/2020 to 10/31/2020, Fee: \$196,216.20, Expenses: \$264.23.). (Hoffman, Juliana)</p>
12/30/2020	<p><u>1641</u> Order granting motion to appear pro hac vice adding A. Lee Hogewood, III for Highland Capital Management Fund Advisors, L.P. and NexPoint Advisors, L.P. (related document # <u>1620</u>) Entered on 12/30/2020. (Okafor, M.)</p>
12/30/2020	<p><u>1642</u> Certificate of No Objection filed by Other Professional Hayward &amp; Associates PLLC (RE: related document(s)<u>1520</u> Application for compensation (<i>Ninth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Hayward &amp; Ass). (Annable, Zachery)</p>
12/30/2020	<p><u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # <u>1</u> Proposed Order) (Smith, Frances)</p>
12/30/2020	<p><u>1644</u> Notice of Appearance and Request for Notice by Frances Anne Smith filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)</p>
12/30/2020	<p><u>1645</u> Certificate of service re: Senior Employees Agreed Motion to Withdraw and Substitute Counsel of Record and Notice of Appearance filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s)<u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau, <u>1644</u> Notice of appearance and request for notice). (Smith, Frances)</p>
12/30/2020	<p><u>1646</u> Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management,</p>

	<p>L.P., <u>1626</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1631</u> Declaration re: (<i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) filed by Debtor Highland Capital Management, L.P., <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: \$401,659.92, Expenses: \$3,643.80. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64. Filed by Attorney Juliana Hoffman Objections due by 1/14/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1634</u> Support/supplemental document (<i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
12/30/2020	<p><u>1647</u> Certificate of service re: <i>1) Supplemental Declaration of Matthew Clemente in Support of Application of the Official Committee of Unsecured Creditors, Pursuant to Sections 328 and 1103 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014, for an Order Approving the Retention and Employment of Sidley Austin LLP as Counsel to the Official Committee of Unsecured Creditors; and 2) Agreed Order Extending Deadline to Assume Unexpired Nonresidential Real Property Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1635</u> Declaration re: <i>Supplemental Declaration of Matthew Clemente</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>206</u> Amended Application to employ Sidley Austin LLP as Attorney <i>APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, PURSUANT TO SECTIONS 328 AND 1103 OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 2014, FOR AN ORDER APPROVING T</i>). filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1636</u> Agreed order granting <u>1623</u> Motion to extend deadline to assume unexpired nonresidential real property lease and setting motion to assume for hearing at confirmation. Entered on 12/28/2020. (Okafor, M.)). (Kass, Albert)</p>
12/30/2020	<p><u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)</p>
12/31/2020	

	<u>1649</u> Joint Motion to continue hearing on (related documents <u>1207</u> Motion to allow claims) Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Proposed Order) (Driver, Vickie)
12/31/2020	<u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5) (O'Neil, Holland)
12/31/2020	<u>1651</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1531</u> Application for compensation ( <i>Tenth Monthly Application for Compensation and Reimbursement of Expenses of Hayward &amp; Associates PLLC as Local Counsel to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Hayward). (Annable, Zachery)
12/31/2020	<u>1652</u> Order granting motion to continue hearing on (related document # <u>1649</u> ) (related documents Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> ) Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , Entered on 12/31/2020. (Okafor, M.)
12/31/2020	<u>1653</u> Certificate of service re: ( <i>Supplemental</i> ) <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.), <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/04/2021	<u>1654</u> Certificate No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1521</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor for the Period from November 1, 2020 through November 30, 2020</i> for J). (Pomerantz, Jeffrey)
01/04/2021	<u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. (Hoffman, Juliana)
01/04/2021	<u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by

	Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit L—Amended Schedule of Retained Causes of Action # <u>2</u> Exhibit M—Amended Form of Claimant Trust Agreement # <u>3</u> Exhibit N—Redline of Form of Claimant Trust Agreement # <u>4</u> Exhibit O—Amended Form of Litigation Trust Agreement # <u>5</u> Exhibit P—Redline of Form of Litigation Trust Agreement) (Annable, Zachery)
01/05/2021	<u>1657</u> Notice of Appearance and Request for Notice by Daniel P. Winikka filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. (Gold, Matthew)
01/05/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28389049, amount \$ 26.00 (re: Doc# <u>1658</u> ). (U.S. Treasury)
01/05/2021	<u>1659</u> Certificate of No Objection filed by Other Professional Hayward & Associates PLLC (RE: related document(s) <u>1545</u> Application for compensation ( <i>Hayward &amp; Associates PLLC's Third Interim Application for Compensation and Reimbursement of Expenses for the Period from July 1, 2020 through September 30, 2020</i> ) for Hayward & Associates PLLC, Debtor's Att). (Annable, Zachery)
01/05/2021	<u>1660</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/05/2021	<u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero. (Clarke, James)
01/05/2021	<u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County. (Spindler, Laurie)
01/05/2021	<u>1663</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1544</u> Application for compensation ( <i>First Interim Application</i> ) for Hunton Andrews Kurth LLP, Special Counsel, Period: 7/1/2020 to 10/31/2020, Fee: \$206933.85, Expenses: \$546.52.). (Annable, Zachery)
01/05/2021	<u>1664</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1547</u> Application for compensation <i>Third Interim Application for Compensation and for Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession for the Period from August 1, 2020 through November 30,</i> ). (Annable, Zachery)
01/05/2021	<u>1665</u> Certificate of No Objection filed by Other Professional Wilmer Cutler Pickering Hale and Dorr LLP (RE: related document(s) <u>1552</u> Application for compensation ( <i>Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for</i> ). (Annable, Zachery)
01/05/2021	<u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang. (Winikka, Daniel)
01/05/2021	<u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)

01/05/2021	<u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS). (Adams, David)
01/05/2021	<u>1669</u> WITHDRAWN per # <u>1845</u> . Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B) (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/05/2021	<u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # <u>1</u> Exhibit A) (Rukavina, Davor)
01/05/2021	<u>1671</u> Trustee's Objection to <i>Fifth Amended Plan</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) (Lambert, Lisa)
01/05/2021	<u>1672</u> Certificate of service re: Senior Employees' Objection to Debtor's Fifth Amended Plan of Reorganization filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1669</u> Objection to confirmation of plan). (Smith, Frances)
01/05/2021	<u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC. (Drawhorn, Lauren)
01/05/2021	<u>1674</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization</i> filed by Paul Kauffman, Todd Travers, Davis Deadman (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1675</u> Joinder by [ <i>Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. [Dkt. No. 1670] and Supplemental Objection to Plan Confirmation</i> ] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Kane, John)
01/05/2021	<u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank. (Drawhorn, Lauren)
01/05/2021	<u>1677</u> Joinder by <i>NexPoint RE Entities to Objection to Confirmation of Fifth Amended Plan of Reorganization</i> filed by Interested Parties NexPoint Hospitality Trust, NexPoint Multifamily Capital Trust, Inc., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Finance Inc., NexPoint Real Estate Partners, LLC, NexPoint Residential Trust, Inc., Nexpoint Real Estate Capital, LLC, VineBrook Homes, Trust, Inc. (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Drawhorn, Lauren)
01/05/2021	<u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty. (Kathman, Jason)
01/05/2021	

	<u>1679</u> Joinder by <i>Kauffman, Travers and Deadman to Limited Objection of Jack Yang and Brad Borud to Fifth Amended Plan of Reorganization (Amended)</i> filed by Davis Deadman, Paul Kauffman, Todd Travers (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1666</u> Objection to confirmation of plan). (Kathman, Jason)
01/05/2021	<u>1680</u> Motion to appear pro hac vice for Debra Dandenau. Fee Amount \$100 Filed by Creditor Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (Soderlund, Eric)
01/05/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28390902, amount \$ 100.00 (re: Doc# <u>1680</u> ). (U.S. Treasury)
01/06/2021	<u>1681</u> Motion to appear pro hac vice for Douglas S. Draper. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393061, amount \$ 100.00 (re: Doc# <u>1681</u> ). (U.S. Treasury)
01/06/2021	<u>1682</u> Motion to appear pro hac vice for Leslie A. Collins. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Draper, Douglas)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393082, amount \$ 100.00 (re: Doc# <u>1682</u> ). (U.S. Treasury)
01/06/2021	<u>1683</u> Motion to appear pro hac vice for Greta M. Brouphy. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Brouphy, Greta)
01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393123, amount \$ 100.00 (re: Doc# <u>1683</u> ). (U.S. Treasury)
01/06/2021	<u>1684</u> Order granting third interim fee application for compensation (related document # <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1685</u> Order granting third interim application for compensation (related document # <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1686</u> Order granting first interim application for compensation (related document # <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1687</u> Order granting third interim application for compensation (related document # <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.)
01/06/2021	<u>1689</u> Motion to appear pro hac vice for Warren Horn. Fee Amount \$100 Filed by Get Good Trust, The Dugaboy Investment Trust (Horn, Warren)

01/06/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28393995, amount \$ 100.00 (re: Doc# <u>1689</u> ). (U.S. Treasury)
01/06/2021	<u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document # <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.)
01/06/2021	<u>1691</u> Order granting third and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.) Modified to correct text on 1/29/2021 (Ecker, C.).
01/06/2021	<u>1692</u> Adversary case 21-03000. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., CLO Holdco, Ltd.. Fee Amount \$350 (Attachments: # <u>1</u> Adversary Proceeding Cover Sheet). Nature(s) of suit: 91 (Declaratory judgment). 72 (Injunctive relief - other). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Annable, Zachery)
01/06/2021	<u>1693</u> Subpoena on Highland Capital Management, L.P. filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 - Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1694</u> Subpoena on Kurtzman Carson Consultants LLC filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 - Subpoena with Document Requests) (Assink, Bryan)
01/06/2021	<u>1695</u> Certificate of service re: 1) <i>WebEx Meeting Invitation to participate electronically in the hearing on Wednesday, December 16, 2020 at 1:30 p.m. Central Time before the Honorable Stacey G. Jernigan</i> ; 2) <i>Instructions for any counsel and parties who wish to participate in the Hearing</i> ; and 3) <i>Foley &amp; Lardner LLP's Witness and Exhibit List for Final Fee Application</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1650</u> Witness and Exhibit List filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP (RE: related document(s) <u>1483</u> Application for compensation <i>Third and Final Application for Compensation and Reimbursement of Expenses of Foley &amp; Lardner LLP as Special Texas Counsel to the Debtor for the Period from October 16, 2019 through October 31, 2020</i> for Foley Ga). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5) (O'Neil, Holland) filed by Spec. Counsel Foley Gardere, Foley & Lardner LLP). (Kass, Albert)
01/06/2021	<u>1696</u> Certificate of service re: 1) <i>Fourth Interim Fee Application of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors, for Compensation and Reimbursement of Expenses for the Period from September 1, 2020 Through and Including November 30, 2020</i> ; and 2) <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47. Filed by Attorney Juliana Hoffman Objections due by 1/25/2021. filed by Financial Advisor FTI Consulting, Inc., <u>1656</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit L—Amended Schedule of Retained Causes of Action # 2 Exhibit M—Amended Form of Claimant Trust Agreement # 3 Exhibit N—Redline of Form of Claimant Trust Agreement # 4 Exhibit O—Amended Form of Litigation Trust Agreement # 5 Exhibit P—Redline of Form of Litigation Trust Agreement) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)

01/06/2021	<u>1697</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan)
01/07/2021	<u>1698</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)). (Annable, Zachery)
01/07/2021	<u>1699</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1700</u> Certificate of service re: Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice (generic)). (Annable, Zachery)
01/07/2021	<u>1701</u> Order granting motion to appear pro hac vice adding Douglas S. Draper for Get Good Trust and The Dugaboy Investment Trust (related document <u>1681</u> ) Entered on 1/7/2021. (Okafor, M.) Modified to add party on 1/7/2021 (Okafor, M.).
01/07/2021	<u>1702</u> Order granting motion to appear pro hac vice adding Leslie A. Collins for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1682</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1703</u> Order granting motion to appear pro hac vice adding Greta M. Brouphy for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1683</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1704</u> Order granting motion to appear pro hac vice adding Warren Horn for Get Good Trust and The Dugaboy Investment Trust (related document # <u>1689</u> ) Entered on 1/7/2021. (Okafor, M.)
01/07/2021	<u>1705</u> Notice to take deposition of Michael Pugatch filed by Interested Party James Dondero. (Assink, Bryan)
01/08/2021	<u>1706</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/08/2021	<u>1707</u> Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.. (Kane, John)
01/08/2021	<u>1708</u> <b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF,</b>

	<b>including Harbourvest, the Debtor, and CLO Holdco – Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/08/2021	<u>1709</u> Notice ( <i>Notice of Filing of Certificate of Service Regarding Letter Dated January 7, 2021 to Highland Capital Management Services, Inc. from James P. Seery, Jr. Regarding Demand on Promissory Note</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1710</u> Debtor-in-possession monthly operating report for filing period November 1, 2020 to November 30, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/08/2021	<u>1711</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)
01/08/2021	<u>1712</u> Certificate of service re: <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1660</u> Notice ( <i>Notice of Agenda of Matters Scheduled for Hearing on January 6, 2021 at 2:30 p.m. (Central Time)</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/08/2021	<u>1713</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1690</u> Order granting motion to appear pro hac vice adding Debra A. Dandeneau for FTI Consulting, Inc. and Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz and Thomas Surgent (related document <u>1680</u> ) Entered on 1/6/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 01/08/2021. (Admin.)
01/09/2021	<u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , (Annable, Zachery)
01/11/2021	<u>1715</u> Order granting application for compensation (related document # <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.)
01/11/2021	<u>1716</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Kane, John)
01/11/2021	<u>1717</u> <b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed</b>

	<b>Protective Order] per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/11/2021	<u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Annable, Zachery)
01/11/2021	<u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/11/2021	<u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u> , (Annable, Zachery)
01/11/2021	<u>1721</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. A – POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H – M) (Assink, Bryan)
01/11/2021	<u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Annable, Zachery)
01/11/2021	<u>1723</u> Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Driver, Vickie)
01/11/2021	<u>1724</u> Certificate of service re: <i>Documents Served on January 6, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1684</u> Order granting third interim fee application for compensation (related document <u>1296</u> ) granting for Official Committee of Unsecured Creditors, fees awarded: \$1865520.45, expenses awarded: \$18678.47 Entered on 1/6/2021. (Okafor, M.), <u>1685</u> Order granting third interim application for compensation (related document <u>1244</u> ) granting for FTI Consulting, Inc., fees awarded: \$886615.45, expenses awarded: \$1833.10 Entered on 1/6/2021. (Okafor, M.), <u>1686</u> Order granting first interim application for compensation (related document <u>1544</u> ) granting for Hunton Andrews Kurth LLP, fees awarded: \$206933.85, expenses awarded: \$546.52 Entered on 1/6/2021. (Okafor, M.), <u>1687</u> Order granting third interim application for compensation (related document <u>1547</u> ) granting for Jeffrey Nathan Pomerantz, fees awarded: \$3380111.5, expenses awarded: \$31940.33 Entered on 1/6/2021. (Okafor, M.),

	<u>1688</u> Second Agreed Order regarding deposit of funds into the registry of the court (RE: related document(s) <u>1365</u> Agreed Supplemental Order re: <u>474</u> Motion for authority to apply and disburse funds filed by Debtor Highland Capital Management, L.P., <u>1365</u> Order (generic)). Entered on 1/6/2021 (Okafor, M.), <u>1691</u> Order granting first and final application for compensation (related document <u>1483</u> ) granting for Foley Gardere, Foley & Lardner LLP, fees awarded: \$617654.60, expenses awarded: \$11433.73 Entered on 1/6/2021. (Okafor, M.). (Kass, Albert)
01/12/2021	<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s) <u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.)
01/12/2021	<u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit DD) (Annable, Zachery)
01/13/2021	<u>1727</u> Certificate of service re: Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to November 30, 2020 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1711</u> Notice (generic)). (Annable, Zachery)
01/13/2021	<u>1728</u> Order granting application for compensation (related document # <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)
01/13/2021	<u>1729</u> Certificate of service re: Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the Fifth Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of the Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1476</u> Order approving disclosure statement). (Annable, Zachery)
01/13/2021	<u>1730</u> Certificate of service re: Order Further Extending Period Within Which the Debtor May Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1725</u> Order on motion to extend/shorten time). (Annable, Zachery)
01/13/2021	<u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/13/2021	<u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit EE) (Annable, Zachery)
01/13/2021	<u>1733</u> Expedited Motion to file document under seal./ <i>Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> Filed by Creditor HarbourVest et al (Attachments: # <u>1</u> Exhibit A – Proposed Order) (Driver, Vickie)

01/13/2021	<u>1734</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) / <i>HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al. (Driver, Vickie)
01/13/2021	<u>1735</u> Support/supplemental document / <i>Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith</i> filed by Creditor HarbourVest et al (RE: related document(s) <u>1734</u> Reply). (Driver, Vickie)
01/13/2021	<u>1736</u> Emergency Motion to file document under seal.( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
01/14/2021	<u>1737</u> Order granting motion to seal exhibits (related document # <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.)
01/14/2021	<u>1738</u> <b>SEALED document regarding: Exhibit A—Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1739</u> <b>SEALED document regarding: Exhibit B—Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1740</u> <b>SEALED document regarding: Exhibit C—Offering Memorandum per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal). (Annable, Zachery)
01/14/2021	<u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/14/2021	<u>1742</u> Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). (Attachments: # <u>1</u> Dondero Ex. N) (Assink, Bryan)
01/14/2021	<u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). (Hoffman, Juliana)
01/14/2021	<u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). (Annable, Zachery)
01/14/2021	<u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)

01/14/2021	<u>1752</u> INCORRECT Entry: Original entry at # [1745 is correct} Motion to Appoint Examiner pursuant to 11 U.S.C. § 1104(c) by Get Good Trust , The Dugaboy Investment Trust . (Ecker, C.) Modified on 1/15/2021 (Ecker, C.). (Entered: 01/15/2021)
01/14/2021	<u>1753</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1754</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1755</u> Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.) (Edmond, Michael) (Entered: 01/15/2021)
01/14/2021	<u>1782</u> Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON) (Edmond, Michael) (Entered: 01/20/2021)
01/15/2021	<u>1746</u> Order granting motion to pay (related document # <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.)
01/15/2021	<u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.)
01/15/2021	<u>1748</u> Motion for expedited hearing(related documents <u>1745</u> Motion to appoint trustee) Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # <u>1</u> Proposed Order) (Draper, Douglas)
01/15/2021	<u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.

	(RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/15/2021	<u>1750</u> Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly (Green, Shanette)
01/15/2021	<u>1751</u> Supplemental Certificate of service re: filed by Creditors The Dugaboy Investment Trust, Get Good Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> , <u>1748</u> Motion for expedited hearing (related documents <u>1745</u> Motion to appoint trustee ). (Draper, Douglas) Modified on 1/15/2021 (Rielly, Bill).
01/15/2021	<u>1756</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Assink, Bryan)
01/15/2021	<u>1757</u> Notice of Increase in Hourly Rates for Pachulski Stang Ziehl & Jones LLP Effective as of January 1, 2021 filed by Debtor Highland Capital Management, L.P.. (Pomerantz, Jeffrey)
01/15/2021	<u>1758</u> Certificate No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1632</u> Application for compensation <i>Sidley Austin LLP's Thirteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 11/1/2020 to 11/30/2020, Fee: &#0). (Hoffman, Juliana)
01/15/2021	<u>1759</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1633</u> Application for compensation <i>Thirteenth Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 11/1/2020 to 11/30/2020, Fee: \$201,148.56, Expenses: \$408.64.). (Hoffman, Juliana)
01/15/2021	<u>1760</u> Certificate of service re: <i>(Supplemental) Solicitation Materials Served on January 11, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)
01/15/2021	<u>1761</u> Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on

	<p>1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u>, filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u>) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing (<i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management, L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P..). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1762</u> Certificate of service re: <i>Documents Served on January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1725</u> Order further extending period within which the Debtor may remove actions <u>1583</u> Motion to extend time. (Re: related document(s) <u>1583</u> Motion to extend time to Remove Actions Pursuant to 28 U.S.C. 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (RE: related document(s)<u>816</u> Order on motion to extend/shorten time)) Entered on 1/12/2021. (Ecker, C.), <u>1726</u> Amended Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1722</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 Exhibit W # 24 Exhibit X # 25 Exhibit DD) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/15/2021	<p><u>1763</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>1728</u> Order granting application for compensation (related document <u>1545</u>) granting for Hayward &amp; Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.)) No. of Notices: 1. Notice Date 01/15/2021. (Admin.)</p>
01/16/2021	<p><u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
01/17/2021	<p><u>1765</u> Transcript regarding Hearing Held 01/14/2021 (173 pages) RE: Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/19/2021.</p>

	<p>Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1753 Hearing held on 1/14/2021. (RE: related document(s) <u>1590</u> Motion to pay Debtor's Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay Loan) filed by Debtor Highland Capital Management, L.P. (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Nonevidentiary hearing. Motion granted. Counsel to upload order.), 1754 Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.), 1755 Hearing held on 1/14/2021. (RE: related document(s) <u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan filed by Creditor HarbourVest et al (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion resolved by approval of compromise and settlement. Counsel to upload order.)). Transcript to be made available to the public on 04/19/2021. (Rehling, Kathy)</p>
01/17/2021	<p><u>1766</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.) No. of Notices: 1. Notice Date 01/17/2021. (Admin.)</p>
01/18/2021	<p><u>1767</u> Verified statement pursuant to Rule 2019 filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Smith, Frances)</p>
01/18/2021	<p><u>1768</u> Certificate of service re: Verified Statement Pursuant to Federal Rule of Bankruptcy Procedure 2019 of (I) Frances A. Smith and Disclosures of Ross &amp; Smith, PC; and (II) Michelle Hartmann and Disclosures of Baker &amp; McKenzie LLP filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1767</u> Verified statement pursuant to Rule 2019). (Smith, Frances)</p>
01/18/2021	<p><u>1769</u> Declaration re: (<i>Report of Mediators</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). (Annable, Zachery)</p>
01/19/2021	<p><u>1770</u> Order Granting Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtors Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith (related document # <u>1733</u>) Entered on 1/19/2021. (Okafor, M.)</p>
01/19/2021	<p><u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. (Pomerantz, Jeffrey)</p>
01/19/2021	<p><u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

01/19/2021	<u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/19/2021	<u>1774</u> Notice to take deposition of Highland Capital Management, L.P. filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.)
01/19/2021	<u>1775</u> Certificate of service re: <i>1) Order Granting Debtors Motion Pursuant to the Protocols for Authority for Highland Multi Strategy Credit Fund, L.P. to Prepay; 2) Order Approving Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP; and 3) Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1746</u> Order granting motion to pay (related document <u>1590</u> ) Entered on 1/15/2021. (Ecker, C.), <u>1747</u> Order (RE: related document(s) <u>1741</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.). Entered on 1/15/2021 (Ecker, C.), <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/19/2021	<u>1776</u> Notice to take deposition of Highland Capital Management LP filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
01/19/2021	<u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B-1 # <u>3</u> Exhibit B-2 # <u>4</u> Exhibit C) (Annable, Zachery)
01/19/2021	<u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/19/2021	<u>1779</u> Certificate of service re: <i>Documents Served on January 13, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1728</u> Order granting application for compensation (related document <u>1545</u> ) granting for Hayward & Associates PLLC, fees awarded: \$82325.00, expenses awarded: \$1972.63 Entered on 1/13/2021. (Ecker, C.), <u>1731</u> Omnibus Reply to (related document(s): <u>1697</u> Objection filed by Interested Party James Dondero, <u>1706</u> Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1707</u> Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1732</u> Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit EE) filed by Debtor Highland Capital Management, L.P., <u>1736</u> Emergency Motion to file document under seal.( <i>Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150,</i>

	<i>153, 154), and Authorizing Actions Consistent Therewith)</i> Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1780</u> Notice of District Court Order Accepting Documents Designated for Inclusion in Record on Appeal Under Seal filed by Interested Parties UBS AG London Branch, UBS Securities LLC. (Sosland, Martin)
01/20/2021	<u>1781</u> Certificate of service re: Notice of Rule 30(b)(6) Amended Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1776</u> Notice to take deposition). (Draper, Douglas)
01/20/2021	<u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , (Annable, Zachery)
01/20/2021	<u>1784</u> WITHDRAWN PER # <u>1876</u> . Objection to (related document(s): <u>1719</u> Notice (generic) filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero. (Assink, Bryan) Modified on 2/2/2021 (Ecker, C.).
01/20/2021	<u>1785</u> Order granting motion for expedited hearing (Related Doc# <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021. (Rielly, Bill)
01/20/2021	<u>1786</u> Certificate of service re: <i>Documents Served on January 14, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1737</u> Order granting motion to seal exhibits (related document <u>1736</u> ) Entered on 1/14/2021. (Ecker, C.), <u>1741</u> Notice ( <i>Notice of Stipulation Resolving Proof of Claim No. 166 Filed by Stinson Leonard Street LLP</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1743</u> Declaration re: <i>Supplemental Declaration of Conor P. Tully In Support of the Application Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor to the Official Committee of Unsecured Creditors</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>1744</u> Declaration re: ( <i>Supplemental Declaration of Marc D. Katz</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>268</u> Declaration). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/20/2021	<u>1787</u> Certificate of service re: <i>Documents Served on or Before January 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1764</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1769</u> Declaration re: ( <i>Report of Mediators</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>912</u> Order (generic)). filed by Debtor Highland Capital Management, L.P., <u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to 12/31/2020, Fee: \$1,046,024.00, Expenses: \$4,130.90. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 2/9/2021. filed by Debtor Highland Capital Management, L.P., <u>1772</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1773</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital

	Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C) filed by Debtor Highland Capital Management, L.P., <u>1778</u> Motion for expedited hearing(related documents <u>1777</u> Motion for leave) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/21/2021	<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document # <u>1625</u> ) Entered on 1/21/2021. (Okafor, M.)
01/21/2021	<u>1789</u> Notice ( <i>Notice of Service of Discovery on Highland Capital Management, L.P.</i> ) filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. A – Document Requests) (Assink, Bryan)
01/21/2021	<u>1790</u> Subpoena on Jean Paul Sevilla filed by Interested Party James Dondero. (Attachments: # <u>1</u> Ex. 1 – Subpoena) (Assink, Bryan)
01/21/2021	<u>1791</u> Notice ( <i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice ( <i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation))., <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)).). (Annable, Zachery)
01/22/2021	<u>1792</u> Witness and Exhibit List <i>United States' (IRS) Witness &amp; Exhibit List</i> filed by Creditor United States (IRS) (RE: related document(s) <u>1668</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6) (Adams, David)
01/22/2021	<u>1793</u> Witness and Exhibit List <i>for Confirmation Hearing</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint

	Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Hogewood, A.)
01/22/2021	<u>1794</u> Witness and Exhibit List <i>with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit 5 # <u>2</u> Exhibit 6 # <u>3</u> Exhibit 6-1) (Draper, Douglas)
01/22/2021	<u>1795</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17) (Assink, Bryan)
01/22/2021	<u>1796</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE1 # <u>2</u> Exhibit SE2 # <u>3</u> Exhibit SE # <u>4</u> Exhibit SE4 # <u>5</u> Exhibit SE5 # <u>6</u> Exhibit SE6 # <u>7</u> Exhibit SE7 # <u>8</u> Exhibit SE8 # <u>9</u> Exhibit SE9 # <u>10</u> Exhibit SE10 # <u>11</u> Exhibit SE11 # <u>12</u> Exhibit SE12 # <u>13</u> Exhibit SE13 # <u>14</u> Exhibit SE14 # <u>15</u> Exhibit SE15 # <u>16</u> Exhibit SE16 # <u>17</u> Exhibit SE17 # <u>18</u> Exhibit SE18 # <u>19</u> Exhibit SE19 # <u>20</u> Exhibit SE20 # <u>21</u> Exhibit SE21 # <u>22</u> Exhibit SE22 # <u>23</u> Exhibit SE23 # <u>24</u> Exhibit SE24 # <u>25</u> Exhibit SE25 # <u>26</u> Exhibit SE26 # <u>27</u> Exhibit SE27 # <u>28</u> Exhibit SE28 # <u>29</u> Exhibit SE29 # <u>30</u> Exhibit SE30 # <u>31</u> Exhibit SE31 # <u>32</u> Exhibit SE33 # <u>33</u> Exhibit SE34 # <u>34</u> Exhibit SE35 # <u>35</u> Exhibit SE36 # <u>36</u> Exhibit SE37 # <u>37</u> Exhibit SE38 # <u>38</u> Exhibit SE39 # <u>39</u> Exhibit SE40) (Smith, Frances)
01/22/2021	<u>1797</u> Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Kane, John)
01/22/2021	<u>1798</u> Certificate of service re: Witness & Exhibit List for Hearing Scheduled for January, 26, 2021 at 9:30 a.m. filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1796</u> List (witness/exhibit/generic)). (Smith, Frances)
01/22/2021	<u>1799</u> Witness and Exhibit List <i>for Hearing Scheduled for January 26, 2021 at 9:30 a.m.</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit SE33) (Smith, Frances)
01/22/2021	<u>1800</u> Exhibit and Witness List for Confirmation Hearing filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1670</u> Objection to confirmation of plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit U # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> Exhibit W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit

	OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit ZZZ) (Hogewood, A.) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1801</u> Adversary case 21-03003. Complaint by Highland Capital Management, L.P. against James Dondero. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1802</u> Adversary case 21-03004. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1803</u> Adversary case 21-03005. Complaint by Highland Capital Management, L.P. against NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1804</u> Adversary case 21-03006. Complaint by Highland Capital Management, L.P. against Highland Capital Management Services, Inc.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Adversary Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1805</u> Adversary case 21-03007. Complaint by Highland Capital Management, L.P. against HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC). Fee Amount \$350 (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Cover Sheet). Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 11 (Recovery of money/property – 542 turnover of property). (Annable, Zachery)
01/22/2021	<u>1806</u> Motion to file document under seal. Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund (Attachments: # <u>1</u> Proposed Order) (Vasek, Julian)
01/22/2021	<u>1807</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1661</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Party James Dondero., <u>1662</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., <u>1666</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., <u>1667</u> Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., <u>1668</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor United States (IRS)., <u>1669</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), <u>1670</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u>

	Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), <u>1673</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., <u>1676</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., <u>1678</u> Objection to confirmation of plan (RE: related document(s) <u>1472</u> Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1809</u> Support/supplemental document ( <i>Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery)
01/22/2021	<u>1810</u> Witness and Exhibit List [Exhibits 1–2 and 12–17] filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1797</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> CLO Exhibit 2 # <u>2</u> CLO Exhibit 12 # <u>3</u> CLO Exhibit 13 # <u>4</u> CLO Exhibit 14 # <u>5</u> CLO Exhibit 15 # <u>6</u> CLO Exhibit 16 # <u>7</u> CLO Exhibit 17) (Kane, John) MODIFIED on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1811</u> NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit Q # <u>2</u> Exhibit R # <u>3</u> Exhibit S # <u>4</u> Exhibit T # <u>5</u> Exhibit U # <u>6</u> Exhibit V # <u>7</u> Exhibit W # <u>8</u> Exhibit X # <u>9</u> Exhibit Y # <u>10</u> Exhibit Z # <u>11</u> Exhibit AA # <u>12</u> Exhibit BB # <u>13</u> Exhibit CC # <u>14</u> Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1812</u> <b>SEALED document regarding: CLO Exhibit 3 – Aberdeen Loan Funding, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1813</u> <b>SEALED document regarding: CLO Exhibit 4 – Brentwood CLO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1814</u> Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1815</u> <b>SEALED document regarding: CLO Exhibit 5 – Grayson CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<u>1816</u> <b>SEALED document regarding: CLO Exhibit 6 – Liberty CLO, Ltd. Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and</b>

	<b>Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1817</u> SEALED document regarding: CLO Exhibit 7 – Red River CLO Ltd. Servicing Agreement and Amendment to Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1818</u> SEALED document regarding: CLO Exhibit 8 – Rockwall CDO Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1819</u> SEALED document regarding: CLO Exhibit 9 – Valhalla CLO, Ltd. Reference Portfolio Management Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1820</u> SEALED document regarding: CLO Exhibit 10 – Westchester CLO, Ltd. Servicing Agreement [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1821</u> SEALED document regarding: CLO Exhibit 11 – Debtor Prepared Summary of CLO Holdco, Ltd.'s Interest in Debtor-Managed CLO Funds [CONFIDENTIAL] in connection to CLO's Witness and Exhibit List at Docket No. 1797 per court order</b> filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>382</u> Order on motion for protective order). (Kane, John)
01/22/2021	<b><u>1822</u> (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> List of 20 Largest Creditors C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M # <u>14</u> Exhibit N # <u>15</u> Exhibit O # <u>16</u> Exhibit P # <u>17</u> Exhibit Q # <u>18</u> Exhibit R # <u>19</u> Exhibit S # <u>20</u> Exhibit T # <u>21</u> Exhibit U # <u>22</u> Exhibit V # <u>23</u> List of 20 Largest Creditors W # <u>24</u> Exhibit X # <u>25</u> Exhibit Y # <u>26</u> Exhibit Z # <u>27</u> Exhibit AA # <u>28</u> Exhibit BB # <u>29</u> Exhibit CC # <u>30</u> Exhibit DD # <u>31</u> Exhibit EE # <u>32</u> Exhibit FF # <u>33</u> Exhibit GG # <u>34</u> Exhibit HH # <u>35</u> Exhibit II # <u>36</u> Exhibit JJ # <u>37</u> Exhibit KK # <u>38</u> Exhibit LL # <u>39</u> Exhibit MM # <u>40</u> Exhibit NN # <u>41</u> Exhibit OO # <u>42</u> Exhibit PP # <u>43</u> Exhibit QQ # <u>44</u> Exhibit RR # <u>45</u> Exhibit SS # <u>46</u> Exhibit TT # <u>47</u> Exhibit UU # <u>48</u> Exhibit VV # <u>49</u> Exhibit WW # <u>50</u> Exhibit XX # <u>51</u> Exhibit YY # <u>52</u> Exhibit ZZ # <u>53</u> Exhibit AAA # <u>54</u> Exhibit BBB # <u>55</u> Exhibit CCC # <u>56</u> Exhibit DDD # <u>57</u> Exhibit EEE # <u>58</u> Exhibit FFF # <u>59</u> Exhibit GGG # <u>60</u> Exhibit HHH # <u>61</u> Exhibit III # <u>62</u> Exhibit JJJ # <u>63</u> Exhibit KKK # <u>64</u> Exhibit LLL # <u>65</u> Exhibit MMM # <u>66</u> Exhibit NNN # <u>67</u> Exhibit OOO # <u>68</u> Exhibit PPP # <u>69</u> Exhibit QQQ # <u>70</u> Exhibit RRR # <u>71</u> Exhibit SSS # <u>72</u> Exhibit TTT # <u>73</u> Exhibit UUU # <u>74</u> Exhibit VVV # <u>75</u> Exhibit WWW # <u>76</u> Exhibit XXX # <u>77</u> Exhibit YYY # <u>78</u> Exhibit ZZZ # <u>79</u> Exhibit AAAA # <u>80</u> Exhibit BBBB # <u>81</u> Exhibit CCCC # <u>82</u> Exhibit DDDD # <u>83</u> Exhibit EEEE # <u>84</u> Exhibit FFFF # <u>85</u> Exhibit GGGG # <u>86</u> Exhibit MMMM # <u>87</u> Exhibit NNNN # <u>88</u> Exhibit OOOO # <u>89</u> Exhibit PPPP # <u>90</u> Exhibit QQQQ # <u>91</u> Exhibit RRRR # <u>92</u> Exhibit SSSS # <u>93</u> Exhibit TTTT # <u>94</u> Exhibit UUUU # <u>95</u> Exhibit VVVV # <u>96</u> Exhibit WWWW # <u>97</u> Exhibit XXXX # <u>98</u> Exhibit YYYY # <u>99</u> Exhibit ZZZZ # <u>100</u> Exhibit AAAAA # <u>101</u> Exhibit BBBB # <u>102</u> Exhibit CCCC # <u>103</u> Exhibit DDDD # <u>104</u> Exhibit EEEE # <u>105</u> Exhibit FFFF # <u>106</u> Exhibit GGGG # <u>107</u> Exhibit HHHH # <u>108</u> Exhibit IIII # <u>109</u> Exhibit JJJJ # <u>110</u> Exhibit KKKK # <u>111</u> Exhibit LLLL # <u>112</u> Exhibit MMMM # <u>113</u> Exhibit NNNN # <u>114</u> Exhibit OOOO # <u>115</u> Exhibit PPPP # <u>116</u> Exhibit QQQQ # <u>117</u> Exhibit RRRR # <u>118</u> Exhibit SSSS # <u>119</u> Exhibit TTTT # <u>120</u> Exhibit UUUU # <u>121</u> Exhibit VVVV # <u>122</u> Exhibit WWWW # <u>123</u> Exhibit XXXX # <u>124</u> Exhibit YYYY # <u>125</u> Exhibit ZZZZ # <u>126</u> Exhibit AAAAAA # <u>127</u> Exhibit

	BBBBBB # <u>128</u> Exhibit CCCCCC # <u>129</u> Exhibit DDDDDD # <u>130</u> Exhibit EEEEEEE # <u>131</u> Exhibit FFFFFFF # <u>132</u> Exhibit GGGGGG # <u>133</u> Exhibit HHHHHH # <u>134</u> Exhibit IIIII # <u>135</u> Exhibit JJJJJ # <u>136</u> Exhibit KKKKKK # <u>137</u> Exhibit LLLLLL # <u>138</u> Exhibit MMMMM # <u>139</u> Exhibit NNNNNN # <u>140</u> Exhibit OOOOOO # <u>141</u> Exhibit PPPPPP # <u>142</u> Exhibit QQQQQQ # <u>143</u> Exhibit RRRRRR # <u>144</u> Exhibit SSSSSS # <u>145</u> Exhibit TTTTTT # <u>146</u> Exhibit UUUUUU # <u>147</u> Exhibit VVVVVV # <u>148</u> Exhibit WWWWWW # <u>149</u> Exhibit XXXXXX # <u>150</u> Exhibit YYYYYY # <u>151</u> Exhibit ZZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). Additional attachment(s) added on 1/28/2021 (Okafor, M.).
01/22/2021	<u>1823</u> Response unopposed to (related document(s): <u>1828</u> Response filed by Debtor Highland Capital Management, L.P.. Modified linkage on 1/25/2021 (Ecker, C.).
01/22/2021	<u>1828</u> Response opposed to (related document(s): <u>1661</u> Objection to confirmation of plan filed by Interested Party James Dondero, <u>1662</u> Objection to confirmation of plan filed by Creditor City of Richardson, Creditor Allen ISD, Creditor Kaufman County, Creditor Dallas County, Creditor City of Allen, <u>1666</u> Objection to confirmation of plan filed by Interested Party Jack Yang, Interested Party Brad Borud, <u>1667</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1668</u> Objection to confirmation of plan filed by Creditor United States (IRS), <u>1669</u> Objection to confirmation of plan filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, <u>1670</u> Objection to confirmation of plan filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., Interested Party Highland Funds I and its series, Interested Party Highland Healthcare Opportunities Fund, Interested Party Highland/iBoxx Senior Loan ETF, Interested Party Highland Opportunistic Credit Fund, Interested Party Highland Merger Arbitrage Fund, Interested Party Highland Funds II and its series, Interested Party Highland Small-Cap Equity Fund, Interested Party Highland Fixed Income Fund, Interested Party Highland Socially Responsible Equity Fund, Interested Party Highland Total Return Fund, Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, Interested Party NexPoint Real Estate Strategies Fund, <u>1671</u> Objection, <u>1673</u> Objection to confirmation of plan filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC, <u>1676</u> Objection to confirmation of plan filed by Interested Party NexBank, Interested Party NexBank Capital Inc., Interested Party NexBank Securities Inc., Interested Party NexBank Title Inc., <u>1678</u> Objection to confirmation of plan filed by Creditor Patrick Daugherty) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C) (Annable, Zachery) Modified date on 1/25/2021 (Ecker, C.). (Entered: 01/25/2021)
01/23/2021	<u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/23/2021	<u>1825</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.) No. of Notices: 1. Notice Date 01/23/2021. (Admin.)
01/24/2021	<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # <u>1</u> Service List) (Vasek, Julian)
01/25/2021	<u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. (Annable, Zachery)
01/25/2021	<u>1829</u> Notice ( <i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i> ) filed by Other Professional Hayward & Associates PLLC. (Annable, Zachery)

01/25/2021	<u>1830</u> Order granting motion to continue hearing on (related document # <u>1827</u> ) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1831</u> Order granting motion to file exhibits under seal (related document # <u>1806</u> ) Entered on 1/25/2021. (Okafor, M.)
01/25/2021	<u>1832</u> Notice of hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> Filed by Get Good Trust, The Dugaboy Investment Trust (Attachments: # 1 Proposed Order)). Hearing to be held on 3/2/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1745</u> , (Draper, Douglas)
01/25/2021	<u>1833</u> Notice ( <i>Notice of Certificate of Service re: Letter Dated January 19, 2021 to PCMG Trading Partners XXIII, L.P. from James P. Seery, Jr. re Highland Select Equity Fund, L.P.</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/25/2021	<u>1834</u> Certificate of service re: Notice Of Hearing filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1832</u> Notice of hearing). (Draper, Douglas)
01/25/2021	<u>1835</u> INCORRECT ENTRY: Attorney to refile. Motion to redact/restrict Emergency Redact (related document(s): <u>1822</u> ) (Fee Amount \$26) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Annable, Zachery) MODIFIED on 1/26/2021 (Ecker, C.).
01/25/2021	Receipt of filing fee for Motion to Redact/Restrict From Public View(19-34054-sgj11) [motion,mredact] ( 26.00). Receipt number 28441834, amount \$ 26.00 (re: Doc# <u>1835</u> ). (U.S. Treasury)
01/25/2021	<u>1836</u> Motion to file document under seal. <i>Emergency Motion to File Competing Plan and Disclosure Statement Under Seal</i> Filed by Interested Party NexPoint Advisors, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
01/25/2021	<u>1837</u> Certificate of service re: 1) <i>Notice of Hearing on Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Relief</i> ; and 2) <i>Order Granting Debtors Motion for an Expedited Hearing on the Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1783</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1777</u> Motion for leave ( <i>Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Exhibit B-1 # 3 Exhibit B-2 # 4 Exhibit C)). Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , filed by Debtor Highland Capital Management, L.P., <u>1785</u> Order granting motion for expedited hearing (Related Doc <u>1778</u> )(document set for hearing: <u>1777</u> Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief)) Hearing to be held on 1/26/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1777</u> , Entered on 1/20/2021.). (Kass, Albert)
01/26/2021	<u>1838</u> Notice ( <i>Notice of Settlement</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # <u>1</u> Exhibit A—Settlement Agreement) (Annable, Zachery)
01/26/2021	<u>1839</u> WITHDRAWN at # <u>1858</u> . Notice to take deposition of Frank Waterhouse filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland

	Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Hogewood, A.) Modified on 1/29/2021 (Ecker, C.).
01/26/2021	<u>1840</u> INCORRECT ENTRY: Attorney to refile. Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan) Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Smith, Frances) MODIFIED on 1/27/2021 (Ecker, C.).
01/26/2021	<u>1841</u> Certificate of service re: Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1840</u> Motion to withdraw document <i>Notice of Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> (related document(s) <u>1669</u> Objection to confirmation of plan)). (Smith, Frances)
01/26/2021	<u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. (Hoffman, Juliana)
01/26/2021	<u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)
01/26/2021	<u>1844</u> Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u> ) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice ( <i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1648</u> Notice ( <i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice ( <i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice ( <i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit

	J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)).). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
01/26/2021	<u>1850</u> Hearing held on 1/26/2021. (RE: related document(s) <u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non–Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing, Motion granted. Counsel to upload order.) (Edmond, Michael) (Entered: 01/27/2021)
01/27/2021	<u>1845</u> <i>Withdrawal of Limited Objection of Senior Employees By Frank Waterhouse and Thomas Surgent Only</i> filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (RE: related document(s) <u>1669</u> Objection to confirmation of plan). (Smith, Frances)
01/27/2021	<u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
01/27/2021	<u>1847</u> Notice ( <i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)
01/27/2021	<u>1848</u> Amended Motion to redact/restrict (related document(s): <u>1835</u> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order # <u>2</u> Exhibit PPPP # <u>3</u> Exhibit QQQQ # <u>4</u> Exhibit RRRR # <u>5</u> Exhibit SSSS # <u>6</u> Exhibit TTTT # <u>7</u> Exhibit UUUU # <u>8</u> Exhibit VVVV # <u>9</u> Exhibit WWWW # <u>10</u> Exhibit XXXX # <u>11</u> Exhibit YYYYY # <u>12</u> Exhibit ZZZZ # <u>13</u> Exhibit DDDDDD) (Annable, Zachery)
01/27/2021	<u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non–Insider Employees and Granting Related Relief (related document # <u>1777</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1851</u> Order granting motion to seal documents (related document # <u>1836</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc # <u>1848</u> ) Entered on 1/27/2021. (Okafor, M.)
01/27/2021	<u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. (Hoffman, Juliana)
01/27/2021	<u>1854</u> Certificate of service re: <i>Documents Served on January 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1807</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Debtor's Omnibus Reply to Objections to Confirmation of the Fifth Amended Plan of Reorganization of Highland Capital Management L.P. (with Technical Modifications)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related

document(s)1661 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Party James Dondero., 1662 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by City of Richardson, Allen ISD, City of Allen, Dallas County, Kaufman County., 1666 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Brad Borud, Jack Yang., 1667 Objection to confirmation of plan *with Certificate of Service* (RE: related document(s)1472 Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust., 1668 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor United States (IRS)., 1669 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon. (Attachments: # 1 Exhibit A # 2 Exhibit B), 1670 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund. (Attachments: # 1 Exhibit A), 1673 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC., 1676 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Interested Parties NexBank Title Inc., NexBank Securities Inc., NexBank Capital Inc., NexBank., 1678 Objection to confirmation of plan (RE: related document(s)1472 Chapter 11 plan) filed by Creditor Patrick Daugherty.). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C) (Annable, Zachery) MODIFIED on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1808 Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1472 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1809 Support/supplemental document (*Redline of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., 1811 NOTICE (Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit Q # 2 Exhibit R # 3 Exhibit S # 4 Exhibit T # 5 Exhibit U # 6 Exhibit V # 7 Exhibit W # 8 Exhibit X # 9 Exhibit Y # 10 Exhibit Z # 11 Exhibit AA # 12 Exhibit BB # 13 Exhibit CC # 14 Exhibit DD) (Annable, Zachery) Modified text on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1814 Memorandum of Law in support of confirmation filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Annable, Zachery) Modified on 1/25/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P., 1822 (REDACTED EXHIBITS ADDED 01/27/2021); Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1808 Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 List of 20 Largest Creditors C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M # 14 Exhibit N # 15 Exhibit O # 16 Exhibit P # 17 Exhibit Q # 18 Exhibit R # 19 Exhibit S # 20 Exhibit T # 21 Exhibit U # 22 Exhibit V # 23 List of 20 Largest Creditors W # 24 Exhibit X # 25 Exhibit Y # 26 Exhibit Z # 27 Exhibit AA # 28 Exhibit BB # 29 Exhibit CC # 30 Exhibit DD # 31 Exhibit EE # 32 Exhibit FF # 33 Exhibit GG # 34 Exhibit HH # 35 Exhibit II # 36 Exhibit JJ # 37 Exhibit KK # 38 Exhibit LL # 39 Exhibit MM # 40 Exhibit NN # 41 Exhibit OO # 42 Exhibit PP # 43 Exhibit QQ # 44 Exhibit RR # 45 Exhibit SS # 46 Exhibit TT # 47 Exhibit UU # 48 Exhibit VV # 49 Exhibit WW # 50 Exhibit XX # 51 Exhibit YY # 52 Exhibit ZZ # 53 Exhibit AAA # 54 Exhibit BBB # 55 Exhibit CCC # 56 Exhibit DDD # 57 Exhibit EEE # 58 Exhibit FFF # 59 Exhibit GGG # 60 Exhibit HHH # 61 Exhibit III # 62 Exhibit JJJ # 63 Exhibit KKK # 64 Exhibit LLL # 65 Exhibit MMM # 66 Exhibit NNN # 67 Exhibit OOO # 68 Exhibit PPP # 69 Exhibit QQQ # 70 Exhibit RRR # 71 Exhibit SSS # 72 Exhibit TTT # 73 Exhibit UUU # 74 Exhibit VVV # 75 Exhibit WWW # 76 Exhibit XXX # 77 Exhibit YYY # 78 Exhibit ZZZ # 79 Exhibit AAAA # 80 Exhibit BBBB # 81 Exhibit CCCC # 82 Exhibit DDDD # 83 Exhibit EEEE # 84 Exhibit FFFF # 85 Exhibit GGGG # 86 Exhibit MMMM # 87 Exhibit NNNN # 88 Exhibit OOOO # 89 Exhibit PPPP # 90 Exhibit

	<p>QQQQ # 91 Exhibit RRRR # 92 Exhibit SSSS # 93 Exhibit TTTT # 94 Exhibit UUUU # 95 Exhibit VVVV # 96 Exhibit WWWW # 97 Exhibit XXXX # 98 Exhibit YYYYY # 99 Exhibit ZZZZ # 100 Exhibit AAAAA # 101 Exhibit BBBB # 102 Exhibit CCCC # 103 Exhibit DDDD # 104 Exhibit EEEE # 105 Exhibit FFFF # 106 Exhibit GGGG # 107 Exhibit HHHH # 108 Exhibit IIII # 109 Exhibit JJJJ # 110 Exhibit KKKK # 111 Exhibit LLLL # 112 Exhibit MMMM # 113 Exhibit NNNN # 114 Exhibit OOOO # 115 Exhibit PPPP # 116 Exhibit QQQQ # 117 Exhibit RRRR # 118 Exhibit SSSS # 119 Exhibit TTTT # 120 Exhibit UUUU # 121 Exhibit VVVV # 122 Exhibit WWWW # 123 Exhibit XXXX # 124 Exhibit YYYYY # 125 Exhibit ZZZZ # 126 Exhibit AAAAAA # 127 Exhibit BBBB # 128 Exhibit CCCC # 129 Exhibit DDDDD # 130 Exhibit EEEEE # 131 Exhibit FFFFF # 132 Exhibit GGGG # 133 Exhibit HHHHH # 134 Exhibit IIII # 135 Exhibit JJJJ # 136 Exhibit KKKKK # 137 Exhibit LLLLL # 138 Exhibit MMMMM # 139 Exhibit NNNNN # 140 Exhibit OOOOO # 141 Exhibit PPPPP # 142 Exhibit QQQQQ # 143 Exhibit RRRRR # 144 Exhibit SSSSS # 145 Exhibit TTTTT # 146 Exhibit UUUUU # 147 Exhibit VVVVV # 148 Exhibit WWWWW # 149 Exhibit XXXXX # 150 Exhibit YYYYYY # 151 Exhibit ZZZZZ) (Annable, Zachery) Additional attachment(s) added on 1/27/2021 (Okafor, M.). Modified on 1/27/2021 (Okafor, M.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
01/28/2021	<p><u>1855</u> Notice of Appearance and Request for Notice by Jeff P. Prostok filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Prostok, Jeff)</p>
01/28/2021	<p><u>1856</u> Notice of Appearance and Request for Notice by Suzanne K. Rosen filed by Acis Capital Management GP, LLC, Acis Capital Management, L.P.. (Rosen, Suzanne)</p>
01/28/2021	<p><u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u>, (Annable, Zachery)</p>
01/28/2021	<p><u>1858</u> <i>Withdrawal of Notice of Deposition</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s)<u>1839</u> Notice to take deposition). (Hogewood, A.)</p>
01/28/2021	<p><u>1859</u> <b>SEALED document regarding: PLAN OF REORGANIZATION OF JAMES DONDERO, NEXPOINT ADVISORS, L.P. per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1851</u> Order on motion to seal). (Rukavina, Davor)</p>
01/28/2021	<p><u>1860</u> <b>SEALED document regarding: DISCLOSURE STATEMENT IN SUPPORT OF PLAN OF REORGANIZATION per court order</b> filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1851</u> Order on motion to seal). (Rukavina, Davor)</p>
01/28/2021	<p><u>1861</u> Certificate of service re: <i>Documents Served on or Before January 25, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1824</u> Notice to take deposition of James P. Seery, Jr. filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1827</u> Emergency Motion to continue hearing on (related documents <u>1808</u> Chapter 11 plan) Filed by Debtor Highland Capital Management, L.P. filed by Debtor Highland Capital Management, L.P., <u>1829</u> Notice (<i>Notice of Increase in Hourly Rates for Hayward PLLC (Formerly Hayward &amp; Associates PLLC) Effective as of January 1, 2021</i>) filed by Other Professional Hayward &amp; Associates</p>

	<p>PLLC. filed by Other Professional Hayward &amp; Associates PLLC, <u>1830</u> Order granting motion to continue hearing on (related document <u>1827</u>) (related documents Modified Chapter 11 plan) Confirmation hearing to be held on 2/2/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Entered on 1/25/2021. (Okafor, M.). (Kass, Albert)</p>
01/29/2021	<p><u>1862</u> Transcript regarding Hearing Held 01/26/2021 (257 pages) RE: KERP Motion <u>1777</u>. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 04/29/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1850 Hearing held on 1/26/2021. (RE: related document(s) <u>1777</u> Motion for leave (Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief) filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz and J. Morris for Debtor; M. Clemente for UCC; J. Kane for CLO Holdco; D. Rukavina and L. Hogewood for Advisors and Funds; J. Wilson for J. Dondero. Evidentiary hearing. Motion granted. Counsel to upload order.)). Transcript to be made available to the public on 04/29/2021. (Rehling, Kathy)</p>
01/29/2021	<p><u>1863</u> Amended Witness and Exhibit List of <i>Funds and Advisors</i> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1793</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33 # <u>34</u> Exhibit 34 # <u>35</u> Exhibit 35 # <u>36</u> Exhibit 36 # <u>37</u> Exhibit 37 # <u>38</u> Exhibit 38 # <u>39</u> Exhibit 39 # <u>40</u> Exhibit 40 # <u>41</u> Exhibit 41 # <u>42</u> Exhibit 42 # <u>43</u> Exhibit 43 # <u>44</u> Exhibit 44 # <u>45</u> Exhibit 45 # <u>46</u> Exhibit 46 # <u>47</u> Exhibit 47 # <u>48</u> Exhibit 48 # <u>49</u> Exhibit 49 # <u>50</u> Exhibit 50 # <u>51</u> Exhibit 51 # <u>52</u> Exhibit 52 # <u>53</u> Exhibit 53 # <u>54</u> Exhibit 54 # <u>55</u> Exhibit 55 # <u>56</u> Exhibit 56 # <u>57</u> Exhibit 57 # <u>58</u> Exhibit 58 # <u>59</u> Exhibit 59 # <u>60</u> Exhibit 60 # <u>61</u> Exhibit 61 # <u>62</u> Exhibit 62 # <u>63</u> Exhibit 63 # <u>64</u> Exhibit 64 # <u>65</u> Exhibit 65 # <u>66</u> Exhibit 66 # <u>67</u> Exhibit 67 # <u>68</u> Exhibit 68 # <u>69</u> Exhibit 69 # <u>70</u> Exhibit 70 # <u>71</u> Exhibit 71 # <u>72</u> Exhibit 72 # <u>73</u> Exhibit 73 # <u>74</u> Exhibit 74 # <u>75</u> Exhibit 75 # <u>76</u> Exhibit 76 # <u>77</u> Exhibit 77 # <u>78</u> Exhibit 78 # <u>79</u> Exhibit 79 # <u>80</u> Exhibit 80 # <u>81</u> Exhibit 81 # <u>82</u> Exhibit 82) (Hogewood, A.)</p>
01/29/2021	<p><u>1864</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1865</u> Notice (<i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i>) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). (Annable, Zachery)</p>
01/29/2021	<p><u>1866</u> Amended Witness and Exhibit List (<i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List</p>

	(witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit AAAAAAA # <u>3</u> Exhibit BBBB BBB # <u>4</u> Exhibit CCCCCC # <u>5</u> Exhibit DDDDDDD # <u>6</u> Exhibit EEEEEEE) (Annable, Zachery)
01/29/2021	<u>1867</u> Certificate of service re: <i>1) Notice of Settlement; 2) Fourteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 Through December 31, 2020; and 3) Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1838</u> Notice ( <i>Notice of Settlement</i> ) filed by Debtor Highland Capital Management, L.P.. (Attachments: # 1 Exhibit A—Settlement Agreement) filed by Debtor Highland Capital Management, L.P., <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses: \$5,403.36. Filed by Attorney Juliana Hoffman Objections due by 2/16/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1843</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/01/2021	Adversary case 3:20-ap-3128 closed (Ecker, C.)
02/01/2021	<u>1868</u> Supplemental Objection to confirmation of plan <i>with Certificate of Service</i> (RE: related document(s) <u>1472</u> Chapter 11 plan, <u>1808</u> Chapter 11 plan) filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas)
02/01/2021	<u>1869</u> Certificate of service re: Monthly Staffing Reports by Development Specialists, Inc. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1864</u> Notice (generic), <u>1865</u> Notice (generic)). (Annable, Zachery)
02/01/2021	<u>1870</u> Notice of appeal <i>and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).
02/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal.ntcapl] ( 298.00). Receipt number 28458158, amount \$ 298.00 (re: Doc# <u>1870</u> ). (U.S. Treasury)
02/01/2021	<u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) ( <i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/01/2021	<u>1872</u> <b>SEALED document regarding: Exhibit 76 per court order</b> filed by Interested Parties Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1831</u> Order on motion to seal). (Attachments: # <u>1</u> Exhibit 77 # <u>2</u> Exhibit 78 # <u>3</u> Exhibit 79 # <u>4</u> Exhibit 80 # <u>5</u> Exhibit 81 # <u>6</u> Exhibit 82) (Vasek, Julian)
02/01/2021	<u>1873</u> Notice ( <i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's</i>

	<p><i>Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). (Annable, Zachery)</p>
02/01/2021	<p><u>1874</u> Amended Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)<u>1795</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Dondero Ex. 1 # <u>2</u> Dondero Ex. 2 # <u>3</u> Dondero Ex. 3 # <u>4</u> Dondero Ex. 4 # <u>5</u> Dondero Ex. 5 # <u>6</u> Dondero Ex. 6 # <u>7</u> Dondero Ex. 7 # <u>8</u> Dondero Ex. 8 # <u>9</u> Dondero Ex. 9 # <u>10</u> Dondero Ex. 10 # <u>11</u> Dondero Ex. 11 # <u>12</u> Dondero Ex. 12 # <u>13</u> Dondero Ex. 13 # <u>14</u> Dondero Ex. 14 # <u>15</u> Dondero Ex. 15 # <u>16</u> Dondero Ex. 16 # <u>17</u> Dondero Ex. 17 # <u>18</u> Dondero Ex. 18 # <u>19</u> Dondero Ex. 19 # <u>20</u> Dondero Ex. 20) (Assink, Bryan)</p>
02/01/2021	<p><u>1875</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1808</u> Chapter 11 plan). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit DD # <u>4</u> Exhibit EE # <u>5</u> Exhibit FF) (Annable, Zachery)</p>
02/01/2021	<p><u>1876</u> Withdrawal (<i>Notice of Withdrawal of Document</i>) filed by Interested Party James Dondero (RE: related document(s)<u>1784</u> Objection). (Assink, Bryan)</p>
02/01/2021	<p><u>1877</u> Amended Witness and Exhibit List (<i>Debtor's Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit SSSSS # <u>2</u> Exhibit DDDDDD # <u>3</u> Exhibit FFFFFFFF # <u>4</u> Exhibit GGGGGG # <u>5</u> Exhibit HHHHHH # <u>6</u> Exhibit IIIIII # <u>7</u> Exhibit JJJJJJ # <u>8</u> Exhibit KKKKKK # <u>9</u> Exhibit LLLLLL # <u>10</u> Exhibit MMMMMM # <u>11</u> Exhibit NNNNNN # <u>12</u> Exhibit OOOOOO # <u>13</u> Exhibit PPPPPP # <u>14</u> Exhibit QQQQQQ) (Annable, Zachery)</p>
02/01/2021	<p><u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # <u>1</u> Proposed Order Exhibit A # <u>2</u> Exhibit Exhibit B) (Montgomery, Paige)</p>
02/01/2021	<p><u>1879</u> Certificate of service re: <i>Documents Served on January 27, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1846</u> Notice to take deposition of Isaac Leventon filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1847</u> Notice (<i>Fourth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1849</u> Order Granting Motion of the Debtor for Entry of an Order Authorizing the Debtor to Implement a Key Employee Retention Plan with Non-Insider Employees and Granting Related Relief (related document <u>1777</u>) Entered on 1/27/2021. (Okafor, M.), <u>1852</u> Order Granting Amended Emergency Motion to Redact Certain Exhibits Attached to Debtors Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021 (Related Doc <u>1848</u>) Entered on 1/27/2021. (Okafor, M.)). (Kass, Albert)</p>
02/01/2021	

	<u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
02/01/2021	<u>1881</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1655</u> Application for compensation <i>Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 9/1/2020 to 11/30/2020, Fee: \$710,280.45, Expenses: \$1,479.47.). (Hoffman, Juliana)
02/02/2021	<u>1882</u> Clerk's correspondence requesting File an amended appeal from attorney for appellant. (RE: related document(s) <u>1870</u> Notice of appeal and <i>Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust. Appellant Designation due by 02/16/2021.) Responses due by 2/5/2021. (Blanco, J.)
02/02/2021	<u>1884</u> Request for transcript regarding a hearing held on 2/2/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/02/2021	<u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Edmond, Michael)
02/02/2021	<u>1886</u> Certificate of service re: <i>Documents Served on or Before January 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1,620,489.60, Expenses: \$8,974.00. Filed by Attorney Juliana Hoffman Objections due by 2/17/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1857</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A # 2 Proposed Order)). Hearing to be held on 2/2/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1624</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/02/2021	<u>1921</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1624</u> Motion to assume executory contract or unexpired lease Filed by Debtor Highland Capital Management, L.P., (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Matter not taken up in light of all-day confirmation hearing.) (Edmond, Michael) (Entered: 02/09/2021)
02/02/2021	<u>1922</u> Hearing held on 2/2/2021. (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank; M. Held for Crescent landlord. L. Lambert for UST. Evidentiary hearing. Hearing recessed and will resume on 2/3/21.) (Edmond, Michael) (Entered: 02/09/2021)
02/03/2021	<u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

02/03/2021	<u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (Drawhorn, Lauren)
02/03/2021	<u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal). (Draper, Douglas)
02/03/2021	<u>1890</u> Request for transcript regarding a hearing held on 2/3/2021. The requested turn-around time is hourly. (Edmond, Michael)
02/03/2021	<u>1891</u> Certificate of service re: <i>Supplemental Certification of Patrick M. Leathem with Respect to the Tabulation of Votes on the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1887</u> Chapter 11 ballot summary filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	<u>1892</u> Certificate of service re: 1) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 Through November 30, 2020</i> ; 2) <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 Through December 31, 2020</i> ; and 3) <i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1864</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from November 1, 2020 through November 30, 2020</i> ) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1865</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from December 1, 2020 through December 31, 2020</i> ) filed by Other Professional Development Specialists, Inc. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered on 7/16/2020. (Ecker, C.)). filed by Other Professional Development Specialists, Inc., <u>1866</u> Amended Witness and Exhibit List ( <i>Debtor's Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1822</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit AAAAAAA # 3 Exhibit BBBB BBB # 4 Exhibit CCCCCC # 5 Exhibit DDDDDDD # 6 Exhibit EEEEEEE) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/03/2021	<u>1893</u> Certificate of service re: <i>Documents Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1871</u> Reply to (related document(s): <u>1784</u> Objection filed by Interested Party James Dondero) ( <i>Debtor's Reply to James Dondero's Objection to Debtor's Proposed Assumption of Executory Contracts and Cure Amounts Proposed in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1873</u> Notice ( <i>Fifth Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1606</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I—Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J—Amended Form of Senior Employee Stipulation # 3 Exhibit K—Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1875</u> Support/supplemental document ( <i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1808</u> Chapter 11 plan). (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit DD # 4 Exhibit EE # 5 Exhibit FF) filed by Debtor Highland Capital Management, L.P., <u>1877</u> Amended Witness and Exhibit List ( <i>Debtor's</i>

	<p><i>Second Amended Witness and Exhibit List with Respect to Confirmation Hearing to Be Held on February 2, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1822</u> List (witness/exhibit/generic), <u>1866</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit SSSSS # 2 Exhibit DDDDDD # 3 Exhibit FFFFFFFF # 4 Exhibit GGGGGGG # 5 Exhibit HHHHHHH # 6 Exhibit IIIIII # 7 Exhibit JJJJJJ # 8 Exhibit KKKKKKK # 9 Exhibit LLLLLLL # 10 Exhibit MMMMMMM # 11 Exhibit NNNNNNN # 12 Exhibit OOOOOOO # 13 Exhibit PPPPPP # 14 Exhibit QQQQQQ) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/03/2021	<p>1902 Bench Ruling set (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u>, (Ellison, T.) (Entered: 02/05/2021)</p>
02/03/2021	<p><u>1915</u> Court admitted exhibits date of hearing February 3, 2021 (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) (COURT ADMITTED ALL THE DEBTOR'S EXHIBIT'S THAT APPEAR AT DOC. #1822, #1866 &amp; #1877 &amp; DONDERO'S EXHIBITS #6 THROUGH #12, #15, 16 &amp; #17; &amp; HIGHLAND CAPTIAL MGMT. FUNDING EXHIBIT #2 AT DOC. #1863 AND JUDGE JERNIGAN TOOK JUDICIAL NOTICE OF THE DEBTOR'S SCHEDULES) (Edmond, Michael) (Entered: 02/08/2021)</p>
02/03/2021	<p>1923 Hearing held on 2/3/2021. (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan) (Appearances: J. Pomeranz, J. Morris, I. Kharesh, and G. Demo for Debtor; M. Clemente for UCC; T. Mascherin for Redeemer Committee; R. Patel for Acis; A. Clubock for UBS; J. Kathman for P. Daugherty; E. Weisgerber for HarbourVest; C. Taylor for J. Dondero; D. Rukavina and A. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Drawhorn for NexBank and NexPoint; L. Lambert for UST. Evidentiary hearing. Court took matter under advisement after conclusion of evidence and arguments. Bench ruling scheduled for 2/8/21 at 9:00 am.) (Edmond, Michael) (Entered: 02/09/2021)</p>
02/04/2021	<p><u>1894</u> Transcript regarding Hearing Held 02/02/2021 (295 pages) RE: Confirmation Hearing, Day One (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/5/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1885 Hearing continued (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/5/2021. (Rehling, Kathy)</p>
02/04/2021	<p><u>1895</u> Amended Witness and Exhibit List (<i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1877</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit PPPPPP # <u>2</u> Exhibit RRRRRRR # <u>3</u> Exhibit SSSSSS # <u>4</u> Exhibit TTTTTTT # <u>5</u> Exhibit UUUUUUU) (Annable, Zachery)</p>
02/04/2021	<p><u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P.. filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). (Hayward, Melissa)</p>
02/05/2021	<p><u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>

02/05/2021	<u>1899</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-CV-00261-L (Lindsay). (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. (Draper, Douglas). Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.), <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.)
02/05/2021	<u>1900</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1889</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1870</u> Notice of appeal).) (Blanco, J.) Additional attachment(s) added on 2/5/2021 (Blanco, J.).
02/05/2021	<u>1901</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1870</u> Notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust. Related document(s) <u>1788</u> Order on motion to compromise controversy. Modified LINKAGE on 2/4/2021 (Blanco, J.).) (Blanco, J.)
02/05/2021	<u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s) <u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s) <u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)
02/05/2021	<u>1905</u> Transcript regarding Hearing Held 02/03/2021 (257 pages) RE: Confirmation Hearing, Day Two (#1808); Motion to Assume (#1624). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/6/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) <u>1885</u> Hearing continued (RE: related document(s) <u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Chapter 11 plan).) Continued Confirmation hearing to be held on 2/3/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm.). Transcript to be made available to the public on 05/6/2021. (Rehling, Kathy)
02/05/2021	<u>1906</u> Certificate of service re: <i>Official Committee of Unsecured Creditors' Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B) filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1907</u> Certificate of service re: <i>Response of the Official Committee of Unsecured Creditors to Supplemental Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)</i> Filed by the Dugaboy Investment Trust and Get Good Trust Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1880</u> Response opposed to (related document(s): <u>1868</u> Objection to confirmation of plan filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/05/2021	<u>1908</u> Certificate of service re: <i>Documents Served on February 4, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1895</u> Amended Witness and

	<p>Exhibit List (<i>Debtor's Third Amended Witness and Exhibit List with Respect to Confirmation Hearing Held on February 3, 2021</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1877</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit PPPPPP # 2 Exhibit RRRRRR # 3 Exhibit SSSSSS # 4 Exhibit TTTTTT # 5 Exhibit UUUUUU) filed by Debtor Highland Capital Management, L.P., <u>1896</u> Stipulation by Highland Capital Management, L.P. and Crescent TC Investors, L.P., filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1623</u> Motion to extend time to assume unexpired nonresidential real property lease). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
02/05/2021	<p><u>1909</u> Certificate of service re: (<i>Supplemental</i>) <i>Solicitation Materials Served on February 1, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1630</u> Certificate of service re: <i>Solicitation Materials Served on or Before December 2, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan). filed by Debtor Highland Capital Management, L.P., <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>945</u> Disclosure statement, <u>1080</u> Disclosure statement, <u>1289</u> Disclosure statement, <u>1384</u> Disclosure statement, <u>1453</u> Disclosure statement). filed by Debtor Highland Capital Management, L.P., <u>1476</u> Order approving disclosure statement and setting hearing on confirmation of plan (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P. and <u>1473</u> Amended disclosure statement filed by Debtor Highland Capital Management, L.P. ). Confirmation hearing to be held on 1/13/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. Last day to Object to Confirmation 1/5/2021. Ballots due 1/5/2021. Entered on 11/24/2020 (Okafor, M.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
02/06/2021	<p><u>1910</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). Appellee designation due by 02/22/2021. (Draper, Douglas)</p>
02/06/2021	<p><u>1911</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1901</u> Notice regarding the record for a bankruptcy appeal, <u>1910</u> Appellant designation). (Draper, Douglas)</p>
02/08/2021	<p><u>1912</u> Clerk's correspondence requesting Amended designation from attorney for appellant. (RE: related document(s)<u>1910</u> Appellant designation of contents for inclusion in record on appeal) Responses due by 2/10/2021. (Blanco, J.)</p>
02/08/2021	<p><u>1913</u> Request for transcript (ruling only) regarding a hearing held on 2/8/2021. The requested turn-around time is hourly. (Edmond, Michael)</p>
02/08/2021	<p><u>1914</u> Motion for leave (<i>Motion for Status Conference</i>) Filed by Interested Party James Dondero (Attachments: # <u>1</u> Proposed Order) (Assink, Bryan)</p>
02/08/2021	<p>1924 Hearing held on 2/8/2021. (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Appearances: J. Pomeranz; M. Clemente for UCC; M. Lynn, J. Bonds, and B. Assink for J. Dondero; D. Rukavina and L. Hogewood for Advisors and Funds; D. Draper for Dugaboy and Get Good Trusts; L. Lambert for UST (numerous others; full roll call not taken). Court read bench ruling approving plan. Counsel to incorporate courts bench ruling into their own set of FOFs, COLS and Order to be submitted.) (Edmond, Michael) (Entered: 02/09/2021)</p>
02/09/2021	

	<p><u>1916</u> Notice of hearing (<i>Status Conference</i>) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/22/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. (Attachments: # <u>1</u> Service List) (Vasek, Julian)</p>
02/09/2021	<p><u>1917</u> Transcript regarding Hearing Held 02/08/2021 (51 pages) RE: Bench Ruling. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/10/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 1902 Bench Ruling set (RE: related document(s)<u>1808</u> Modified chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan).) Hearing to be held on 2/8/2021 at 09:00 AM Dallas Judge Jernigan Ctrm for <u>1808</u>, (Ellison, T.)). Transcript to be made available to the public on 05/10/2021. (Rehling, Kathy)</p>
02/09/2021	<p><u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)</p>
02/09/2021	<p><u>1919</u> Notice (<i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Annable, Zachery)</p>
02/09/2021	<p><u>1920</u> Certificate of service re: 1) Debtors Notice of Rule 30(b)(6) Deposition to NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC; 2) Order Approving Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation; and 3) Order Approving Second Stipulation Extending Deadline to Assume Lease and Setting Motion to Assume for Hearing at Confirmation Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1898</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1903</u> Order approving stipulation extending deadline to assume lease and setting motion to assume for hearing oat confirmation, which is currently set for February 2, 2021 at 9:30 a.m (RE: related document(s)<u>1843</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.), <u>1904</u> Order approving second stipulation extending deadline to assume lease and setting motion to assume for hearing at confirmation (RE: related document(s)<u>1896</u> Stipulation filed by Debtor Highland Capital Management, L.P.). Entered on 2/5/2021 (Okafor, M.)). (Kass, Albert)</p>
02/09/2021	<p><u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 3/2/2021. (Hesse, Gregory)</p>
02/10/2021	<p><u>1926</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1771</u> Application for compensation <i>Fifteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from December 1, 2020 through December 31, 2020</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 12/1/2020 to). (Pomerantz, Jeffrey)</p>

02/10/2021	<u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. (Hoffman, Juliana)
02/10/2021	<u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation). (Draper, Douglas)
02/11/2021	<u>1929</u> Order denying motion for status conference (related document # <u>1914</u> ) Entered on 2/11/2021. (Ecker, C.)
02/11/2021	<u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # <u>1</u> Evidence of Transfer) (Tanabe, Keshia)
02/12/2021	<u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document # <u>1624</u> ) Entered on 2/12/2021. (Okafor, M.)
02/12/2021	<u>1932</u> Certificate of service re: <i>1) Debtors Notice of Deposition to James Dondero in Connection with Debtors Objection to Proof of Claim Filed by HCRE Partners, LLC; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1918</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1919</u> Notice ( <i>Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to December 31, 2020</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # <u>1</u> Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/13/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28493529, amount \$ 26.00 (re: Doc# <u>1930</u> ). (U.S. Treasury)
02/16/2021	<u>1933</u> Agreed Motion to continue hearing on (related documents <u>1826</u> Application for administrative expenses) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Hogewood, A.)
02/16/2021	<u>1934</u> Certificate of service re: <i>Fourteenth Monthly Application of FTI Consulting, Inc. for Allowance of Compensation and Reimbursement of Expenses for the Period from December 1, 2020 to and Including December 31, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297.76, Expenses: \$0. Filed by Attorney Juliana Hoffman Objections due by 3/3/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
02/17/2021	<u>1935</u> Adversary case 21-03010. Complaint by Highland Capital Management, L.P. against Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. Fee Amount \$350 (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Adversary Cover

	Sheet). Nature(s) of suit: 91 (Declaratory judgment). 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). 72 (Injunctive relief – other). (Annable, Zachery)
02/17/2021	<u>1936</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1643</u> Agreed Motion to substitute attorney David Neier with Frances A. Smith, Michelle Hartmann, and Debra A. Dandeneau Filed by Creditor Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon (Attachments: # 1 Proposed Order)) Responses due by 2/24/2021. (Ecker, C.)
02/17/2021	<u>1937</u> Order granting motion to continue hearing on (related document <u>1933</u> ) (related documents Application for administrative expenses) The Status Conference is hereby continued from March 22, 2021 at 9:30 a.m. to to such date and time on or after March 29, 2021 that is determined by the Court. (Okafor, M.) MODIFIED to correct hearing setting on 2/17/2021 (Okafor, M.).
02/18/2021	<u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). (Annable, Zachery)
02/18/2021	<u>1939</u> Certificate of service re: <i>Agreed Order on Motion to Assume Nonresidential Real Property Lease with Crescent TC Investors, L.P.</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1931</u> Agreed Order granting motion to assume nonresidential real property lease with Crescent TC Investors, L.P. (related document <u>1624</u> ) Entered on 2/12/2021. (Okafor, M.)). (Kass, Albert)
02/19/2021	<u>1940</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1842</u> Application for compensation <i>Fourteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 12/1/2020 to 12/31/2020, Fee: \$416,359.08, Expenses:). (Hoffman, Juliana)
02/22/2021	<u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). (Annable, Zachery)
02/22/2021	<u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). (Annable, Zachery)
02/22/2021	<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)
02/22/2021	<u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. (Pomerantz, Jeffrey)
02/23/2021	<u>1945</u> Certificate of service re: <i>Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1938</u> Stipulation by Highland Capital Management, L.P. and The Dugaboy Investment Trust and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1745</u> Motion to appoint trustee <i>Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c)</i> ). filed by Debtor Highland Capital

	Management, L.P.). (Kass, Albert)
02/24/2021	<u>1946</u> Clerk's correspondence requesting from attorney for appellant. (RE: related document(s) <u>1928</u> Amended appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1910</u> Appellant designation).) Responses due by 3/10/2021. (Blanco, J.)
02/24/2021	<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , (Montgomery, Paige)
02/24/2021	<u>1948</u> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)). (Annable, Zachery)
02/24/2021	<u>1949</u> Debtor-in-possession monthly operating report for filing period December 1, 2020 to December 31, 2020 filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
02/24/2021	<u>1950</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.)) No. of Notices: 8. Notice Date 02/24/2021. (Admin.)
02/25/2021	<u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). (Annable, Zachery)
02/25/2021	Receipt of Registry Funds – \$43976.75 by SD. Receipt Number 338805. (admin)
02/25/2021	Receipt of Registry Funds – \$3022.74 by SD. Receipt Number 338806. (admin)
02/25/2021	<u>1952</u> Certificate of service re: <i>Documents Served on February 22, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1941</u> Certificate of Counsel filed by Debtor Highland Capital Management, L.P. (RE: related document(s) 1924 Hearing held). filed by Debtor Highland Capital Management, L.P., <u>1942</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1870</u> Notice of appeal, <u>1889</u> Amended notice of appeal, <u>1899</u> Notice of docketing notice of appeal/record, <u>1900</u> Certificate of mailing regarding appeal, <u>1901</u> Notice regarding the record for a bankruptcy appeal). filed by Debtor Highland Capital Management, L.P., <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.). Entered on 2/22/2021 (Okafor, M.), <u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/31/2021, Fee: \$2,557,604.00, Expenses: \$32,906.65. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 3/15/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/26/2021	<u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann

	for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document # <u>1643</u> ) Entered on 2/26/2021. (Okafor, M.)
02/26/2021	<u>1954</u> Certificate of service re: <i>1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u> , filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> Notice ( <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s) <u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
02/28/2021	<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
02/28/2021	<u>1956</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1953</u> Agreed Order granting motion to substitute attorney adding Frances Anne Smith for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Michelle Hartmann for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, Debra A. Dandeneau for Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon, terminating David Neier. (related document <u>1643</u> ) Entered on 2/26/2021. (Okafor, M.)) No. of Notices: 3. Notice Date 02/28/2021. (Admin.)
03/01/2021	<u>1957</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/15/2021. (Attachments: # <u>1</u> Exhibit A)(Rukavina, Davor)
03/01/2021	Receipt of filing fee for Notice of appeal(19–34054–sgj11) [appeal,ntcap] ( 298.00). Receipt number 28523950, amount \$ 298.00 (re: Doc# <u>1957</u> ). (U.S. Treasury)
03/01/2021	<u>1958</u> Motion for expedited hearing(related documents <u>1955</u> Motion to stay pending appeal) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Rukavina, Davor)
03/01/2021	<u>1959</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Action Shred Of Texas (Amount \$3,825.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. (Knox, Victor)
03/01/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19–34054–sgj11) [claims,trclmagt] ( 26.00). Receipt number 28524853, amount \$ 26.00 (re: Doc# <u>1959</u> ). (U.S. Treasury)
03/01/2021	<u>1960</u> Order Denying Motion to Appoint Examiner Pursuant to 11 U.S.C. § 1104(c) (related document # <u>1745</u> ) Entered on 3/1/2021. (Okafor, M.)
03/01/2021	

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	<u>1961</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1853</u> Application for compensation <i>Sidley Austin LLP's Fourth Interim Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 9/1/2020 to 11/30/2020, Fee: \$1.). (Hoffman, Juliana)
03/02/2021	<u>1962</u> Certificate of service re: <i>Appellees Amended Supplemental Designation of Record on Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1951</u> Amended appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1942</u> Appellee designation). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/02/2021	<u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. (Hoffman, Juliana)
03/03/2021	<u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/03/2021	<u>1966</u> Notice of appeal . Fee Amount \$298 filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/17/2021. (Hogewood, A.)
03/03/2021	<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.)
03/03/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28532838, amount \$ 298.00 (re: Doc# <u>1966</u> ). (U.S. Treasury)
03/03/2021	<u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. (Hoffman, Juliana)
03/03/2021	<u>1969</u> Objection to (related document(s): <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. filed by Creditor Committee Official Committee of Unsecured Creditors) filed by Interested Party James Dondero. (Assink, Bryan)
03/04/2021	<u>1970</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero. Appellant Designation due by 03/18/2021. (Attachments: # <u>1</u> Exhibit)(Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537086, amount \$ 298.00 (re: Doc# <u>1970</u> ). (U.S. Treasury)
03/04/2021	<u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit Opinion) (Draper, Douglas)

03/04/2021	<u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . Fee Amount \$298 filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). Appellant Designation due by 03/18/2021. (Draper, Douglas)
03/04/2021	<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Taylor, Clay)
03/04/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcapl] ( 298.00). Receipt number 28537308, amount \$ 298.00 (re: Doc# <u>1972</u> ). (U.S. Treasury)
03/04/2021	<u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery)
03/05/2021	<u>1976</u> Certificate of No Objection Regarding First Monthly Fee Application filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s) <u>1925</u> Application for compensation <i>First Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 11/1/2020 to 12/31/2020, Fee: \$73121.04, Expenses: \$10.35.). (Hesse, Gregory)
03/05/2021	<u>1977</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 12 Number of appellee volumes: 13. Civil Case Number: 3:20-CV-03390-X (RE: related document(s) <u>1347</u> Notice of appeal ) (Blanco, J.)
03/05/2021	<u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20-CV-03390-X (RE: related document(s) <u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Blanco, J.)
03/05/2021	<u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)
03/05/2021	<u>1980</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1927</u> Application for compensation <i>Fourteenth Application of FTI Consulting, Inc. for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Financial Advisor, Period: 12/1/2020 to 12/31/2020, Fee: \$239,297). (Hoffman, Juliana)
03/07/2021	<u>1981</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)) No. of Notices: 2. Notice Date 03/07/2021. (Admin.)

03/08/2021	<u>1986</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1987</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1988</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/08/2021	<u>1990</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1991</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/08/2021	<u>1992</u> Certificate of mailing regarding appeal (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # <u>1</u> Service List) (Whitaker, Sheniqua)
03/08/2021	<u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/08/2021	<u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , (Annable, Zachery)
03/08/2021	<u>1995</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc..

	(Drawhorn, Lauren)
03/08/2021	<u>1996</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/08/2021	<u>1997</u> Certificate of service re: <i>Documents Served on or Before March 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,724.88, Expenses: \$6,612.00. Filed by Attorney Juliana Hoffman Objections due by 3/23/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1964</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1965</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 3/24/2021. filed by Financial Advisor FTI Consulting, Inc.). (Kass, Albert)
03/08/2021	<u>1998</u> Certificate of service re: 1) [ <i>Customized for Rule 3001(e)(1) or 3001(e)(3)</i> ] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1377</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 94, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1378</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Claim No. 97, Amount \$268,095.08) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1379</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: Debevoise & Plimpton LLP (Amount \$20,658.79) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC, <u>1401</u> Assignment/Transfer of Claim. Fee Amount \$25. Transfer Agreement 3001 (e) 2 Transferors: DLA Piper LLP (US) (Amount \$1,318,730.36) To Contrarian Funds LLC. Filed by Creditor Contrarian Funds LLC. filed by Creditor Contrarian Funds LLC). (Kass, Albert)
03/08/2021	<u>1999</u> Certificate of service re: 1) [ <i>Customized for Rule 3001(e)(1) or 3001(e)(3)</i> ] Notice of Transfer of Claim Pursuant to F.R.B.P 3001(e)(1) or 3001(e)(3); and 2) [ <i>Customized for Rule 3001(e)(2) or 3001(e)(4)</i> ] Notice of Transfer of Claim Pursuant to F.R.B.P. 3001(e)(2) or 3001(e)(4) Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1500</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Katten Muchin Rosenman LLP (Claim No. 26, Amount \$16,695.00) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP, <u>1508</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Daniel Sheehan & Associates, PLLC (Claim No. 47, Amount \$32,433.75) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1509</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Vengroff Williams Inc (American Arbitration Assoc (Claim No. 33, Amount \$12,911.80) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed by Creditor Fair Harbor Capital, LLC, <u>1512</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Foley Gardere, Foley Lardner LLP To Hain Capital Investors Master Fund, Ltd. Filed by Creditor Hain Capital Group, LLC. filed by Creditor Hain Capital Group, LLC, <u>1582</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: CVE Technologies Group Inc. (Amount \$1,500.00) To Fair Harbor Capital, LLC. Filed by Creditor Fair Harbor Capital, LLC. filed

	by Creditor Fair Harbor Capital, LLC, <u>1591</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bates White LLC (Amount \$90,855.70) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1658</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: ACA Compliance Group (Amount \$26,324.25) To Argo Partners. Filed by Creditor Argo Partners. filed by Creditor Argo Partners, <u>1930</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stanton Law Firm PC (Claim No. 163, Amount \$88,133.99) To Cedar Glade LP. Filed by Creditor Cedar Glade LP. (Attachments: # 1 Evidence of Transfer) filed by Creditor Cedar Glade LP). (Kass, Albert)
03/09/2021	<u>2000</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00538-N. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A)) (Whitaker, Sheniqua)
03/09/2021	<u>2001</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00539-N. (RE: related document(s) <u>1966</u> Notice of appeal . filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Hogewood, A.)) (Whitaker, Sheniqua)
03/09/2021	<u>2002</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00546-L. (RE: related document(s) <u>1970</u> Notice of appeal . filed by Interested Party James Dondero. (Attachments: # 1 Exhibit)) (Whitaker, Sheniqua)
03/09/2021	<u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2004</u> Application for compensation ( <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2005</u> Application for compensation ( <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i> ) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP (Annable, Zachery)
03/09/2021	<u>2006</u> Certificate of service re: <i>Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1974</u> Stipulation by Highland Capital Management, L.P. and the Official Committee of Unsecured Creditors; Highland Capital Management Fund Advisors, L.P.; NexPoint Advisors, L.P.; Highland Income Fund; NexPoint Strategic Opportunities Fund; Highland Global Allocation Fund; NexPoint Capital, Inc.; James Dondero; The Dugaboy Investment Trust; and Get Good Trust. filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/10/2021	<u>2007</u> Notice ( <i>Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u> ) Entered

	on 7/16/2020. (Ecker, C.)). (Annable, Zachery)
03/10/2021	<u>2008</u> Notice of docketing notice of appeal. Civil Action Number: 3:21-cv-00550-L. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Whitaker, Sheniqua)
03/10/2021	<u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/10/2021	<u>2011</u> Certificate of service re: <i>Order Approving Stipulation Regarding Briefing and Hearing Schedule</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1979</u> Order approving stipulation regarding briefing (Re: related document(s) <u>1974</u> Stipulation) and setting hearing (RE: related document(s) <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund). Hearing to be held on 3/19/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1955</u> and for <u>1967</u> , Entered on 3/5/2021 (Okafor, M.)). (Kass, Albert)
03/10/2021	<u>2012</u> BNC certificate of mailing. (RE: related document(s) <u>1989</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1957</u> Notice of appeal . filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan). (Attachments: # 1 Exhibit A))) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/10/2021	<u>2013</u> BNC certificate of mailing. (RE: related document(s) <u>1993</u> Notice regarding the record for a bankruptcy appeal to the U.S. District Court. (RE: related document(s) <u>1972</u> Notice of appeal <i>Notice of Appeal and Statement of Election</i> . filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1943</u> Order confirming chapter 11 plan).) No. of Notices: 1. Notice Date 03/10/2021. (Admin.)
03/11/2021	<u>2014</u> Amended notice of appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1972</u> Notice of appeal). (Draper, Douglas)
03/11/2021	<u>2015</u> Statement of issues on appeal, filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). (Rukavina, Davor)
03/11/2021	<u>2016</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>1957</u> Notice of appeal). Appellee designation due by 03/25/2021. (Rukavina, Davor)
03/11/2021	<u>2017</u> Certificate of service re: <i>Notice of Hearing</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1994</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related

	documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).). Hearing to be held on 3/19/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1967</u> and for <u>1973</u> and for <u>1955</u> and for <u>1971</u> , filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/12/2021	<u>2018</u> Transmittal of record on appeal to U.S. District Court . Complete record on appeal . ,Transmitted: Volume 1, Mini Record. Number of appellant volumes: 6 Number of appellee volumes: 1. Civil Case Number: 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)
03/12/2021	<u>2021</u> Notice of transmittal 20-CV-03408-G 13 SEALED DOCUMENTS (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/12/2021	<u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021 (Rielly, Bill).
03/12/2021	<u>2023</u> Joinder by <i>the Official Committee of Unsecured Creditors</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2022</u> Response). (Hoffman, Juliana)
03/12/2021	<u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	<u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54. Filed by Spec. Counsel Hunton Andrews Kurth LLP Objections due by 4/2/2021. (Hesse, Gregory)
03/12/2021	<u>2026</u> Certificate of service re: 1) <i>First Combined Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 Through July 31, 2020</i> ; 2) <i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 Through August 31, 2020</i> ; and 3) <i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 Through September 30, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2003</u> Application for compensation ( <i>First Combined Monthly Fee Statement of Deloitte Tax LLP</i>

	<p><i>for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from October 16, 2019 through July 31, 2020) for Deloitte Tax LLP, Other Professional, Period: 10/16/2019 to 7/31/2020, Fee: \$87,972.80, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2004</u> Application for compensation (<i>Second Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from August 1, 2020 through August 31, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 8/1/2020 to 8/31/2020, Fee: \$91,353.40, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP, <u>2005</u> Application for compensation (<i>Third Monthly Fee Statement of Deloitte Tax LLP for Compensation for Services Rendered as Tax Services Provider to the Debtor for the Period from September 1, 2020 through September 30, 2020</i>) for Deloitte Tax LLP, Other Professional, Period: 9/1/2020 to 9/30/2020, Fee: \$78,594.30, Expenses: \$0.00. Filed by Other Professional Deloitte Tax LLP filed by Other Professional Deloitte Tax LLP). (Kass, Albert)</i></p>
03/12/2021	<p><u>2027</u> Certificate of service re: (<i>Supplemental</i>) <i>Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P., <u>1954</u> Certificate of service re: <i>1) Notice of Hearing on Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation; and 2) Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1947</u> Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 3/22/2021 at 01:30 PM Dallas Judge Jernigan Ctrm for <u>1878</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>1948</u> <i>Notice (Notice of (I) Confirmation Date and (II) Bar Date for Filing Rejection Claims)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1943</u> Order confirming the fifth amended chapter 11 plan, as modified and granting related relief (RE: related document(s)<u>1472</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P., <u>1808</u> Chapter 11 plan filed by Debtor Highland Capital Management, L.P.)). Entered on 2/22/2021 (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.)). filed by Claims Agent Kurtzman Carson Consultants LLC). (Kass, Albert)</p>
03/12/2021	<p><u>2028</u> Certificate of service re: <i>1) Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021; and 2) Notice of Status Conference</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2007</u> <i>Notice (Notice of Filing of Monthly Staffing Report by Development Specialists, Inc. for the Period from January 1, 2021 through January 31, 2021)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>853</u> Order granting application to employ Development Specialists, Inc. as Other Professional (related document <u>775</u>) Entered on 7/16/2020. (Ecker, C.)). filed by Debtor Highland Capital Management, L.P., <u>2009</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 3/29/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a>. filed by Debtor Highland Capital Management, L.P.)). (Kass, Albert)</p>
03/15/2021	<p><u>2030</u> Debtor-in-possession monthly operating report for filing period January 1, 2021 to January 31, 2021 filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)</p>

03/15/2021	<u>2032</u> Notice of transmittal 3:20-CV-03390-X. CLERKS OFFICE OVERLOOKED SECOND APPELLEE. AMENDED MINI RECORD TO INCLUDE SECOND APPELLEE INDEX. ATTACHED ALSO: APPELLEE VOL. 27 (RE: related document(s) <u>1978</u> Notice of docketing COMPLETE record on appeal. 3:20-CV-03390-X (RE: related document(s) <u>1347</u> Notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>1302</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/16/2021	<u>2033</u> Motion for Certification to Court of Appeals ( <i>Joint Motion</i> ) Filed by Interested Parties James Dondero, Highland Capital Management Fund Advisors, L.P., Highland Global Allocation Fund, Highland Income Fund, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Get Good Trust, The Dugaboy Investment Trust, Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Proposed Order) (Rukavina, Davor)
03/16/2021	<u>2034</u> Order certifying appeals of the confirmation order for direct appeal to the United States Court of appeals for the Fifth Circuit (Related Doc # <u>2033</u> ) Entered on 3/16/2021. (Okafor, M.)
03/16/2021	<u>2035</u> Certificate of No Objection filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1944</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from January 1, 2021 through January 31, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 1/1/2021 to 1/). (Pomerantz, Jeffrey)
03/16/2021	<u>2036</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.. (Rukavina, Davor)
03/16/2021	<u>2037</u> Reply to (related document(s): <u>2022</u> Response filed by Debtor Highland Capital Management, L.P.) filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/16/2021	<u>2038</u> Second Notice of Additional Services to be Provided by Deloitte Tax LLP filed by Debtor Highland Capital Management, L.P.. (Hayward, Melissa)
03/16/2021	<u>2039</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALSUTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). (Hayward, Melissa)
03/17/2021	<u>2040</u> Statement of issues on appeal, filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). (Hogewood, A.)
03/17/2021	<u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)
03/17/2021	<u>2042</u> Certificate of service re: 1) Debtor's Omnibus Response to Motions for Stay Pending Appeal of the Confirmation Order; and 2) Omnibus Objection of the Official Committee of

	<p><i>Unsecured Creditors Objection to Motions for Stay Pending Appeal of the Confirmation Order and Joinder in Debtors Omnibus Objection to Motions for Stay</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2022</u> Omnibus Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery). Modified linkage on 3/12/2021. filed by Debtor Highland Capital Management, L.P., <u>2023</u> Joinder by <i>the Official Committee of Unsecured Creditors</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>2022</u> Response). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
03/17/2021	<p><u>2043</u> Witness and Exhibit List filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit A # <u>2</u> Exhibit B # <u>3</u> Exhibit C # <u>4</u> Exhibit D # <u>5</u> Exhibit E # <u>6</u> Exhibit F # <u>7</u> Exhibit G # <u>8</u> Exhibit H # <u>9</u> Exhibit I # <u>10</u> Exhibit J # <u>11</u> Exhibit K # <u>12</u> Exhibit L # <u>13</u> Exhibit M) (Vasek, Julian)</p>
03/17/2021	<p><u>2044</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Bhawika Jain To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)</p>
03/17/2021	<p><u>2045</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Michael Beispiel To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)</p>
03/17/2021	<p><u>2046</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Sang Kook (Michael) Jeong To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)</p>
03/17/2021	<p><u>2047</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 1 Transferors: Phoebe Stewart To NexPoint Advisors LP. Filed by Interested Party NexPoint Advisors, L.P.. (Vasek, Julian)</p>
03/17/2021	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2044</u>). (U.S. Treasury)</p>
03/17/2021	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2045</u>). (U.S. Treasury)</p>
03/17/2021	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2046</u>). (U.S. Treasury)</p>
03/17/2021	<p>Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28570099, amount \$ 26.00 (re: Doc# <u>2047</u>). (U.S. Treasury)</p>
03/17/2021	<p><u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s)<u>336</u> Order on application to employ). (Hoffman, Juliana)</p>

03/18/2021	<u>2052</u> Notice of transmittal to submit Amended Mini Record Vol. 1 to remove appellee index and to disregard Appellee Record Vol. 8 filed at doc 27 in 3:20-CV-03408-G (RE: related document(s) <u>2019</u> Notice of docketing record on appeal. 3:20-CV-03408-G (RE: related document(s) <u>1339</u> Notice of appeal filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>1273</u> Order on motion to compromise controversy). (Blanco, J.)). (Blanco, J.)
03/18/2021	<u>2053</u> Clerk's correspondence requesting Amended designation from attorney for Appellant. (RE: related document(s) <u>2041</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>1966</u> Notice of appeal). Appellee designation due by 03/31/2021. (Hogewood, A.)) Responses due by 3/24/2021. (Blanco, J.)
03/18/2021	<u>2054</u> Appellant designation of contents for inclusion in record on appeal filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). Appellee designation due by 04/1/2021. (Draper, Douglas)
03/18/2021	<u>2055</u> Statement of issues on appeal, filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>2014</u> Amended notice of appeal). (Draper, Douglas)
03/18/2021	<u>2056</u> Statement of issues on appeal, filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal). (Taylor, Clay)
03/18/2021	<u>2057</u> Appellant designation of contents for inclusion in record on appeal filed by Interested Party James Dondero (RE: related document(s) <u>1970</u> Notice of appeal, <u>2056</u> Statement of issues on appeal). Appellee designation due by 04/1/2021. (Taylor, Clay)
03/18/2021	<u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8 # <u>9</u> Exhibit 9 # <u>10</u> Exhibit 10 # <u>11</u> Exhibit 11 # <u>12</u> Exhibit 12 # <u>13</u> Exhibit 13 # <u>14</u> Exhibit 14 # <u>15</u> Exhibit 15 # <u>16</u> Exhibit 16 # <u>17</u> Exhibit 17 # <u>18</u> Exhibit 18 # <u>19</u> Exhibit 19 # <u>20</u> Exhibit 20 # <u>21</u> Exhibit 21 # <u>22</u> Exhibit 22 # <u>23</u> Exhibit 23 # <u>24</u> Exhibit 24 # <u>25</u> Exhibit 25 # <u>26</u> Exhibit 26 # <u>27</u> Exhibit 27 # <u>28</u> Exhibit 28 # <u>29</u> Exhibit 29 # <u>30</u> Exhibit 30 # <u>31</u> Exhibit 31 # <u>32</u> Exhibit 32 # <u>33</u> Exhibit 33) (Annable, Zachery)
03/18/2021	<u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrion; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. (Annable, Zachery)
03/18/2021	<u>2060</u> Motion to recuse Judge Jernigan Filed by Interested Party James Dondero (Lang, Michael)
03/18/2021	<u>2061</u> Brief in support filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan). (Lang, Michael)
03/18/2021	<u>2062</u> Support/supplemental document <i>Appendix to Motion to Recuse</i> filed by Interested Party James Dondero (RE: related document(s) <u>2060</u> Motion to recuse Judge Jernigan).

	(Lang, Michael)
03/19/2021	<u>2063</u> Request for transcript regarding a hearing held on 3/19/2021. The requested turn-around time is hourly. (Edmond, Michael)
03/19/2021	<u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors (Montgomery, Paige)
03/19/2021	<u>2065</u> Court admitted exhibits date of hearing March 19, 2021 (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) (COURT ADMITTED MOVANT'S EXHIBIT'S #A THROUGH #M BY DAVOR RUKAVINA & DEFENDANT'S EXHIBIT'S #1 THROUGH #33 BY JEFFREY POMERANTZ) (Edmond, Michael)
03/19/2021	<u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021 (Rielly, Bill).
03/19/2021	<u>2067</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2068</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)
03/19/2021	<u>2069</u> Hearing held on 3/19/2021. (RE: related document(s) <u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth

	<p>Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)</p>
03/19/2021	<p><u>2070</u> Hearing held on 3/19/2021. (RE: related document(s)<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orally court determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing today's hearing.) (Edmond, Michael)</p>
03/19/2021	<p><u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021 (Tello, Chris).</p>
03/19/2021	<p><u>2072</u> Certificate of service re: <i>1) Second Notice of Additional Services to be Provided by Deloitte Tax LLP; and 2) Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2038</u> Second Notice of Additional Services to be Provided by Deloitte Tax LLP filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2039</u> Notice of Statement of Amounts Paid to Ordinary Course Professionals for the Period from October 16, 2019 to January 31, 2021 filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>176</u> ORDER PURSUANT TO SECTIONS 105(A), 327, 328, AND 330 OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO RETAIN, EMPLOY, AND COMPENSATE CERTAIN PROFESSIONALS UTILIZED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS (Related Doc # 76, 99, 162) Order Signed on 11/26/2019. (Attachments: # 1 Exhibit A) (DRG) [ORIGINALLY FILED AS DOCUMENT #169 ON 11/26/2019 IN U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE] (Okafor, M.)). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/19/2021	<p><u>2077</u> Hearing set – follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.), <u>1971</u> Joinder by <i>Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u></p>

	<p>Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion), <u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)).) Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>, (Ellison, T.) (Entered: 03/22/2021)</p>
03/20/2021	<p><u>2073</u> Transcript regarding Hearing Held 03/19/2021 (82 pages) RE: Motions/Joinders to Stay Pending Appeal. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 06/18/2021. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Kathy Rehling, kathyrehlingtranscripts@gmail.com, Telephone number 972-786-3063. (RE: related document(s) 2067 Hearing held on 3/19/2021. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2068 Hearing held on 3/19/2021. (RE: related document(s)<u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (Hogewood, A.) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2069 Hearing held on 3/19/2021. (RE: related document(s)<u>1971</u> Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit Opinion) (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.), 2070 Hearing held on 3/19/2021. (RE: related document(s)<u>1973</u> Joinder by filed by Interested Party James Dondero (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Appearances: D. Rukavina for Advisors; L. Hogewood for Funds; C. Taylor for J. Dondero; D. Draper for Get Good and Dugaboy Trusts; J. Pomeranz for Debtor; M. Clemente for UCC. Evidentiary hearing. Motion denied, based on reasons stated orallycourt determined 4-factor test for a stay pending appeal not met. Court will hold a follow up hearing on whether a sufficient monetary bond/supersedeas bond might be posted to warrant a mandatory stay pending appeal, on 3/24/21 at 9:30 am, since the issue of monetary bond was not fully addressed in evidence and arguments. Mr. Pomeranz will submit written order memorializing todays hearing.)). Transcript to be made available to the public on 06/18/2021. (Rehling, Kathy)</p>
03/22/2021	

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	<u>2074</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund (RE: related document(s) <u>2041</u> Appellant designation). (Hogewood, A.)
03/22/2021	<u>2075</u> Notice to take deposition of James P. Seery filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund. (Hogewood, A.)
03/22/2021	<u>2076</u> Order granting motion to continue hearing on (related document # <u>2064</u> ) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , Entered on 3/22/2021. (Okafor, M.)
03/22/2021	<u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u> , (Annable, Zachery)
03/22/2021	<u>2079</u> Declaration re: ( <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>70</u> Application to employ Pachulski Stang Ziehl & Jones LLP as Attorney). (Annable, Zachery)
03/22/2021	<u>2080</u> Amended appellant designation of contents for inclusion in record on appeal filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) <u>2016</u> Appellant designation). (Rukavina, Davor)
03/23/2021	<u>2081</u> Clerk's correspondence requesting an order from attorney for creditor. (RE: related document(s) <u>1888</u> Application for administrative expenses Filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc.) Responses due by 4/6/2021. (Ecker, C.)
03/23/2021	<u>2082</u> Notice of Authority to Clerk of Bankruptcy Court filed by Get Good Trust, The Dugaboy Investment Trust. (Attachments: # <u>1</u> Order) (Draper, Douglas)
03/23/2021	<u>2083</u> Order denying motion to recuse (related document # <u>2060</u> ) Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document # <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document # <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related

	document # <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document # <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)
03/23/2021	<u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , (Montgomery, Paige)
03/23/2021	<u>2086</u> Support/supplemental document ( <i>Letter to Court Regarding Mandatory Stay Pending Appeal Bond Hearing</i> ) filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (RE: related document(s) 2077 Hearing set/continued, <u>2084</u> Order on motion to stay pending appeal, Order on motion to stay pending appeal). (Rukavina, Davor)
03/23/2021	<u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021 (Tello, Chris).
03/23/2021	<u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 34) (Annable, Zachery)
03/23/2021	<u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. (Hoffman, Juliana)
03/23/2021	<u>2090</u> Certificate of service re: <i>Debtor's Witness and Exhibit List with Respect to Hearing to be Held on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2058</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14 # 15 Exhibit 15 # 16 Exhibit 16 # 17 Exhibit 17 # 18 Exhibit 18 # 19 Exhibit 19 # 20 Exhibit 20 # 21 Exhibit 21 # 22 Exhibit 22 # 23 Exhibit 23 # 24 Exhibit 24 # 25 Exhibit 25 # 26 Exhibit 26 # 27 Exhibit 27 # 28 Exhibit 28 # 29 Exhibit 29 # 30 Exhibit 30 # 31 Exhibit 31 # 32 Exhibit 32 # 33 Exhibit 33) filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/23/2021	<u>2091</u> Certificate of service re: <i>Debtor's Third Omnibus Objection to Certain No Liability Claims</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebek; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky

	Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit Jain; Paul Broadus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahan Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert) Modified on 3/24/2021 (Rielly, Bill).
03/24/2021	<u>2092</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Scott Ellington (Claim No. 244) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2093</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Frank Waterhouse (Claim No. 217) To CPCM, LCC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2094</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Jean Paul Sevilla (Claim No. 241) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)
03/24/2021	<u>2096</u> Assignment/Transfer of Claim. Fee Amount \$26. Transferors: Isaac Leventon (Claim No. 216) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2097</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lucy Bannon (Claim No. 235) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2098</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jerome Carter (Claim No. 223) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2099</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Brian Collins (Claim No. 233) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2100</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Matthew DiOrio (Claim No. 230) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2101</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Hayley Eliason (Claim No. 236) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2102</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Gosserand (Claim No. 232) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	

	<u>2103</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Steven Haltom (Claim No. 224) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2104</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Charles Hoedebeck (Claim No. 228) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2105</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mary Irving (Claim No. 231) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2106</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Helen Kim (Claim No. 226) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2107</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kari Kovelan (Claim No. 227) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2108</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: William Mabry (Claim No. 234) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2109</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Mark Patrick (Claim No. 219) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2110</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Christopher Rice (Claim No. 220) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2111</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Jason Rothstein (Claim No. 229) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2112</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Kellie Stevens (Claim No. 221) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2113</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Ricky Swadley (Claim No. 237) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2114</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Lauren Thedford (Claim No. 222) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2115</u> Assignment/Transfer of Claim. Fee Amount \$26. Transfer Agreement 3001 (e) 2 Transferors: Stephanie Vitiello (Claim No. 225) To CPCM, LLC. Filed by Interested Party CPCM, LLC. (Hartmann, Margaret)
03/24/2021	<u>2116</u> Certificate of No Objection filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1963</u> Application for compensation <i>Sidley Austin LLP's 15th Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 1/1/2021 to 1/31/2021, Fee: \$655,7). (Hoffman, Juliana)

03/24/2021	<u>2117</u> Certificate of service re: <i>Documents Served on March 19, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2048</u> Declaration re: <i>Third Supplemental Declaration</i> filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>336</u> Order on application to employ). filed by Financial Advisor FTI Consulting, Inc., <u>2064</u> Motion to continue hearing on (related documents <u>1878</u> Motion to compel) Filed by Creditor Committee Official Committee of Unsecured Creditors filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2066</u> Witness List ( <i>Debtor's Witness List with Respect to Hearing to Be Held on March 24, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). (Annable, Zachery). Modified linkage on 3/19/2021. filed by Debtor Highland Capital Management, L.P., <u>2071</u> Witness List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Hoffman, Juliana). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to create linkages on 3/22/2021. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2092</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2093</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2094</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2096</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2097</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2098</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2099</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2100</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2101</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2102</u> ). (U.S. Treasury)

	(U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2103</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2104</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2105</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2106</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2107</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2108</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2109</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2110</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2111</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2112</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2113</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2114</u> ). (U.S. Treasury)
03/25/2021	Receipt of filing fee for Assignment/Transfer of claim (Claims Agent)(19-34054-sgj11) [claims,trclmagt] ( 26.00). Receipt number 28587981, amount \$ 26.00 (re: Doc# <u>2115</u> ). (U.S. Treasury)
03/25/2021	<u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

03/25/2021	<u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/25/2021	<u>2120</u> INCORRECT ENTRY: Attorney to refile. Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana) Modified on 3/26/2021 (Ecker, C.).
03/25/2021	<u>2121</u> BNC certificate of mailing – PDF document. (RE: related document(s) <u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u> ), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u> ), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u> ), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u> ). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u> , Entered on 3/23/2021. (Okafor, M.)) No. of Notices: 1. Notice Date 03/25/2021. (Admin.)
03/26/2021	<u>2122</u> Certificate of No Objection filed by Financial Advisor FTI Consulting, Inc. (RE: related document(s) <u>1968</u> Application for compensation <i>15th Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 1/1/2021 to 1/31/2021, Fee: \$244,315.80, Expenses: \$0.00.). (Hoffman, Juliana)
03/26/2021	<u>2123</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery)
03/26/2021	<u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. (Pomerantz, Jeffrey)
03/26/2021	<u>2125</u> Certificate of service re: 1) <i>Order Granting the Motion for Continuance of Hearing on the Preservation Motion Filed by the Official Committee of Unsecured Creditors</i> ; 2) <i>Notice of Hearing on Debtor's Third Omnibus Objection to Certain No Liability Claims</i> ; and 3) <i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2076</u> Order granting motion to continue hearing on (related document <u>2064</u> ) (related documents Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ) Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u> , Entered on 3/22/2021. (Okafor, M.), <u>2078</u> Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2059</u> Omnibus Objection to claim(s) of Creditor(s) Christopher Rice; Helen Kim; Jason Rothstein; Jerome Carter; Kari Kovelan; Kellie Stevens; Lauren Thedford; Mark Patrick; Charles Hoedebeck; Stephanie Vitiello; Steven Haltom; William Gosserand; Brian Collins; Hayley Eliason; Lucy Bannon; Mary Irving; Matthew DiOrio; Ricky Swadley; William Mabry; Jean Paul Sevilla; Jon Poglitsch; Clifford Stoops; Jason Post; Ajit

	<p>Jain; Paul Broaddus; Melissa Schroth; Mauro Staltari; Will Mabry; Yegor Nikolayev; Sahana Abayarantha; Kunal Sachdev; Kent Gatzki; Scott Groff; James Mills; Bhawika Jain; Jae Lee; Cyrus Eftekhari; Tara Loiben; Michael Jeong; Will Duffy; Sarah Goldsmith; Sarah Hale; Heriberto Rios; Mariana Navejas; Joye Luu; Austin Cotton; Lauren Baker; Phoebe Stewart; Blair Roeber; Brad McKay; Jennifer School.. Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/20/2021.). Hearing to be held on 5/3/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>2059</u>, filed by Debtor Highland Capital Management, L.P., <u>2079</u> Declaration re: (<i>Supplemental Declaration of Jeffrey N. Pomerantz in Support of Application Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 for Authorization to Employ and Retain Pachulski Stang Ziehl &amp; Jones LLP as Counsel for the Debtor and Debtor in Possession Nunc Pro Tunc to the Petition Date</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>70</u> Application to employ Pachulski Stang Ziehl &amp; Jones LLP as Attorney). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
03/26/2021	<p><u>2126</u> Certificate of service re: <i>Documents Served on March 23, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>2084</u> Order denying motion to stay pending appeal Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (related document <u>1955</u>), denying motion to stay pending appeal Filed by Interested Parties Highland Global Allocation Fund, Highland Income Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund(related document <u>1967</u>), denying Joinder by Joinder to Motions for Stay Pending Appeal of the Court's Order Confirming the Debtor's Fifth Amended Plan with Certificate of Service filed by Get Good Trust, The Dugaboy Investment Trust (related document <u>1971</u>), denying Joinder by filed by Interested Party James Dondero (related document <u>1973</u>). Hearing to be held on 3/24/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jernigan">https://us-courts.webex.com/meet/jernigan</a> for <u>1955</u> and for <u>1967</u> and for <u>1973</u> and for <u>1971</u>, Entered on 3/23/2021. (Okafor, M.), <u>2085</u> Amended Notice of hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s)<u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. Filed by Creditor Committee Official Committee of Unsecured Creditors (Attachments: # 1 Proposed Order Exhibit A # 2 Exhibit Exhibit B)). Hearing to be held on 4/5/2021 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for <u>1878</u>, filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2087</u> Debtor's Supplemental Brief in opposition filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan), <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan)). (Annable, Zachery). Related document(s) <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero. Modified to add linkages on 3/23/2021. filed by Debtor Highland Capital Management, L.P., <u>2088</u> Amended Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>2058</u> List (witness/exhibit/generic), <u>2066</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 34) filed by Debtor Highland Capital Management, L.P., <u>2089</u> Supplemental Response opposed to (related document(s): <u>1955</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal (related documents <u>1943</u> Order confirming chapter 11 plan) filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund) filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)</p>
03/26/2021	<p><u>2127</u> BNC certificate of mailing – PDF document. (RE: related document(s)<u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy</p>

	Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)) No. of Notices: 1. Notice Date 03/26/2021. (Admin.)
03/29/2021	<u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Sosland, Martin)
03/29/2021	<u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # <u>1</u> Exhibit A—Proposed Order) (Annable, Zachery)
03/29/2021	<u>2130</u> Certificate of service re: <i>Supplemental Order on Motions for Stay Pending Appeal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2095</u> Supplemental Order on Motions for stay pending appeal (RE: related document(s) <u>2084</u> Order, <u>1955</u> Motion to stay pending appeal filed by Interested Party Highland Capital Management Fund Advisors, L.P., Interested Party NexPoint Advisors, L.P., <u>1967</u> Motion to stay pending appeal filed by Interested Party NexPoint Capital, Inc., Interested Party NexPoint Strategic Opportunities Fund, Interested Party Highland Income Fund, Interested Party Highland Global Allocation Fund, <u>1971</u> Joinder filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, <u>1973</u> Joinder filed by Interested Party James Dondero). Entered on 3/24/2021 (Okafor, M.)). (Kass, Albert)
03/29/2021	<u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> )). (Annable, Zachery)
03/29/2021	<u>2132</u> Certificate of Conference filed by Interested Parties UBS AG London Branch, UBS Securities LLC (RE: related document(s) <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal). (Sosland, Martin)
03/29/2021	<u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. (Annable, Zachery)
03/29/2021	<u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/29/2021	<u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
03/30/2021	<u>2136</u> Notice to take deposition of Paul Broaddus filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2137</u> Notice to take deposition of Mark Patrick filed by HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC), Highland Capital Management Services, Inc.. (Drawhorn, Lauren)
03/30/2021	<u>2138</u> INCORRECT EVENT: Attorney to refile. Notice ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.).
03/31/2021	<u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)

03/31/2021	<u>2140</u> Order granting motion for leave to file Adversary Complaint and Other Materials Under Seal Filed by Interested Parties UBS AG London Branch, UBS Securities LLC(related document # <u>2128</u> ) Entered on 3/31/2021. (Okafor, M.)
03/31/2021	<u>2141</u> Certificate of service re: <i>1) Debtor's Second Amended Notice of Rule 30(b)(6) Deposition to HCRE Partners, LLC; and 2) Debtor's Second Amended Notice of Deposition to James Dondero in Connection with Debtor's Objection to Proof of Claim Filed by HCRE Partners, LLC</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2118</u> Notice to take deposition of NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2119</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	<u>2142</u> Adversary case 21-03020. Complaint by UBS Securities LLC, UBS AG London Branch against Highland Capital Management, L.P.. Fee Amount \$350. Nature(s) of suit: 72 (Injunctive relief – other). (Sosland, Martin)
03/31/2021	<u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)
03/31/2021	<u>2144</u> Certificate of service re: <i>1) Amended Notice of Status Conference; and 2) Seventeenth Monthly Application for Compensation and Reimbursement of Expenses of Pachulski Stang Ziehl &amp; Jones LLP as Counsel to the Debtor for the Period from February 1, 2021 Through February 28, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2123</u> Amended Notice of hearing ( <i>Amended Notice of Status Conference</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1826</u> Application for administrative expenses Filed by Interested Parties Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P. (Attachments: # 1 Service List)). Status Conference to be held on 5/7/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . filed by Debtor Highland Capital Management, L.P., <u>2124</u> Application for compensation <i>Seventeenth Monthly Application for Compensation and for Reimbursement of Expenses for the Period from February 1, 2021 through February 28, 2021</i> for Jeffrey Nathan Pomerantz, Debtor's Attorney, Period: 2/1/2021 to 2/28/2021, Fee: \$1,358,786.50, Expenses: \$21,401.29. Filed by Attorney Jeffrey Nathan Pomerantz Objections due by 4/16/2021. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
03/31/2021	<u>2145</u> Certificate of service re: <i>Doucments Served on March 29, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> ) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A—Proposed Order) filed by Debtor Highland Capital Management, L.P., <u>2131</u> Certificate of Conference filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2129</u> Motion to file document under seal. ( <i>Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal</i> )). filed by Debtor Highland Capital Management, L.P., <u>2133</u> Objection to claim(s) of Creditor(s) Integrated Financial Associates, Inc... Filed by Debtor Highland Capital Management, L.P.. Responses due by 4/28/2021. filed by Debtor Highland Capital Management, L.P., <u>2134</u> Notice to take deposition of HCRE Partners, LLC filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2135</u> Notice to take deposition of James Dondero filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/01/2021	<u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document # <u>2129</u> )

	Entered on 4/1/2021. (Okafor, M.)
04/01/2021	Adversary case 3:20-ap-3105 closed (Ecker, C.)
04/01/2021	<u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/01/2021	<u>2148</u> SEALED document regarding: (Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2146</u> Order on motion to seal). (Annable, Zachery)
04/01/2021	<u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # <u>1</u> Exhibit)(Lang, Michael)
04/01/2021	Receipt of filing fee for Notice of appeal(19-34054-sgj11) [appeal,ntcap] ( 298.00). Receipt number 28609730, amount \$ 298.00 (re: Doc# <u>2149</u> ). (U.S. Treasury)
04/02/2021	<u>2150</u> Certificate of service re: re: Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152 Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2138</u> INCORRECT EVENT: Attorney to refile. Notice (Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152) filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery) MODIFIED on 3/31/2021 (Ecker, C.). filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/02/2021	<u>2151</u> Motion to appear pro hac vice for Zachary F. Proulx. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612120, amount \$ 100.00 (re: Doc# <u>2151</u> ). (U.S. Treasury)
04/02/2021	<u>2152</u> Motion to appear pro hac vice for Kathryn K. George. Fee Amount \$100 Filed by Interested Parties UBS AG London Branch, UBS Securities LLC (Clubok, Andrew)
04/02/2021	Receipt of filing fee for Motion to Appear pro hac vice(19-34054-sgj11) [motion,mprohac] ( 100.00). Receipt number 28612132, amount \$ 100.00 (re: Doc# <u>2152</u> ). (U.S. Treasury)
04/02/2021	<u>2153</u> Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Attachments: # <u>1</u> Ex. 1 # <u>2</u> Ex. 2 # <u>3</u> Ex. 3 # <u>4</u> Ex. 4 # <u>5</u> Ex. 5 # <u>6</u> Ex. 6 # <u>7</u> Ex. 7) (Assink, Bryan)
04/02/2021	<u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) Reply to James Donderos Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors. (Montgomery, Paige)
04/02/2021	<u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.).

04/02/2021	<u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). (Annable, Zachery)
04/02/2021	<u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). (Annable, Zachery)
04/03/2021	<u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). (Montgomery, Paige)
04/05/2021	<u>2159</u> Amended Witness and Exhibit List <i>for April 5, 2021 Hearing</i> filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7 # <u>8</u> Exhibit 8) (Montgomery, Paige)
04/05/2021	<u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021, Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. (Hoffman, Juliana)
04/05/2021	<u>2162</u> Withdrawal of claim(s): ( <i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i> ) Filed by Debtor Highland Capital Management, L.P.. (Annable, Zachery)
04/05/2021	<u>2163</u> Certificate of service re: <i>1) Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152; and 2) Order Approving Joint Stipulation as to Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2139</u> Withdrawal of claim(s): ( <i>Joint Stipulation as to the Withdrawal of Hunter Mountain Investment Trust's Proof of Claim No. 152</i> ) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P., <u>2143</u> Order approving joint stipulation as to withdrawal of Hunter Mountain Investment Trust's proof of claim No. 152 (RE: related document(s) <u>2139</u> Withdrawal of claim filed by Debtor Highland Capital Management, L.P.). Entered on 3/31/2021 (Okafor, M.)). (Kass, Albert)
04/05/2021	<u>2164</u> Hearing held on 4/5/2021. (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation filed by Creditor Committee Official Committee of Unsecured Creditors) (Appearances: P. Montgomery for Unsecured Creditors Committee; A. Russell for J. Dondero; J. Pomeranz and J. Morris for Debtor. Evidentiary hearing. Motion granted. Counsel to submit an order.) (Edmond, Michael) (Entered: 04/06/2021)
04/06/2021	<u>2165</u> Order granting motion to appear pro hac vice adding Zachary F. Proulx for UBS AG London Branch and UBS Securities LLC (related document # <u>2151</u> ) Entered on 4/6/2021. (Okafor, M.)
04/06/2021	<u>2166</u> Order granting motion to appear pro hac vice adding Kathryn K. George for UBS AG London Branch and UBS Securities LLC (related document # <u>2152</u> ) Entered on 4/6/2021. (Okafor, M.)

04/06/2021	<u>2167</u> Clerk's correspondence requesting to amend document from attorney for Interested Party. (RE: related document(s) <u>2149</u> Notice of appeal . Fee Amount \$298 filed by Interested Party James Dondero (RE: related document(s) <u>2083</u> Order on motion to recuse Judge). Appellant Designation due by 04/15/2021. (Attachments: # 1 Exhibit)) Responses due by 4/8/2021. (Whitaker, Sheniqua)
04/06/2021	<u>2168</u> Request for hearing filed by Interested Parties NexBank, NexBank Capital Inc., NexBank Securities Inc., NexBank Title Inc. (RE: related document(s) <u>2081</u> Clerk's correspondence). (Attachments: # <u>1</u> Proposed Order) (Drawhorn, Lauren)
04/06/2021	<u>2169</u> Amended notice of appeal filed by Interested Party James Dondero (RE: related document(s) <u>2149</u> Notice of appeal). (Lang, Michael)
04/06/2021	<u>2170</u> Certificate of service re: <i>1) Order Granting Debtor's Motion for Leave to File Under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal; and 2) Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials Under Seal</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2146</u> Order Granting Debtor's Motion for Leave to File under Seal the Debtor's Statement with Respect to UBS's Motion for Leave to File Adversary Complaint and Other Materials under Seal) Filed by Debtor Highland Capital Management, L.P. (related document <u>2129</u> ) Entered on 4/1/2021. (Okafor, M.), <u>2147</u> Response unopposed to (related document(s): <u>2128</u> Motion for leave to file Adversary Complaint and Other Materials Under Seal filed by Interested Party UBS Securities LLC, Interested Party UBS AG London Branch) filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)
04/07/2021	<u>2171</u> Request for transcript regarding a hearing held on 4/5/2021. The requested turn-around time is hourly. (Edmond, Michael)
04/07/2021	<u>2172</u> Certificate of service re: <i>Documents Served on or Before April 3, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2154</u> Reply to (related document(s): <u>1969</u> Objection filed by Interested Party James Dondero) <i>Reply to James D. Dondero's Objection and Response to the Committees Motion for an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation</i> filed by Creditor Committee Official Committee of Unsecured Creditors. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2155</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>2014</u> Amended notice of appeal, ). (Annable, Zachery). Modified LINKAGE and TEXT on 4/6/2021 (Blanco, J.). filed by Debtor Highland Capital Management, L.P., <u>2156</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1970</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2157</u> Appellee designation of contents for inclusion in record of appeal filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1966</u> Notice of appeal). filed by Debtor Highland Capital Management, L.P., <u>2158</u> Witness and Exhibit List filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>1878</u> Motion to compel an Order Requiring James D. Dondero to Preserve Documents and to Identify Measures Taken to Ensure Document Preservation. ). filed by Creditor Committee Official Committee of Unsecured Creditors). (Kass, Albert)
04/07/2021	<u>2173</u> Certificate of service re: <i>Documents Served on April 5, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>2159</u> Amended Witness and Exhibit List for April 5, 2021 Hearing filed by Creditor Committee Official Committee of Unsecured Creditors (RE: related document(s) <u>2158</u> List (witness/exhibit/generic)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8) filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2160</u> Application for compensation <i>Sidley Austin LLP's Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for Official Committee of Unsecured Creditors, Creditor Comm. Atty, Period: 2/1/2021 to 2/28/2021,

	<p>Fee: \$493,524.00, Expenses: \$11,141.12. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Creditor Committee Official Committee of Unsecured Creditors, <u>2161</u> Application for compensation <i>Sixteenth Monthly Application for Compensation and Reimbursement of Expenses</i> for FTI Consulting, Inc., Financial Advisor, Period: 2/1/2021 to 2/28/2021, Fee: \$187,387.56, Expenses: \$0.00. Filed by Attorney Juliana Hoffman Objections due by 4/26/2021. filed by Financial Advisor FTI Consulting, Inc., <u>2162</u> Withdrawal of claim(s): (<i>Stipulation and Agreed Order Authorizing Withdrawal of Proofs of Claim 110 and 111</i>) Filed by Debtor Highland Capital Management, L.P.. filed by Debtor Highland Capital Management, L.P.). (Kass, Albert)</p>
04/08/2021	<p><u>2174</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2024</u> Application for compensation – <i>Second Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 1/1/2021 to 1/31/2021, Fee: \$35042.76, Expenses: \$3.80.). (Hesse, Gregory)</p>
04/08/2021	<p><u>2175</u> Certificate of No Objection filed by Spec. Counsel Hunton Andrews Kurth LLP (RE: related document(s)<u>2025</u> Application for compensation – <i>Third Monthly Fee Application</i> for Hunton Andrews Kurth LLP, Special Counsel, Period: 2/1/2021 to 2/28/2021, Fee: \$37092.24, Expenses: \$94.54.). (Hesse, Gregory)</p>

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 2**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

*Vol. 1*

1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

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		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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001024

01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed January 21, 2020

  
United States Bankruptcy Judge

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

\_\_\_\_\_) Chapter 11  
In re: )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054 (SGJ)  
 )  
Debtor. )

**AGREED PROTECTIVE ORDER**

This Agreed Protective Order (the “Order”) governs any document, information, or other thing that has been or will be produced or received by a Party (as defined below) in the action *In re Highland Capital Management, L.P.*, Case No. 19-34054 (SGJ) (the “Bankruptcy Case”), pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) (collectively, the “Discovery Materials”). Discovery Materials include, without limitation, testimony adduced at depositions; responses to interrogatories; responses to requests for admission (and documents produced in connection with such responses); and documents and things produced

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

voluntarily or in response to any type of request. “Party” or “Parties” means any person or entity that (1) produces, (2) designates, (3) receives, formally or informally, or (4) reviews any Discovery Materials designated as Confidential or Highly Confidential Information, as defined in this Order.

### **TERMS OF AGREED ORDER**

1. Confidential Information. As used in this Order, “Confidential Information” means all documents, data, reports, interpretations, forecasts, financial and business projections, records, agreements, contracts, business plans, marketing materials and vendor agreements or programs (whether in oral or written form, electronically stored, or otherwise) containing or otherwise reflecting information provided by or on behalf of any Party or any of the Parties’ respective Representatives (as defined below) before, on, or after the date hereof, and all reproductions of such information (whether in written form, electronically stored, or otherwise or substantially derived from the information described above), that the producing Party reasonably believes in good faith is confidential or sensitive proprietary, personal, commercial, financial, or business information or that is otherwise subject to protection under a pre-existing agreement or applicable law or regulation. Accordingly, for example, “Confidential Information” does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by a Party or any of the Parties’ Representatives in breach of this Order; (b) was lawfully within a Party’s possession prior to it being furnished to such Party in the Bankruptcy Case; (c) becomes available to a Party from a source other than the producing Party or any of its Representatives, provided that such source is not, to such receiving Party’s knowledge, bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the producing Party with respect to such information; or (d) is independently developed by a receiving Party without reference to or reliance upon any information furnished to such receiving Party by or on behalf of the producing Party.

2. Use and Disclosure of Confidential Information. Subject to the terms of this Order, each Party shall (i) keep the Confidential Information confidential in accordance with the terms of this Order; (ii) not disclose any Confidential Information except in accordance with the terms of this Order; (iii) not use any Confidential Information in any way other than in connection with the Bankruptcy Case; and (iv) hold and treat all Confidential Information in confidence and with the same degree of care that such Party exercises with regard to its own Confidential Information; *provided, however*, that each Party may disclose any Confidential Information (A) to any other Party subject to this Order; (B) counsel and other professionals retained by the Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the “Committee,”); (C) to any Representative of any Party other than the Committee, which is addressed in paragraph 2(iv)(B); (D) to the extent permitted pursuant to paragraph 9 below; (E) to the United States Bankruptcy Court for the Northern District of Texas and its personnel; (F) the United States Trustee for the Northern District of Texas (the “U.S. Trustee”); (G) any person who is indicated on the face of a document or its related documents to have been an author, addressee or copy recipient of such document, an actual or intended recipient of such document, or in the case of meeting minutes, an attendee of the meeting; (H) for purposes of witness preparation, any deponent or witness who was noticed for a deposition, or is on a witness list for hearing or trial, in preparation for his or her noticed deposition, hearing, or trial testimony where such material is determined by counsel in good faith to be necessary to the anticipated subject matter of testimony; (I) in the case of a deposition, to any court reporter, stenographer, or videographer in attendance; and (J) in response to a subpoena issued from another court or as otherwise required by law. For purposes of this Order, “Representatives” means a Party’s parent(s), subsidiaries, affiliates, officers,

directors, employees, contractors, attorneys (whether in-house or outside counsel), financial advisors and other professionals engaged by the Party, or its agents and representatives.

3. Highly Confidential Information. A producing Party may designate information that it reasonably believes in good faith is so personally, economically, or competitively sensitive that (a) disclosure would materially affect or threaten injury to its personal, commercial, or financial interests, and (b) the protections provided to Confidential Information in this Order are insufficient, as being restricted Highly Confidential Information (the “Highly Confidential Information”).

4. Use and Disclosure of Highly Confidential Information. Discovery Materials designated as “Highly Confidential” may only be viewed by the people and entities identified in paragraphs 2(iv) (B), (D), (E), (F), (G), (H) (I) or (J). Discovery Materials designated as “Highly Confidential” may not otherwise be disclosed without the producing Party’s prior written consent or further order of the Court. Highly Confidential Information may be disclosed to the United States Bankruptcy Court for the Northern District of Texas and its personnel as long as the information is filed under seal under the procedures set forth in L.B.R. 9077-1.

5. Designating Confidential and Highly Confidential Information. Where practicable, the producing Party may designate Discovery Materials as Confidential or Highly Confidential by applying the legend “Confidential” or “Highly Confidential” to the Discovery Materials. In the case of data stored in electronic form (“ESI”), the legend shall be printed on the cover or container of the disk, tape or other medium in which the electronic data is produced and/or on the ESI itself. If such measures are not practicable, the producing Party shall designate the Discovery Materials as Confidential or Highly Confidential through other feasible means.

6. Disputes Over Designation of Confidential Information. In the event that any Party objects to any designation of Discovery Materials as Confidential Information (the “Objecting Party”), the Objecting Party shall notify the producing or designating Party in writing, stating the grounds of the objection. The producing or designating Party shall have ten (10) business days following the receipt of an objection from the Objecting Party of any Confidential Information designation to attempt to resolve the objection, at the end of which the Objecting Party may seek a ruling from the Court by written notice and a motion and pursuant to the Court’s individual rules and procedures that such information should not be treated as Confidential Information. For the avoidance of doubt, the burden of establishing the Confidential nature of any Discovery Materials shall be borne by the producing or designating Party.

7. Disputes Over Designation of Highly Confidential Information. In the event that any Party objects to any designation of Discovery Materials as Highly Confidential Information, the Objecting Party shall notify the other producing or designating Party in writing, stating the grounds of the objection. The producing or designating Party shall have five (5) business days following receipt of an objection from the Objecting Party of any Highly Confidential Information designation to attempt to resolve the objection, at the end of which, if the dispute is not resolved, the producing or designating Party must seek a ruling from the Court by written notice and a motion and pursuant to the Court’s individual rules and procedures that such information should be treated as Highly Confidential Information. In the absence of such a filing within five (5) business days from the receipt of the objection, the information will be deemed Confidential Information (and not Highly Confidential Information) under this Order. For the avoidance of doubt, the burden of establishing the Highly Confidential nature of any Discovery Materials shall be borne by the producing or designating Party.

8. Depositions. During any deposition or interview, if counsel for any Party reasonably believes that any answer to a question will result in the disclosure of Confidential Information or Highly Confidential Information, counsel may require that all persons other than those entitled to view the Confidential Information or Highly Confidential Information, as the case may be, leave the room during the relevant portion of the deposition or interview. Any Party shall have the right to designate on the record, or within ten (10) business days following receipt of the final transcript of the deposition, any portion of the deposition transcript as Confidential Information or Highly Confidential Information. Transcripts of testimony or portions thereof so designated during the deposition may, at the option of any Party, be appropriately marked.

9. Legally Required Disclosure. If any Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process, or by applicable law or the rules or regulations of any regulatory authority having jurisdiction over such Parties) to disclose in connection with a matter that is not the Bankruptcy Case any of the Confidential Information or Highly Confidential Information, such Party shall provide the Party that produced or designated such information with prompt written notice of any such request or requirement so that the producing or designating Party may seek a protective order or other remedy, and/or waive compliance with the provisions of this Order. In the absence of a protective order or other remedy at the time of the deadline for the production of the Confidential Information or Highly Confidential Information (including any extensions of such deadline), the Party may, without liability hereunder, disclose that portion of the Confidential Information or Highly Confidential Information which is legally required to be disclosed.

10. Nothing herein shall prevent the U.S. Trustee from disclosing Discovery Material for civil or criminal law enforcement purposes in compliance with a subpoena or court order, or pursuant to any request under the Freedom of Information Act or other applicable law requiring disclosure, subject to the U.S. Trustee providing prompt notice to the Producing Party as described in Paragraph 9 above.

11. No Waiver. The failure to designate any Discovery Materials as Confidential Information or Highly Confidential Information shall not constitute a waiver of such claim. If at any time any of the Parties believes that certain testimony or some portion of Discovery Materials that was previously produced should have been designated as Confidential Information or Highly Confidential Information, that Party shall promptly notify all of the other Parties who have received such testimony or Discovery Materials in writing, and such designated testimony or portion of Discovery Materials will thereafter be treated as Confidential Information or Highly Confidential Information under the terms of this Order. If such information has been disclosed by a Party between the time of production or receipt of the transcript containing the testimony and the time at which a Party gives notice that the Discovery Materials are to be designated as Confidential Information or Highly Confidential Information, such disclosure shall not constitute a violation of this Order.

12. Claw Back of Inadvertently Produced Protected Materials. If Discovery Materials protected from disclosure under Federal Rule of Civil Procedure 26(b)(5) (“Protected Materials”) are inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information or any other information that may be protected from disclosure by the attorney-client privilege, the work-product immunity, or any other legally cognizable privilege

or other protection. If the producing Party inadvertently or mistakenly produces Protected Materials, upon written request by the producing Party after the discovery of such inadvertent or mistaken production, the receiving Party shall use all commercially reasonable efforts to return or destroy the Protected Materials and all copies of it, including any work product containing, identifying, or referencing such information, and the receiving Party shall not use such information for any purpose other than in connection with a motion to compel production of the information. The Parties shall not use any inadvertently produced Protected Materials, or information gleaned exclusively from any inadvertently produced Protected Materials, in connection with the Bankruptcy Case, except to the extent that the inadvertently producing Party withdraws its designation of the relevant material as Protected Materials or that the Court determines that the relevant material was not properly designated as Protected Materials.

13. No Bar Against Seeking Further Protection. Nothing in this Order shall be construed as preventing any Party from seeking further protection for or disclosure of any Discovery Material.

14. No Admission Regarding Admissibility or Relevancy. Nothing in this Order shall be construed to affect in any way the admissibility or relevance of any Discovery Material or other evidence.

15. No Bar to Use of Party's Own Discovery Material. This Order shall have no effect on, and shall not apply to, a producing Party's use or disclosure of its own Discovery Material for any purposes whatsoever.

16. Conclusion of Litigation and Return of Confidential Information. Within sixty (60) calendar days after final judgment in this action, including the exhaustion of all appeals, or within sixty (60) calendar days after dismissal pursuant to a settlement agreement, each Party

or other person subject to the terms of this Protective Order is under an obligation to destroy or return to the producing Party all materials and documents containing Confidential Information or Highly Confidential Information, and to certify to the producing Party that this destruction or return has been done. However, outside counsel for any Party is entitled to retain all court papers, trial transcripts, exhibits, and attorney work product provided that any such materials are maintained and protected in accordance with the terms of this Agreed Protective Order.

17. No Third-Party Beneficiaries. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Order. For the avoidance of doubt, this provision precludes non-Debtor affiliates, and their Representatives, including any entity affiliated with, owned by, or controlled in any way, directly or indirectly, by James Dondero and his affiliates (the “Dondero Parties”) from seeking to enforce or rely on this Order in any way, unless any of the Dondero Parties is asked (formally or informally) to produce or receive Discovery Materials thereby becoming a "Party" as defined herein. The Dondero Parties are subject to the exclusive jurisdiction of this Court. Nothing in this order shall be deemed to limit third parties (other than the Dondero Parties) who receive a subpoena issued by the Court from seeking to quash or modify that subpoena in the court for the district where compliance is required pursuant to FRCP 45(d).

18. Exclusive Jurisdiction. This Court retains exclusive jurisdiction for matters arising from or related to this Order, including but not limited to after confirmation of any plan of reorganization or conversion of this Bankruptcy Case. The Court further reserves the right to amend this Order upon a motion of any party in interest after notice and a hearing.

*[Remainder of Page Intentionally Left Blank]*

Dated: January 21, 2020

Respectfully submitted,

PACHULSKI STANG ZIEHL & JONES LLP

SIDLEY AUSTIN LLP

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### End of Order ###

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*Counsel for the Debtor and Debtor-in-Possession*

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

---

In re:	§	
	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

---

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Highland” or the “Debtor”), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),<sup>2</sup> a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”). In support of this Motion, the Debtor represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

## RELEVANT BACKGROUND

### A. Procedural Background

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to this Court [Docket No. 186].<sup>3</sup>

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor’s general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor’s chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

**B. Overview of HarbourVest's Claims**

10. HarbourVest's claims against the Debtor's estate arise from its \$80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of \$300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.<sup>4</sup>

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<sup>4</sup> Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

**C. Summary of HarbourVest’s Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry (“Mr. Terry”), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. (“Acis LP”). Through Acis LP, Mr. Terry managed Highland’s CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. (“Acis Funding”).

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately \$8 million (the “Arbitration Award”) on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to “Highland CLO Funding, Ltd.” (“HCLOF”) and “swapped out” Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the “Structural Changes”). The Debtor allegedly told HarbourVest that it made these changes because of the “reputational harm” to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the “Highland” CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to “denude”

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the “Transfers”), on January 24, 2018, Terry moved for a temporary restraining order (the “TRO”) from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the “Acis Bankruptcy Case”). The Bankruptcy Court overruled the Debtor’s objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the “Acis Trustee”). A long sequence of events subsequently transpired, all of which relate to HarbourVest’s claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").
- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.
- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."
- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.
- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

**D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim**

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to” the Operative Documents “and any and all legal and equitable claims or causes of action relating to the forgoing harm.” *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest’s Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the “Claim Objection”).

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the “Fraud Claims”), U.S. State and Federal Securities Law Claims (the “Securities Claims”), violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the “HarbourVest Claims”).

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than \$300 million (based largely on a theory of treble damages).

**E. Settlement Discussions**

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

**F. Summary of Settlement Terms**

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;<sup>5</sup>
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

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<sup>5</sup> The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

See generally Morris Dec. Exhibit 1.

**BASIS FOR RELIEF REQUESTED**

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. See *In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” See *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any

attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive

issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

**NO PRIOR REQUEST**

41. No previous request for the relief sought herein has been made to this, or any other, Court.

**NOTICE**

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests entry of an order, substantially in the form attached hereto as Exhibit A, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: December 23, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
Gregory V. Demo (NY Bar No. 5371992)  
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-and-

**HAYWARD & ASSOCIATES PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*

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

---

In re:	§	
	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

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**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the following matter is scheduled for hearing on **Wednesday, January 13, 2021 at 9:30 a.m. (Central Time)** (the “Hearing”) in the above-captioned bankruptcy case (the “Bankruptcy Case”):

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<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1. *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion").

The Hearing on the Motion will be held before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, Texas 75242-1496.

Any response (each, a "Response") to the relief requested in the Motion shall be filed with the Clerk of the Court on or before **Monday, January 11, 2021 at 5:00 p.m. (Central Time)** (the "Response Deadline").

The Debtor may file a reply (each, a "Reply") to any Response. Any Reply shall be filed with the Clerk of the Court on or before **Tuesday, January 12, 2021 at 5:00 p.m. (Central Time)** (the "Reply Deadline").

*[Remainder of Page Intentionally Left Blank]*

Dated: December 23, 2020.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 266326)  
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hwinograd@pszjlaw.com

-and-

**HAYWARD & ASSOCIATES PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*

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*Counsel for the Debtor and Debtor-in-Possession*

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

-----  
In re: §  
§ Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> §  
§ Case No. 19-34054-sgj11  
§  
Debtor. §  
-----

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR’S MOTION  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
(CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS  
CONSISTENT THEREWITH**

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1. I am a partner in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as Exhibit 1 is a true and correct copy of the *Settlement Agreement*, executed as of December 23, 2020.

3. Attached as Exhibit 2 is a true and correct copy of Proof of Claim No. 143.

4. Attached as Exhibit 3 is a true and correct copy of Proof of Claim No. 147.

5. Attached as Exhibit 4 is a true and correct copy of Proof of Claim No. 149.

6. Attached as Exhibit 5 is a true and correct copy of Proof of Claim No. 150.

7. Attached as Exhibit 6 is a true and correct copy of Proof of Claim No. 153.

8. Attached as Exhibit 7 is a true and correct copy of Proof of Claim No. 154.

Dated: December 24, 2020

/s/ John A. Morris  
John A. Morris

# EXHIBIT 1

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
One Financial Center  
Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

# Exhibit A

**TRANSFER AGREEMENT**  
**FOR ORDINARY SHARES OF**  
**HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [redacted], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
  - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
  - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
  - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
  - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
  - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
  - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
  - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
  - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
  - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

  - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
  - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

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

**TRANSFeree:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

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

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

## **EXHIBIT 2**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global Fund L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harb

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P.		
<b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

000391

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**EXHIBIT 3**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

000401

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## **EXHIBIT 4**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

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*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

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**EXHIBIT 5**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

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Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor? HarbourVest Dover Street IX Investment L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?  
 No  
 Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?  

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

  
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
 Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com  
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. Does this claim amend one already filed?  
 No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?  
 No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

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7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

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9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

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10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

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11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

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bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**EXHIBIT 6**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HV International VIII Secondary L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**  
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

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7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

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9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

000431

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**EXHIBIT 7**

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
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<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P.		
<b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
	(Empty)	
<b>Disbursement/Notice Parties:</b> HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv <b>Company:</b> Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

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in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## **EXHIBIT A**

***Proposed Order on the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 1625]***

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

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In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	

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**ORDER APPROVING DEBTOR'S SETTLEMENT  
WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Having considered the *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion")<sup>2</sup> and the Settlement Agreement attached as **Exhibit 1** (the "Settlement Agreement") to the *Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147,*

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 1631] (the “Morris Dec”) filed by Highland Capital Management, L.P. (the “Debtor”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of creditors, with proper deference to their reasonable views; and (ii) the extent to which the settlement is truly the product of arm’s-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and all other documents filed in support of the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.

2. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

3. All objections to the proofs of claim subject to the Motion<sup>3</sup> are overruled as moot in light of the Court's approval of the Settlement Agreement.

4. The Debtor, HarbourVest (as defined by the Settlement Agreement), and all other parties are authorized to take any and all actions necessary and desirable to implement the Settlement Agreement, including the transfer contemplated by the Transfer Agreements (as defined in the Settlement Agreement), without need of further approval or notice.

5. HarbourVest may, in its sole discretion, allocate the Allowed Claims (as defined in the Settlement Agreement) amongst the HarbourVest Claims (as defined in the Settlement Agreement).

6. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

###End of Order###

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<sup>3</sup> This includes the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906].

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

---

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054 (SGJ)
	)	
Debtor.	)	
	)	

---

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On December 23, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit B**; and, on December 24, 2020, via First Class Mail upon the service lists attached hereto as **Exhibit C** and **Exhibit D**:

- **Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith** [Docket No. 1625]
- **Notice of Hearing** [Docket No. 1626]

Furthermore, on December 24, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit B**; and via First Class Mail upon the service lists attached hereto as **Exhibit C** and **Exhibit D**:

- **Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith** [Docket No. 1631]
- **Proposed Order on the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith** [Docket No. 1625] [Docket No. 1634]

Furthermore, on December 24, 2020, at my direction and under my supervision, employees of KCC caused the following documents to be served via Electronic Mail upon the service list attached hereto as **Exhibit E**; and via First Class Mail upon the service list attached hereto as **Exhibit F**:

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

- **Thirteenth Monthly Application of Sidley Austin LLP for Allowance of Compensation and Reimbursement of Expenses for the Period from November 1, 2020 Through November 30, 2020** [Docket No. 1632]
- **Thirteenth Monthly Application of FTI Consulting for Allowance of Compensation and Reimbursement of Expenses for the Period of November 1, 2020 to and Including November 30, 2020** [Docket No. 1633]

Dated: December 30, 2020

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

# EXHIBIT A

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	jwelton@btlaw.com; lwohlford@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust Equity Holders	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
IRS	Hunter Mountain Investment Trust	c/o Rand Advisors LLC	Jhonis@RandAdvisors.com
Counsel to Crescent TC Investors, L.P.	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Secured Creditor	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetztes	stephen.topetztes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arshat & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mna.com; cmiller@mna.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq.	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslough@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynticeshr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

# **EXHIBIT B**

**Exhibit B**

Affected Parties  
 Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
Crowe & Dunlevy, P.C.	Vickie L. Driver, Christina W. Stephenson	vickie.driver@crowedunlevy.com; crissie.stephenson@crowedunlevy.com
Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com
HarbourVest 2017 Global AIF L.P.	c/o HarbourVest Partners, LLC	agoren@harbourvest.com
HarbourVest 2017 Global AIF L.P.	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com
HarbourVest 2017 Global Fund L.P.	c/o HarbourVest Partners, LLC	agoren@harbourvest.com
HarbourVest 2017 Global Fund L.P.	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com
HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	agoren@harbourvest.com
HarbourVest Dover Street IX Investment L.P.	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com
HarbourVest Partners L.P. on behalf of funds and accounts under management	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com
HarbourVest Partners L.P. on behalf of funds and accounts under management	HarbourVest Partners L.P.	agoren@harbourvest.com
HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	agoren@harbourvest.com
HarbourVest Skew Base AIF L.P.	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com
HV International VIII Secondary L.P.	c/o HarbourVest	agoren@harbourvest.com
HV International VIII Secondary L.P.	Debevoise and Plimpton LLP Attn Erica Weisgerber	eweisgerber@debevoise.com

# EXHIBIT C

Exhibit C

Core/2002 Service List  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
US Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	US Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

# EXHIBIT D

**Exhibit D**  
Affected Parties  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Crowe & Dunlevy, P.C.	Vickie L. Driver, Christina W. Stephenson	2525 McKinnon Street, Suite 425		Dallas	TX	75201
Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	919 Third Avenue		New York	NY	10022
HarbourVest 2017 Global AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HarbourVest 2017 Global AIF L.P.	HarbourVest 2017 Global AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center	Boston	MA	02111
HarbourVest 2017 Global Fund L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HarbourVest 2017 Global Fund L.P.	HarbourVest 2017 Global Fund L.P.	c/o HarbourVest Partners, LLC	One Financial Center	Boston	MA	02111
HarbourVest Dover Street IX Investment L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HarbourVest Dover Street IX Investment L.P.	HarbourVest Dover Street IX Investment L.P.	c/o HarbourVest Partners, LLC	One Financial Center	Boston	MA	02111
HarbourVest Partners L.P. on behalf of funds and accounts under management	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HarbourVest Partners L.P. on behalf of funds and accounts under management	HarbourVest Partners L.P.	c/o HarbourVest Partners, LLC	One Financial Center	Boston	MA	02111
HarbourVest Skew Base AIF L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HarbourVest Skew Base AIF L.P.	HarbourVest Skew Base AIF L.P.	c/o HarbourVest Partners, LLC	One Financial Center	Boston	MA	02111
HV International VIII Secondary L.P.	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022
HV International VIII Secondary L.P.	HV International VIII Secondary L.P.	c/o HarbourVest	One Financial Center	Boston	MA	02111

# EXHIBIT E

**Exhibit E**

Fee App Parties List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Debtor	Highland Capital Management	Attn: Isaac Leventon	ileventon@highlandcapital.com
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	jane.m.leamy@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, Maxim B. Litvak, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; mlitvak@pszjlaw.com; joneill@pszjlaw.com
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# EXHIBIT F

**Exhibit F**  
 Fee App Parties List  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building		Dallas	TX	75242
US Trustee for District of DE	Office of the United States Trustee Delaware	Jane M. Leamy	J. Caleb Boggs Federal Building	844 King St Ste 2207	Lockbox 35	Wilmington	DE	19801
United States Bankruptcy Court	United States Bankruptcy Court	Honorable Stacey G. Jernigan	Northern District of Texas - Dallas Division	Earle Cabell Federal Building	1100 Commerce St., Rm. 1254	Dallas	TX	75242-1496

D. Michael Lynn  
State Bar I.D. No. 12736500  
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ATTORNEYS FOR JAMES DONDERO

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

**IN RE:** §  
§  
**HIGHLAND CAPITAL MANAGEMENT,** § **Case No. 19-34054**  
**L.P.,** §  
§  
**Debtor.** § **Chapter 11**

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**JAMES DONDERO’S OBJECTION TO DEBTOR’S MOTION FOR ENTRY  
OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
[Relates to Docket No. 1625]**

James Dondero (“Respondent”), a creditor, indirect equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Objection to *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154)* [Docket No. 1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the Federal

Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Respondent respectfully represents as follows:

## I. INTRODUCTION

1. Under Bankruptcy Rule 9019, the Bankruptcy Court is tasked with making an independent judgment on the merits of a proposed settlement to ensure that the proposed settlement is “fair, equitable, and in the best interest of the estate.”<sup>1</sup> While Respondent recognizes the Debtor’s efforts in arranging a settlement, there are at least three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim (as hereinafter defined); (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a significant claim to which it would not otherwise be entitled; and (iii) the proposed settlement seeks to improperly classify the HarbourVest Claim<sup>2</sup> in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. Moreover, the proposed settlement does not satisfy the factors for approval fixed by case law. On information and belief, Debtor’s CEO/CRO, Mr. Seery, has previously asserted on multiple occasions that the HarbourVest Claim had no value and that the Debtor could resolve such claim for no more than \$5 million. While Respondent and Mr. Seery have had a number of disagreements in this case, Respondent agrees with Mr. Seery’s initial conclusion that the HarbourVest Claim is substantially without merit. Respondent understands that any settlement will not necessarily provide the best possible outcome for the Debtor, but in this instance the proposed settlement far exceeds the bounds of reasonableness and, on its face, is an attempt by the Debtor to purchase votes in favor

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<sup>1</sup> See *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

<sup>2</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

of confirmation of its Plan. Given the Debtor's prior positions as to the merits of HarbourVest Claim it is necessary for the Court to closely scrutinize the settlement to determine why the Debtor now believes granting HarbourVest a net claim of nearly \$60 million<sup>3</sup> resulting from HarbourVest's investment in a non-debtor entity (which was and is managed by a non-debtor) to be in the best interest of the estate. Upon close scrutiny, Respondent believes the Court will find that the proposed settlement is not reasonable or in the best interest of the estate and the Motion therefore should be denied.

## II. BACKGROUND

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

5. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

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<sup>3</sup> The proposed settlement provides that HarbourVest shall receive an allowed general unsecured (Class 8) claim in the amount of \$45 million and an allowed subordinated general unsecured (Class 9) claim in the amount of \$35 million. As part of the settlement, HarbourVest will then transfer its entire interest in Highland CLO Funding, Ltd. ("HCLOF") to an entity to be designated by the Debtor. The Debtor states that the value of this interest is approximately \$22 million as of December 1, 2020.

6. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms.

7. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. *See* Docket No. 854.

8. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the "HarbourVest Claim")<sup>4</sup>.

9. On July 30, 2020, the Debtor filed *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the "Debtor Objection"), which contained an objection to the HarbourVest Claim.

10. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "HarbourVest Response").

11. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. Docket No. 1625.

### **III. LEGAL STANDARD**

12. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390

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<sup>4</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. *See* Claim Nos. 143, 147, 149, 150, 153, and 154.

U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984). The terms “fair and equitable,” commonly referred to as the “absolute priority rule,” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

13. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

*TMT Trailer*, 390 U.S. at 424.

14. In considering whether to approve a proposed compromise, the bankruptcy judge “may not simply accept the trustee’s word that the settlement is reasonable, nor may he merely ‘rubber stamp’ the trustee’s proposal.” *In re Am. Res. Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). “[T]he bankruptcy judge must apprise himself of all facts necessary to evaluate the settlement and make an informed and independent judgment about the settlement.” *See TMT Trailer*, 390 U.S. at 424, 434.

15. While the trustee’s business judgment is entitled to a certain deference, “business judgment is not alone determinative of the issue of court approval.” *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). Further, the business judgment rule does not provide a debtor with “unfettered freedom” to do as it wishes. *See In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) (“[A]s a fiduciary holding its estate in trust and responsible

to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.”). The Court must conduct an “intelligent, objective and educated evaluation”<sup>5</sup> of the proposed settlement “to ensure that the settlement is fair, equitable, and in the best interest of the estate and creditors.” *See In re Mirant Corp.*, 348 B.R. 725, 739 (Bankr. N.D. Tex. 2006) (quoting *Conn. Gen. Life Ins. Co. v. Foster Mortgage Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)).

#### IV. ARGUMENT AND AUTHORITIES

16. As discussed in detail below, there are three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim; (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a substantial claim to which it is not entitled; and (iii) the proposed settlement seeks to improperly classify HarbourVest’s one claim in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. For these and certain additional reasons as discussed below, the Motion should be denied.

##### **A. Through its Claim, HarbourVest Seeks to Revisit this Court’s Orders in the Acis Case**

17. As an initial matter, through its proofs of claim, HarbourVest appears to be second guessing the Court’s judgment in the Chapter 11 case of Acis Capital Management, LP and Acis Capital Management GP, LLC (collectively, “Acis”) and seeking to revisit the Court’s orders entered in that case years ago. HarbourVest appears to be arguing that the TRO and injunction

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<sup>5</sup> *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (“To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation.”).

entered in the Acis case that prevented redemptions or resets in the CLOs are now the root cause of the decrease in value of its investment in HCLOF.

18. Specifically, the claim states that HarbourVest incurred “financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF.”<sup>6</sup>

19. Essentially, HarbourVest is saying that the orders entered in the Acis case did not actually protect the investors and their investments, but instead were a triggering cause for the alleged diminution in value of its investment in HCLOF. Nevertheless, even though the value of HCLOF dropped dramatically only after the Effective Date of Acis’s Plan, years later and despite the lack of Debtor involvement in managing HarbourVest’s investment, HarbourVest now seeks to impute liability to the Debtor through a flimsy narrative designed to recoup investment losses unrelated to the Debtor and for which the Debtor owed HarbourVest no duty.

20. That HarbourVest now, years later, seeks to revisit this Court’s Acis orders raises a number of issues, including those as to HarbourVest’s involvement (or lack thereof) in the Acis case, whether the orders, Plan, or Confirmation Order in the Acis case may bar some of the relief requested by HarbourVest here, and questions related to the merits of the HarbourVest Claim and the legal grounds allegedly supporting it.

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<sup>6</sup> See Proof of Claim 143, para. 3 (“Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF.”).

**B. The HarbourVest Claim Lacks Merit and the Proposed Settlement is Not Reasonable**

21. Based on the HarbourVest Claim and its filed response to the Debtor's objection, Respondent believes that the HarbourVest claim is meritless and the proposed settlement is not reasonable, fair and equitable, or in the best interest of the estate.

22. First, the proposed settlement is concerning particularly because HarbourVest's bare bones proof of claim contains very little in terms of allegations of specific conduct against the Debtor that would give rise to a \$60 million claim against this estate. While HarbourVest's response to the Debtor's claim objection is lengthy, it contains very little in real substance supporting its right to such a claim against the estate. The response also omits a number of key facts that are relevant and potentially fatal to its claim for damages against the Debtor's estate. Among them is the fact that Acis (and thereafter Reorganized Acis), along with Mr. Joshua Terry, managed HarbourVest's investment for years after it was made.<sup>7</sup> Despite this fact, HarbourVest's alleged damages appear to be based largely on the difference between the value of its initial investment at confirmation of Acis's Plan and the current value of the investment—which amount was directly determined by the performance of the CLOs that Acis managed during this time.<sup>8</sup> Neither the claim nor the response directly address the implications of Acis's management of the CLOs during the period following HarbourVest's investment. Nor does HarbourVest address or discuss performance of the CLOs, the market forces that may have caused HarbourVest's investment to lose value, or other factors influencing the current value of its investment. The

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<sup>7</sup> See, e.g., HarbourVest Proof of Claim 143, p. 5 (“The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018.”).

<sup>8</sup> See HarbourVest Response, Docket No. 1057, para. 40 (“HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment’s current value is far less than HarbourVest’s initial contribution.”).

speculative nature of the damages and the lack of specificity of the HarbourVest Claim and the role of Acis in the loss of value to HarbourVest all call into question the reliability of the allegations and the legal basis for the claim amount awarded in the settlement.

23. Also absent from Harbourvest's papers is any discussion of any contract or agreement between (i) HarbourVest and the Debtor; and (ii) any agreement that was executed in conjunction with HarbourVest's initial investment. While the proof of claim references a number of agreements, there is no explanation in the claim or in HarbourVest's response to the Debtor's claim objection of how these agreements give rise to liability against the *Debtor*. For example, neither the claim nor the HarbourVest Response (which includes more than 600 pages of attachments) attach *any* written agreement between HarbourVest and **any other party**. While HarbourVest has alleged a number of claims sounding in tort, many of those claims cannot exist absent a contract or other express relationship between the parties. Moreover, the terms of the relevant contracts themselves likely contain a number of provisions that may call into question Debtor's liability or would be otherwise relevant to merits of the HarbourVest Claim. For example, HarbourVest in its papers appears to assert or imply that the Debtor made a number of false or fraudulent representations to solicit HarbourVest's investment, but then fails to discuss or even identify the applicable agreements it alleges it was induced into signing in connection with its investment (this despite the substantial value of the investment when the Acis plan was confirmed).

24. Given these issues, among many others, the HarbourVest Claim is unsustainable both from a liability and damages standpoint and there are many very high hurdles HarbourVest would have to clear in seeking to prove liability against the Debtor and in proving its damages. For a long period of time, its investment was managed by Acis and the investment's performance was directly tied to Acis's inadequate performance as portfolio manager. Further, the value of

HarbourVest's investment is also directly tied to various market forces that may have impacted its value. The HarbourVest Claim is largely lacking in relevant facts and omits much salient information, such as who it contracted with in connection with its investment, the terms of such agreements, who controlled its investment during the entire period from November 2017 to the present, and the performance of its investment during the last two years. Given these issues, HarbourVest will be unable to demonstrate a causal connection between any conduct of the Debtor and the alleged damages it suffered from a reduction in value of its investment.

25. Because of the speculative nature of the HarbourVest Claim, and the fact that very little pleading or litigation has occurred, the proposed settlement in granting such a large claim is unreasonable, not fair and equitable, and not in the best interest of the estate. The lack of pending litigation, narrowing of threshold questions, and lack of detail in HarbourVest Claim make it impossible to determine whether the huge claim awarded under the proposed settlement is justified under the facts. Accordingly, the Motion should be denied.

**C. The Proposed Settlement is an Improper Attempt by the Debtor to Purchase Votes in Support of its Plan and the Separate Classification of the HarbourVest Claim Constitutes Gerrymandering in Violation of 11 U.S.C. § 1122**

26. The proposed settlement is a flagrant attempt by the Debtor to purchase votes in support of its Plan by giving HarbourVest a significant claim to which it has not shown itself entitled. Moreover, the separate classification of the HarbourVest Claim into two separate classes constitutes impermissible gerrymandering in violation of section 1122 of the Bankruptcy Code. The proposed settlement essentially gives HarbourVest a claim it is not entitled to in exchange for votes in two separate classes. This is not a proper basis for a settlement and the Court should deny the Motion.

27. Section 1122 of the Bankruptcy Code provides as follows:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

28. “Chapter 11 requires classification of claims against a debtor for two reasons. Each class of creditors will be treated in the debtor's plan of reorganization based upon the similarity of its members' priority status and other legal rights against the debtor's assets. Proper classification is essential to ensure that creditors with claims of similar priority against the debtor's assets are treated similarly.” *In re Greystone III Joint Venture*, 995 F.2d 1274, 1277 (5th Cir. 1991).

29. “Section 1122 consequently must contemplate some limits on classification of claims of similar priority. A fair reading of both subsections suggests that ordinarily substantially similar claims, those which share common priority and rights against the debtor’s estate, should be placed in the same class.” *Id.* at 1278.

30. The Fifth Circuit has stated that there is “one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.” *Id.* at 1279. The Court observed:

There must be some limit on a debtor’s power to classify creditors in such a manner. . . . Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class.

*In re Greystone III Joint Venture*, 995 F.2d 1274, 1279 (5th Cir. 1991) (quoting *In re U.S. Truck Co.*, 800 F.2d 581, 586 (6th Cir. 1986)).

31. Here, the HarbourVest settlement and the classification of the HarbourVest Claim under the Plan blatantly violate the Fifth Circuit’s “one rule” concerning the classification of claims under section 1122. To the extent that HarbourVest even has a legitimate claim, not only should its claim be classified together with other unsecured creditors, its claim should be classified solely in one class. To allow the Debtor to do otherwise as proposed is improper gerrymandering in order to obtain a consenting class in express violation of section 1122.

**D. There Are Other Reasons for the Court to Closely Scrutinize the Proposed Settlement that May Warrant Denial of the Motion**

32. There are a number of other reasons for the Court to closely scrutinize the proposed settlement that may warrant denial of the Motion.

33. First, the granting to HarbourVest of a claim in the total amount of \$80 million potentially allows HarbourVest to achieve a significant windfall at the expense of other creditors and equity holders. The Debtor has asserted numerous times that the estate is solvent and, for this reason, the purported subordinated claim of \$35 million (if allowed and approved) may be worth just as much as its general unsecured claim. This is a huge figure in this case, outshined only by the Redeemer Committee, which has an actual arbitration award obtained after lengthy litigation. By contrast, the HarbourVest Claim contains only a few paragraphs of generalized allegations that essentially argue that the Debtor’s alleged actions related to the Acis bankruptcy, and this Court’s orders in the Acis case, are a “but for” cause of the loss of its investment. While the HarbourVest Response is lengthy, it lacks necessary details for the Court to determine whether HarbourVest *may* be entitled to the relief requested by the Motion. The other significant creditors in this case—*inter alia*, Redeemer, UBS and Acis—all had pending claims that were litigated. Nor is HarbourVest a trade creditor, vendor, or other contract counter-party of the Debtor. The HarbourVest Claim is thus uniquely situated in this case and, given the size and the nature of its

claims, should invite close scrutiny. Under these facts, the potential allowance of an \$80 million claim (less the value of its share in HCLOF, which may suffer by continued management by Acis) against the estate for an investment which was not held or managed by the Debtor would be a huge undue windfall.

34. Second, the Motion states that HarbourVest will vote its proposed allowed Class 8 (proposed at \$45 million) and Class 9 (proposed at \$35 million) claims in support of confirmation. There are at least two potential issues with this proposal. First, the deadline for parties to submit ballots was January 5, 2021, and as of the close of business on January 5, the HarbourVest Claim has not been allowed for voting purposes.<sup>9</sup> Second, the Motion and proposed settlement agreement state that the HarbourVest Claim will be allowed for voting purposes only as a general unsecured claim in the amount of \$45 million. It is unclear how HarbourVest can, or would be authorized to, vote its purported Class 8 and 9 Claims in support of the Plan after the voting deadline and when the settlement provides only for a voting claim in Class 8.

35. Third, while the Motion addresses the factor of probability of success in the litigation, it does not discuss in detail the cost of doing so in relation to the amount to be paid to HarbourVest under the settlement or the likelihood that the Debtor will succeed in the litigation. In addition, unlike the claims filed by Acis and UBS, the HarbourVest Claim does not arise from pending litigation. At this point, relatively little litigation has occurred and the parties have not addressed threshold issues that might dramatically narrow the scope of the HarbourVest Claim. Rule 9019 requires an analysis as to whether the probability of success in litigation is outweighed by the consideration achieved under the settlement. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (The Court must “compare the terms of the compromise with the likely rewards

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<sup>9</sup> The hearing on the 3018 and 9019 motions are set concurrently with confirmation.

of litigation.”). Given the excessive amount to be paid under the settlement and the weakness of the HarbourVest Claim, this factor weighs in favor of denial of the Motion.

36. Fourth, it is unclear from the settlement papers whether the transfer by HarbourVest of its interest in HCLOF to the Debtor or an entity the Debtor designates will cause the value of the investment to be received by the Debtor’s estate. Further, the interest of HCLOF being conveyed under the proposed settlement may be subject to the Acis plan injunction, which could potentially prevent the Debtor’s estate from realizing the value of this interest. In the event the Court is inclined to approve the settlement, the order should make clear that the available value of the investment should be realized by the Debtor’s estate.

#### **CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that the Court enter an order denying the Motion and providing Respondent such other and further relief to which he may be justly entitled.

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Dated: January 6, 2021

Respectfully submitted,

/s/ D. Michael Lynn

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**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor \*

**OBJECTION TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

The Dugaboy Investment Trust and Get Good Trust (jointly, “Objectors”), submit this Objection for the purpose of objecting to the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Dkt. #1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the

Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Objectors respectfully represent as follows:

## **I. INTRODUCTION**

1. Objectors recognize that Courts favorably view settlements and, as a matter of course, generally approve settlements as being in the best interest of the bankruptcy estate. The settlement proposed herein, however, is different than other settlements inasmuch as it represents a 180 degree departure from the Debtor’s own analysis of the Claim of HarbourVest and the fact that the settlement is tied to HarbourVest approving the Debtor’s plan. Little or no information is provided by the Debtor as to why its initial analysis was flawed and what information or legal principal it discovered to change a zero claim into a massive claim that will have a significant impact on the recovery to creditors.

## **II. BACKGROUND**

2. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the venue of this case was transferred. [Dkt. #186].

5. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. [See Dkt. #854].

6. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the “HarbourVest Claim”)<sup>1</sup>.

7. On July 30, 2020, the Debtor filed *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #906] (the “Debtor Objection”), which contained an objection to the HarbourVest Claim.

8. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #1057] (the “HarbourVest Response”).

9. The Debtor, in its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. #1473 pgs. 40-41], described its position relative to the HarbourVest Claim as follows:

The Debtor intends to **vigorously** defend the HarbourVest Claims on various grounds ..... The HarbourVest Entities invested approximately \$80,000,000.00 in HCLOF but seek an allowed claim in excess of 300 million dollars (after giving effect to treble damages for the alleged RICO violations)

10. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. [Dkt. # 1625].

11. The proposed settlement provides HarbourVest with the following:

- a. An allowed, general unsecured claim in the amount of \$45,000,000.00 [Dkt. #1625 pg. 9 pp.f]; and

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<sup>1</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

- b. A \$35,000,000 claim in Class 9 [Dkt. #1625 pg. 9 pp.f].
12. An integral element of the settlement requires that HarbourVest will “support confirmation of the Debtor’s Plan including, but not limited to, voting its claims in support of the Plan.”
13. The settlement also contains a provision that HarbourVest will transfer its entire interest in HCLOF to an entity to be designated by the Debtor. It is unclear whether HarbourVest has a right to transfer the interest and secondly, what the Debtor will do with the interest [Dkt. #1625 pp.f].
14. The sole support for the Motion is the Declaration of John Morris [Dkt. #1631] which fails to account for the enormous change in the Debtor’s position between November 24, 2020 when the Disclosure Statement was approved and December 23, 2020 when the Motion was filed, a period of less than thirty (30) days.
15. The Declaration of John Morris [Dkt. #1631] also contains no information as to the potential cost of the litigation, whether HarbourVest can transfer the interest or reasons, other than conclusory reasons, as to why the settlement is beneficial to the estate. The Debtor makes the assertion that the interest it is acquiring was worth \$22,000,000.00 as of December 1, 2020 without advising as to the basis for the valuation. Is it a book value and, if not, what was the methodology employed to arrive at the valuation? The Court has no basis to evaluate the settlement without essential information as to 1) how the asset being acquired is valued; 2) can the Debtor acquire the interest; and 3) how will the Debtor bring value to the estate in connection with the interest inasmuch as the Debtor has discretion as to where to place the asset to be acquired.

**A. LEGAL STANDARDS**

16. The law relative to approval of motions pursuant to BR 9019 is well settled. The settlement must be fair and equitable. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980). The factors the Court should consider are the following:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

*Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

17. Although the Debtor's business judgment is entitled to a certain deference, "business judgment" is not alone determinative of the issue of court approval. *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). However, notwithstanding the business judgment rule, a debtor does not have unfettered freedom to do what it wishes. *See In re Pilgrim's Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) ("[A]s a fiduciary holding its estate in trust and responsible to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.").

## **B. ISSUES WITH THE SETTLEMENT**

18. Objectors believe that the following issues are not explained or addressed in the Motion and, thus, the Motion should be denied:

- a) The settlement represents a radical change in the Debtor's position that was set forth in its Disclosure Statement. While the Debtor asserts that its position is

based on its fear of parties' oral testimony, the size of the transactions at issue make the case a document case, as opposed to who said what, when and how. A review of the applicable documents to determine whether they support the Debtor's initial position is warranted, as opposed to stating that the case is based upon the credibility of a witness. This settlement is not the settlement of an automobile accident where the parties are disputing who ran a red light;

- b) The settlement requires HarbourVest to support and vote in favor of the Debtor's Plan. On its face this appears to be vote buying. The settlement should not be conditioned upon HarbourVest's support or non-support of the Plan and its vote in favor or against the Plan; and
- c) No information is provided as to whether the Debtor can acquire the interest in HCLOF, liquidate the interest, who will receive the interest, or how will the estate benefit from the interest to be acquired.

### CONCLUSION

The settlement with HarbourVest has too many questions to be approved on the record before this Court and the parties, due to the Notice of the Motion, the holidays and the press of other litigation in this case, do not have the time to adequately investigate the propriety of the settlement.

January 8, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

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### CERTIFICATE OF SERVICE

I do hereby certify that on the 8<sup>th</sup> day of January, 2021, a copy of the above and foregoing *Objection To Debtor's Motion For Entry Of An Order Approving Settlement With Harbourvest (Claim Nos. 143, 147, 149, 150, 153, 154) And Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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ATTORNEYS FOR CLO HOLDCO, LTD.

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

In re: §  
§  
HIGHLAND CAPITAL MANAGEMENT, L.P., § Case No. 19-34054-SGJ  
§  
Debtor. § Chapter 11  
§

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**CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT**

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**TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:**

CLO Holdco, Ltd. ("**CLO Holdco**") respectfully files this *Objection to Harbourvest Settlement* (the "**Harbourvest Settlement Objection**") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "**Harbourvest Settlement Motion**") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

**I.  
BACKGROUND**

**A. TRANSFERRING SHARES IN HCLOF**

1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("**HCLOF**"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "**Harbourvest**"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "**Member Agreement**"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "**Right of First Refusal**"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

#### **B. THE HARBOURVEST SETTLEMENT**

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "**Settlement Agreement**") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "**Transferee**"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "**Plan**") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

## **II.** **ARGUMENTS AND AUTHORITIES**

### **A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE**

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892–93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Grupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Fifth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

## **B. ANALYZING THE MEMBER AGREEMENT**

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager...

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

**(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates**

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first..." comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

**(ii) Absurd Results – Disparate Transfer Rights Between Members**

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer all of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,

however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow *all* of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in *every instance*. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply *cannot* be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

### **C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY**

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the *debtor's* contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

**D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT**

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

or enforce a settlement where the parties were subject to conditions precedent before the settlement could be effective, and the conditions precedent were not satisfied. This Court should similarly deny Harbourvest's proposed settlement, as it would deny the Members' Right of First Refusal, which is the benefit of their bargain under the Member Agreement.

**III.**  
**PRAYER FOR RELIEF**

WHEREFORE, CLO Holdco requests that this Court grant the Objection and enter an order denying the Harbourvest Settlement Motion.

DATED: January 8, 2020

Respectfully submitted,

**KANE RUSSELL COLEMAN LOGAN PC**

By:           /s/ John J. Kane          

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**ATTORNEYS FOR CLO HOLDCO, LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at [Lisa.L.Lambert@usdoj.gov](mailto:Lisa.L.Lambert@usdoj.gov) and upon the following parties:

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/s/ John J. Kane

John J. Kane

**SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s) [382](#) Order on motion for protective order)**

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*Counsel for the Debtor and Debtor-in-Possession*

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Debtor.	§	

**AMENDED NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the following matter is scheduled for hearing on **Thursday, January 14, 2021 at 9:30 a.m. (Central Time)** (the “Hearing”) in the above-captioned bankruptcy case (the “Bankruptcy Case”):

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1. *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion").

The Hearing on the Motion will be held before The Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 1, Dallas, Texas 75242-1496.

Any response (each, a "Response") to the relief requested in the Motion shall be filed with the Clerk of the Court on or before **Monday, January 11, 2021 at 5:00 p.m. (Central Time)** (the "Response Deadline").

The Debtor may file a reply (each, a "Reply") to any Response. Any Reply shall be filed with the Clerk of the Court on or before **Wednesday, January 13, 2021 at 5:00 p.m. (Central Time)** (the "Reply Deadline").

*[Remainder of Page Intentionally Left Blank]*

Dated: January 9, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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*Counsel for the Debtor and Debtor-in-Possession*

**SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)[382](#) Order on motion for protective order).**

1717

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*Counsel for the Debtor and Debtor-in-Possession*

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

---

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	<b>Re: Docket Nos. 1625, 1697, 1706,</b>
	)	<b>1707</b>

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**DEBTOR’S OMNIBUS REPLY IN SUPPORT OF DEBTOR’S MOTION FOR  
ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
(CLAIM NOS. 143, 147, 149, 150, 153, 154), AND AUTHORIZING ACTIONS  
CONSISTENT THEREWITH**

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

The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) in support of its *Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Motion”).<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. If granted, the Motion will resolve a \$300 million general unsecured claim against the Debtor’s estate for less than \$16.8 million in actual value.<sup>3</sup> The settlement is another solid achievement for the Debtor and – not surprisingly – is opposed by no one except Mr. Dondero and entities affiliated with him.

2. As discussed in the Motion, in November 2017, HarbourVest invested \$80 million in exchange for a 49.98% membership interest in HCLOF – an entity managed by a subsidiary of the Debtor. The balance of HCLOF’s interests are held by CLO Holdco, Ltd. (an entity affiliated with Mr. Dondero), the Debtor, and certain of the Debtor’s employees. Subsequent to its investment in HCLOF, HarbourVest incurred substantial losses on its investment in HCLOF and filed claims against the Debtor’s estate.

3. HarbourVest asserts claims for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Motion.

<sup>3</sup> Under the proposed settlement, HarbourVest would receive an allowed, general unsecured claim of \$45 million and an allowed, subordinated claim of \$35 million. Based on the estimated recovery for general unsecured creditors of 87.44% (which is a recovery based on certain outdated assumptions discussed *infra*), HarbourVest’s \$45 million general unsecured claim is estimated to be worth approximately \$39.3 million and the \$35 million subordinated claim, which is junior to the general unsecured claim, is currently estimated to have value only if there are litigation recoveries. In addition, HarbourVest is transferring to an affiliate of the Debtor its interest in HCLOF, which is estimated to be worth approximately \$22.5 million. Thus, HarbourVest’s estimated recovery on its general unsecured and subordinated claims is estimated at approximately \$16.8 million on a net economic basis. This estimate, however, is dated and is based on the claims that were settled as of the filing of the Debtor’s plan in November 2020.

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. In furtherance of these claims, HarbourVest alleges it was misled by the Debtor and its employees, including Mr. Scott Ellington (then the Debtor's general counsel), and that subsequent to investing in HCLOF, Mr. Dondero and the Debtor used HCLOF both as a piggybank to fund the litigation against Acis Capital Management, L.P. ("Acis") and as a scapegoat for the Debtor's litigation strategy, in each case to HarbourVest's substantial detriment.

4. Specifically, HarbourVest alleges that:

- the Debtor and its employees, including Mr. Ellington, misled HarbourVest about its intentions with respect to Mr. Terry's arbitration award against Acis and orchestrated a series of fraudulent transfers and corporate restructurings, the true purpose of which was to denude Acis of assets and make it judgment proof;
- the Debtor and its employees, including Mr. Ellington, misled HarbourVest as to the intent and true purpose of these restructurings and led HarbourVest to believe that Mr. Terry's claims against Acis were meritless and a simple employment dispute that would not affect HarbourVest's investment;
- the Debtor, through Mr. Dondero, improperly exercised control over or misled HCLOF's Guernsey-based board of directors to cause HCLOF to engage in unnecessary, unwarranted, and resource-draining litigation against Acis;
- the Debtor improperly caused HCLOF to pay substantial legal fees of various entities in the Acis bankruptcy that were unwarranted, imprudent, and not properly chargeable to HCLOF; and
- the Debtor used HarbourVest as a scapegoat in its litigation against Acis by asserting that the Debtor's improper conduct and scorched-earth litigation strategy was at HarbourVest's request, which was untrue.

5. The Debtor believed, and continues to believe, that it has viable defenses to HarbourVest's claims. Nevertheless, those defenses would be subject to substantial factual disputes and would require expensive and time-consuming litigation that would likely be resolved only after a lengthy trial all while the Debtor (or its successor) assumes the risk that the defenses might fail. The evidence will show that the proposed settlement is the product of substantial, arm's length – and sometimes quite heated – negotiations between and among the

principals and their counsel. The evidence will also show that one of HarbourVest's primary concerns in settling its claim was that part of that settlement would include the extrication of HarbourVest from the Highland web of entities and the related litigation. The proposed settlement accomplishes that and does so in compliance with HCLOF's governing agreements.

6. Pursuant to the proposed settlement, (a) HarbourVest will receive (i) an allowed, general unsecured claim in the amount of \$45 million, and (ii) an allowed, subordinated claim in the amount of \$35 million; (b) HarbourVest will transfer its 49.98% interest in HCLOF (valued at approximately \$22.5 million) to a wholly-owned subsidiary of the Debtor; and (c) the parties will exchange mutual and general releases. The Debtor believes that the proposed settlement is reasonable and results from the valid and proper exercise of its business judgment. And the Debtor's creditors apparently agree. None of the major parties-in-interest or creditors in this case has objected to the Motion: not the Committee, the Redeemer Committee, Acis, Patrick Daugherty, or UBS.

7. In distinction, the only objecting parties are Mr. Dondero, his family trusts (the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts")), and CLO Holdco (a wholly-owned subsidiary of Mr. Dondero's Charitable Donor Advised Fund, L.P. (the "DAF")) (collectively, the "Objectors"). Each of the Objectors has only the most tenuous economic interest in and connection to the Debtor's settlement with HarbourVest. Each of the Objectors is also controlled directly or indirectly by Mr. Dondero who has coordinated each of the Objectors litigation strategies against the Debtor.<sup>4</sup> Mr. Dondero's efforts to litigate every issue in this case – directly and by proxy – should be rebuffed, and the objections overruled. The following is a brief summary of the objections.

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<sup>4</sup> See *Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q.

<b><u>Pleading</u></b>	<b><u>Objection/Reservation</u></b>	<b><u>Response</u></b>
<p><i>Objection of James Dondero</i> [Docket No. 1697] (the “<u>Dondero Objection</u>”)</p>	<p>Because HarbourVest was damaged by the injunction entered in Acis, the settlement seeks to revisit this Court’s rulings in Acis.</p>	<p>Mr. Dondero is misdirecting the Court. HarbourVest’s claim arises from the misrepresentations of Mr. Dondero, Mr. Ellington, and others, not this Court’s rulings in Acis, including the failure to disclose the fraudulent transfer of assets.</p>
	<p>The settlement is not fair and equitable because it does not address (1) Acis’s mismanagement, (2) how the Debtor is liable for HarbourVest’s damages, (3) the success on the merits, (4) the costs of litigation, and (5) the Debtor’s ability to realize the value of the HCLOF interests in light of the Acis injunction.</p>	<p>Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation. The Debtor has assessed the value of the HCLOF interests in light of all factors, including the Acis injunction.</p>
	<p>The HarbourVest settlement represents a substantial windfall to HarbourVest.</p>	<p>Mr. Dondero ignores the economics of this case, which have value breaking in Class 8 (General Unsecured Claims). The value of the settlement is not \$60 million; it is approximately \$16.8 million against a claim of \$300 million. There is no windfall.</p>
	<p>The HarbourVest settlement is improper gerrymandering because it provides HarbourVest with a general unsecured claim and a subordinated claim in order to secure votes for the plan.</p>	<p>The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.</p>
<p><i>Objection of the Dugaboy Investment Trust and Get Good Trust</i> [Docket No. 1706] (the “<u>Trusts Objection</u>”)</p>	<p>The settlement represents a radical change in the Debtor’s earlier position on the HarbourVest settlement.</p>	<p>Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation.</p>
	<p>The settlement appears to buy HarbourVest’s vote.</p>	<p>The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.</p>
	<p>No information is provided as to whether the Debtor can acquire HarbourVest’s interest in HCLOF or the value of that interest to the estate.</p>	<p>As discussed below, the HCLOF interest will be transferred to a wholly-owned subsidiary of the Debtor. Mr. Seery will testify as to the benefit of the HCLOF interests to the estate.</p>
<p><i>Objection of CLO Holdco</i> [Docket No. 1707] (“<u>CLOH Objection</u>”)</p>	<p>HarbourVest cannot transfer its interests in HCLOF unless it complies with the right of first refusal.</p>	<p>CLO Holdco misinterprets the operative agreements and tries to create ambiguity where none exists.</p>

8. These objections are just the latest objections filed by Mr. Dondero and his related entities to any attempt by the Debtor to resolve this case,<sup>5</sup> including the Debtor's settlement with Acis [Docket No. 1087] and the seven separate objections filed by Mr. Dondero and his related entities to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan").<sup>6</sup> It will not shock this Court to hear that each of the Objectors is also objecting to the Plan. In contradistinction, the Debtor has heard this Court's admonishments about old Highland's culture of litigation as evidenced by this case, Acis's bankruptcy, and beyond. Although the Debtor has vigorously contested claims when appropriate, the Debtor has also sought to settle claims and limit the senseless fighting. The Debtor has successfully resolved the largest claims against the estate, including the claims of the Redeemer Committee, Acis, and, as recently announced to this Court, UBS. The Debtor would ask this Court to see through the pretense of the Dondero-related entities' objections to the HarbourVest settlement and approve it as a valid exercise of the Debtor's business judgment.

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<sup>5</sup> As an example of Mr. Dondero's litigiousness, on January 12, 2021, Mr. Dondero filed notice that he will be appealing the preliminary injunction entered against him earlier on January 12, 2021.

<sup>6</sup> (1) *James Dondero's Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1661]; (2) *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by *Get Good Trust, The Dugaboy Investment Trust*) [Docket No. 1667]; (3) *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by *Scott Ellington, Thomas Surgent, Frank Waterhouse, Isaac Leventon*) [Docket No. 1669]; (4) *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by *Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrate Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund*) [Docket No. 1670]; (5) *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by *NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC*) [Docket No. 1673]; (6) *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]; and (7) *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by *NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank*) [Docket No. 1676].

**REPLY**

**A. Standing**

9. **James Dondero.** In the Dondero Objection, Mr. Dondero asserts he is a “creditor, indirect equity security holder, and party in interest” in the Debtor’s bankruptcy. While that claim is ostensibly true, it is tenuous at best. On April 8, 2020, Mr. Dondero filed three unliquidated, contingent claims that he promised to update “in the next ninety days.”<sup>7</sup> More than nine months later, Mr. Dondero has yet to “update” those claims to assert an actual claim against the Debtor’s estate.<sup>8</sup>

10. Mr. Dondero’s claim as an “indirect equity security holder” is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor’s Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero’s recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his “indirect” equity interest, the Debtor’s estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be satisfied.

11. **Dugaboy and Get Good.** Dugaboy and Get Good are sham Dondero “trusts” with only the most attenuated standing. Dugaboy has filed three proofs of claim [Claim Nos. 113; 131; 177]. In two of these claims, Dugaboy argues that (1) the Debtor is liable to Dugaboy

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<sup>7</sup> Mr. Dondero filed two other proofs of claim that he has since withdrawn with prejudice. See Docket No. 1460.

<sup>8</sup> Without knowing the nature of the “updates,” the Debtor does not concede that any “updates” would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero’s claims.

for its postpetition mismanagement of the Highland Multi Strategy Credit Fund, L.P., and (2) this Court should pierce the corporate veil and allow Dugaboy to sue the Debtor for a claim it ostensibly has against the Highland Select Equity Master Fund, L.P. – a Debtor-managed investment vehicle. The Debtor believes that each of the foregoing claims is frivolous and has objected to them. [Docket No. 906].

12. In its third claim, Dugaboy asserts a claim against the Debtor arising from its Class A limited partnership interest in the Debtor (which represents just 0.1866% of the total limited partnership interests in the Debtor). Similarly, Get Good filed three proofs of claim [Claim Nos. 120; 128; 129] arising from its prior ownership of limited partnership interests in the Debtor. Because each these claims arises from an equity interest, the Debtor will seek to subordinate them under 11 U.S.C. § 510 at the appropriate time. As set forth above, these interests are out of the money and are not expected to receive any economic recovery.

13. Consequently, Mr. Dondero, Dugaboy, and Get Good’s standing to object to the HarbourVest settlement is attenuated and their chances of recovery in this case are extremely speculative at best. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had a “pecuniary interest . . . directly affected by the bankruptcy proceeding”); *see also In re Flintkote Co.*, 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff’d*. 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing). Mr. Dondero, Dugaboy, and Get Good’s minimal interest in the estate should not allow them to overrule the estate’s business judgment or veto settlements with creditors, especially when no actual creditors and constituents have objected. “[A] bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors . . . and . . . act to further the diverse interests of the debtor, creditors and equity

holders, alike.” *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983).

**B. Mr. Dondero’s Objection and his “Trusts” Objection Are Without Merit**

14. As discussed in the Motion, under applicable Fifth Circuit precedent, a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See, e.g., In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). In making this determination, courts look to the following factors:

- probability of success in the litigation, with due consideration for the uncertainty of law and fact;
- complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- all other factors bearing on the wisdom of the compromise, including (i) “the paramount interest of creditors with proper deference to their reasonable views” and (ii) whether the settlement is the product of arm’s length bargaining and not of fraud or collusion.

*Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citations omitted). *See also Age Ref. Inc.*, 801 F.3d at 540; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 918 (5th Cir. 1995).

15. **The Settlement Seeks to Revisit the Acis Orders.** In the Dondero Objection, Mr. Dondero argues that HarbourVest’s claim is based on the financial harm caused to HarbourVest from Acis’s bankruptcy and the orders entered in the Acis bankruptcy. Mr. Dondero extrapolates from this that HarbourVest is seeking to challenge this Court’s rulings in Acis. (Dondero Obj., ¶¶ 17-20) Mr. Dondero misinterprets HarbourVest’s claims and the dangers such claims pose to the Debtor’s estate.

16. HarbourVest’s claims are for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. HarbourVest is not arguing that Acis or this Court caused its damages; HarbourVest is arguing that *the Debtor* – led by Mr. Dondero – (a) misled HarbourVest as to the nature of Mr. Terry’s claims against the Debtor and the litigation with Acis, (b) knowingly and intentionally failed to disclose that the Debtor was engaged in the fraudulent transfer of assets to prevent Mr. Terry from collecting his judgment, and (c) that *the Debtor* – under the control of Mr. Dondero – improperly engaged in a crusade against Mr. Terry and Acis, which substantially damaged HarbourVest and its investment in HCLOF, in each case in order to induce HarbourVest to invest in HCLOF.

17. Again, HarbourVest does not contend that Acis caused its damages. Rather, HarbourVest contends that the fraudulent transfer of assets as part of the Debtor’s crusade against Mr. Terry and Acis and the false statements and omissions about those matters caused HarbourVest to make an investment it would never have made had Mr. Dondero and the Debtor been honest and transparent. The Acis litigation – in HarbourVest’s estimation – never should have happened. Acis did not cause HarbourVest’s damages. Mr. Dondero’s crusade against Mr. Terry and the Debtor’s allegedly fraudulent statements to HarbourVest about the fraudulent transfers, Mr. Terry and Acis caused HarbourVest’s damages.

18. **The HarbourVest Claim Lacks Merit.** In their objections, Mr. Dondero and the Trusts argue that the HarbourVest settlement is not fair and equitable and not in the best interests of the estate because (a) it does not address the Debtor’s arguments against the HarbourVest claims and (b) there is a lack of pending litigation seeking to narrow the claims against the estate. These arguments only summarily address the first two factors of *Cajun Electric*, which deal with success in the litigation, and, in doing so, mischaracterize the dangers to the Debtor’s estate

posed by HarbourVest's claims. (Dondero Obj., ¶¶ 21-25; Trusts Obj., ¶ 18(a))

19. Both the Dondero Objection and – to a much lesser extent - the “Trusts” Objection allege that (a) HarbourVest's losses were caused by Acis and its (mis)management of HCLOF's investments (Dondero Obj., ¶¶ 22, 24), (b) there is no contract that supports HarbourVest's claims (Dondero Obj. ¶ 23; Trusts Obj., ¶ 18(a)), (c) there is no causal connection between HarbourVest's losses and the Debtor's conduct (Dondero Obj., ¶ 24), and (d) the Debtor should litigate all or a portion of HarbourVest's claim before settling (Dondero Obj., ¶ 25). Again, though, as set forth above, both Mr. Dondero and the “Trusts” seek to shift the cause of HarbourVest's damages away from the Debtor's misrepresentations and to Mr. Terry's management of HCLOF's investments. This is simple misdirection.

20. HarbourVest's claims are that it invested in HCLOF based on the Debtor's fraudulent misrepresentations. Fraudulent misrepresentation sounds in tort, not contract. *See, e.g., Clark v. Constellation Brands, Inc.*, 348 Fed. Appx. 19, 21 (5th Cir. 2009) (referring to party's claim based on fraudulent misrepresentation as a tort); *Eastman Chem. Co. v. Niro, Inc.*, 80 F. Supp. 2d 712, 717 (S.D. Tex. 2000) (noting that party had common law duty not to commit intentional tort of fraudulent misrepresentation). There is thus no need for HarbourVest to point to a contractual provision to support its claim.<sup>9</sup> Moreover, in order to defend against HarbourVest's claims, the Debtor would need to elicit evidence showing that its employees did not make misrepresentations to HarbourVest. Such a defense would require the Debtor to rely on the veracity of Mr. Ellington's testimony, among others. That is a high hurdle, and no reasonable person would expect the Debtor to stake the resolution of HarbourVest's \$300 million claim on the Debtor's ability to convince this Court that Mr. Ellington was telling HarbourVest

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<sup>9</sup> Subsequent to filing the Motion, the Objectors requested all agreements between HarbourVest, HCLOF, and the Debtor, and such agreements were provided.

the truth. This is especially true in light of the evidence supporting Mr. Ellington's recent termination for cause and the evidence recently provided by HarbourVest supporting its claim for fraudulent misrepresentations.

21. Finally, neither Mr. Dondero nor the "Trusts" even address the third factor analyzed by the Fifth Circuit: all other factors bearing on the wisdom of the compromise, including "the paramount interest of creditors with proper deference to their reasonable views." This is telling because no creditor or party in interest has objected to the settlement. Mr. Dondero and his proxies' preference for constant litigation should not outweigh the preference of the Debtor and its creditors for a reasonable and expeditious settlement of HarbourVest's claims.

22. **The HarbourVest Settlement Is a Windfall to HarbourVest.** Both the Dondero Objection and the "Trusts" Objection argue that the HarbourVest settlement represents a substantial windfall to HarbourVest. Both Mr. Dondero and the "Trusts" ignore the facts. Specifically, Mr. Dondero argues that HarbourVest is receiving \$60 million dollars in *actual* value for its claims. Mr. Dondero's contention, however, wrongly assumes that both the \$45 million general unsecured claim and the \$35 million subordinated claim provided to HarbourVest under the settlement will be paid 100% in full and that HarbourVest will receive \$80 million in cash. From that \$80 million, Mr. Dondero subtracts \$20 million, which represents the value Mr. Dondero ascribes to HarbourVest's interests in HCLOF that are being transferred to the Debtor. Mr. Dondero's math ignores the reality of this case.

23. The Debtor very clearly disclosed in the projections filed with the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, [Docket No. 1473] (the "Projections") that general unsecured claims would receive an 87.44% recovery *only if* the claims of UBS, HarbourVest, Integrated Financial Associates, Inc., Mr.

Daugherty, and the Hunter Mountain Investment Trust were zero. Because of the Debtor's success in settling litigation, that assumption is proving to be inaccurate. Regardless, even if general unsecured claims receive a recovery of 87.44%, because the subordinated claims are junior to the general unsecured claims, the subordinated claims' projected recovery is currently zero. As such, assuming the HCLOF's interests are worth \$22.5 million,<sup>10</sup> the actual recovery to HarbourVest will be less than \$16.8 million. This is not a windfall. HarbourVest's investment in HCLOF was \$80 million and its claim against the estate was over \$300 million. The settlement represents a substantial discount.

24. **Improper Gerrymandering and/or Vote Buying.** Each of Mr. Dondero and the Trusts argue in one form or another that the HarbourVest settlement is improper as it provides HarbourVest a windfall on its claims in exchange for HarbourVest voting to approve the Plan. These unsubstantiated allegations of vote buying should be disregarded. As an initial matter, and as set forth above, HarbourVest is *not* getting a windfall. HarbourVest is accepting a substantial discount in the settlement. HarbourVest's incentive to support the Plan comes from HarbourVest's determination that the Plan is in its best interests. There is also nothing shocking about a settling creditor supporting a plan. Indeed, it would be nonsensical for a creditor to settle its claims and then object to the plan that would pay those claims.

25. More importantly, HarbourVest's votes in Class 9 (Subordinated Claims) are not needed to confirm the Plan. As will be set forth in the voting declaration, Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 8 (General Unsecured Claims) have voted in favor of the Plan.<sup>11</sup> In brief, the Plan was approved without HarbourVest's Class 9 vote,

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<sup>10</sup> It is currently anticipated that Mr. James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, will testify as to the value of the HCLOF interests to the Debtor's estate.

<sup>11</sup> The Debtor anticipates that Mr. Dondero and his related entities will argue that neither Class 7 nor Class 8 voted to accept the Plan because of the votes cast against the Plan in those Classes by current and former Debtor

and the Debtor, therefore, has no need to “buy” HarbourVest’s Class 9 claims. Accordingly, any claims of gerrymandering or vote buying are without merit.

**C. CLOH Objection**

26. CLO Holdco (and to a much lesser extent, the “Trusts”) object to HarbourVest’s transfer of its interests in HCLOF as part of the settlement. Currently, the settlement contemplates that HarbourVest will transfer 100% of its collective interests in HCLOF to HCMLP Investments, LLC (“HCMLPI”), a wholly-owned subsidiary of the Debtor. As set forth in the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.* (which was appended as Exhibit A to the Settlement Agreement) [Docket No. 1631-1], each of the Debtor, HarbourVest, Highland HCF Advisors, Ltd. (HCLOF’s investment manager) (“HHCFA”), and HCLOF agree that HarbourVest is entitled to transfer its interests to HCMLPI pursuant to that certain *Members Agreement Relating to the Company*, dated November 15, 2017 (the “Members Agreement”),<sup>12</sup> without offering that interest to other investors in HCLOF.

27. The *only* party to object to the transfer of HarbourVest’s interests in HCLOF to HCMLPI is CLO Holdco. CLO Holdco holds approximately a 49.02% interest in HCLOF and is the wholly-owned subsidiary of the DAF, Mr. Dondero’s donor-advised fund. CLO Holdco argues that the Member Agreement requires HarbourVest to offer its interest first to the other investors in HCLOF before it can transfer its interests to HCMLPI. In so arguing, CLO Holdco attempts to create ambiguity in an unambiguous contract and to use that ambiguity to disrupt the Debtor’s settlement with HarbourVest.

28. As an initial matter, the Debtor and CLO Holdco agree that the transfer of HarbourVest’s interests in HCLOF to HCMLPI is governed by Article 6 (Transfers or Disposals

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employees, including Mr. Ellington and Mr. Isaac Leventon. The Debtor will demonstrate at confirmation that those objections are without merit and that Class 7 and Class 8 voted to accept the Plan.

<sup>12</sup> A true and accurate copy of the Members Agreement is attached hereto as Exhibit A.

of Shares) of the Members Agreement (an agreement governed by Guernsey law). (CLOH Obj., ¶ 3) The parties diverge, however, as to how to interpret Article 6. The Debtor, as set forth below, believes Article 6 is clear in that it allows HarbourVest to transfer its interests in HCLOF to any “Affiliate of an initial Member party” without requiring the right of first refusal in Section 6.2 of the Members Agreement. CLO Holdco’s position appears to be that the Members Agreement, despite its clear language, should be interpreted as limiting transfers to an “initial Member’s *own* affiliates” and that any other transfer requires the consent of HHCFA and satisfaction of the right of first refusal. (*Id.* (emphasis added)) CLO Holdco’s reading is contrary to the actual language of the Members Agreement.

29. First, Section 6.1 of the Members Agreement provides, in pertinent part:

[REDACTED]

(Members Agmt, § 6.1 (emphasis added)) Under the Members Agreement, “Affiliate” is defined, in pertinent part, as “[REDACTED]

[REDACTED]

(*Id.*, § 1.1) A “Member” in turn is a [REDACTED].” The “initial Member[s]” are the initial Members of HCLOF listed on the first page of the Members Agreement and include the Debtor, HarbourVest, and CLO Holdco.

30. As such, under the plain language of Section 6.1, HarbourVest is entitled – without the consent of any party – to “Transfer” its interests in HCLOF to an “Affiliate” of any of the Debtor, HarbourVest, or CLO Holdco. And that is exactly what is contemplated by the settlement. HarbourVest is transferring its interests to HCMLPI, a wholly owned and controlled subsidiary of the Debtor, and therefore an “Affiliate” of the Debtor. That transfer is indisputably

allowed under Section 6.1; it is a transfer to an “Affiliate of an initial Member.” CLO Holdco may, tongue in cheek, call this structure “convenient” but that sarcasm is an attempt to avoid the fact that the Members Agreement clearly allows HarbourVest to transfer its interest to HCMLPI without the consent of any party.<sup>13</sup> The fact that CLO Holdco does not now like the language it previously agreed to when CLO Holdco and the Debtor were both controlled by Mr. Dondero is not a reason to re-write Section 6.1 of the Members Agreement.

31. Second, Section 6.2 of the Members Agreement is also unambiguous and, by its plain language, allows HarbourVest to “Transfer” its interests in HCLOF to “Affiliates of an initial Member” (*i.e.*, HCMLPI) without having to first offer those interests to the other Members (such obligation, the “ROFO”). CLO Holdco attempts to create ambiguity in Section 6.2 by arguing that it must be read in conjunction with Section 6.1 and that interpreting the plain language of Section 6.2 to allow HarbourVest to transfer its interests to HCMLPI without restriction makes certain other language surplus and meaningless. (CLOH Obj., ¶ 11-13) Again, CLO Holdco is attempting to create controversy and ambiguity where none exists.

32. Section 6.2 of the Members Agreement provides, in pertinent part:

██  
██  
██  
██

(Members Agmt., § 6.2 (emphasis added)) Like Section 6.1, Section 6.2 is clear on its face. It exempts from the requirement to comply with the ROFO two categories of “Transfers”: (1) Transfers to “affiliates of an initial Member” from Members *other than* CLO Holdco and the

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<sup>13</sup> Although HHCFA’s consent is not necessary for HarbourVest to transfer its interests to HCMLPI, HHCFA will consent to the transfer.

“Highland Principals” (*i.e.*, the Debtor and certain of its employees)<sup>14</sup> and (2) Transfers from CLO Holdco or a Highland Principal to the Debtor, the Debtor’s “Affiliates,” or another Highland Principal. The fact that a narrower exemption is provided to CLO Holdco and the Debtor than to HarbourVest (or any other Member) under Section 6.2 is of no moment; the language says what it says and was agreed to by all Members, including CLO Holdco, when they executed the Members Agreement.

33. In addition, and although not relevant, the language of Section 6.2 makes sense in the context of the deal. Although CLO Holdco and the Debtor may have disclaimed an “Affiliate” relationship, they are related through Mr. Dondero and invest side by side with the Debtor in multiple deals.<sup>15</sup> The different standards in Section 6.2 serve to ensure that HarbourVest’s (or any successor to HarbourVest) right to Transfer its shares without satisfying the ROFO is limited to three parties: (i) HarbourVest’s Affiliates, (ii) the Debtor’s Affiliates, and (iii) CLO Holdco’s Affiliates. This restriction keeps the relative voting power of each Member static and ensures that CLO Holdco and the Debtor, together, will *always* have more than fifty percent of HCLOF’s total interests and that HarbourVest will *always* have less than fifty percent. This counterintuitively also explains the greater restrictions placed on CLO Holdco and the “Highland Principals.” The Highland Principals include certain Debtor employees. Those employees – as well as CLO Holdco and the Debtor – are prohibited from transferring their HCLOF interests outside of the Dondero family. This restriction makes sense. If, for example, a Debtor employee wanted to transfer its interests to an Affiliate of HarbourVest, HarbourVest could have more than fifty percent of the HCLOF interests because of the thinness

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<sup>14</sup> “**Highland Principals**” means: [REDACTED]  
[REDACTED]  
[REDACTED] (Members Agmt., § 1.1)

<sup>15</sup> There can be no real dispute that Mr. Dondero effectively controls CLO Holdco.

of the Dondero-family's majority (approximately 0.2%). At the time the Members Agreement was executed, CLO Holdco and the Debtor were under common control. Section 6.2 preserves those related entities' control over HCLOF by restricting transactions that would transfer that control unless the ROFO is complied with.

34. As such, and notwithstanding CLO Holdco's protestations, Section 6.1 and Section 6.2 are consistent as written and clear on their face. This consistency is further evidenced by HCLOF's Articles of Incorporation<sup>16</sup> and HCLOF's offering memorandum, which each include language identical to Section 6.1 and 6.2 of the Members Agreement.<sup>17</sup> It seems highly unlikely, if not implausible, that sophisticated parties such as CLO Holdco would include the exact same language in six separate places over three documents without a reason for that language and without the intent that such language be interpreted as it is clearly written – not as CLO Holdco now wants it to be interpreted. Accordingly, since HarbourVest is transferring its interests to HCMLPI, an Affiliate of an initial Member, the plain language of Section 6.2

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<sup>16</sup> See Articles of Incorporation, adopted November 15, 2017, a true and correct copy of which is attached hereto as Exhibit B.

[REDACTED]

(Articles of Incorporation, § 18.1)

[REDACTED]

(*Id.*, § 18.2)

<sup>17</sup> See Offering Memorandum, dated November 15, 2017, a true and correct copy of which is attached hereto as Exhibit C.

[REDACTED]

(Offering Memorandum, page 89)

exempts HarbourVest from having to comply with the ROFO.

35. Third, and finally, CLO Holdco makes the nonsensical argument that because Section 6.2 provides different treatment to similarly situated Members that this Court should re-write Section 6.2. (CLOH Obj., ¶¶ 15-17) Contracts provide different treatment to ostensibly similarly situated parties all the time and no one objects that that creates an absurd result. It just means that different parties bargained for and received different rights.

36. CLO Holdco's attempt to justify why this Court should re-write the Members Agreement to correct the "disparate treatment" is also unavailing. As an example of the absurd result caused by the "disparate treatment," CLO Holdco states: "[B]ecause the HarbourVest Members are technically Affiliates of an initial member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer." (*Id.*, ¶ 16) The scenario posited by CLO Holdco, however, is *exactly* the scenario prevented by the clear language of Section 6.2. For HarbourVest to obtain control of HCLOF, it would – as a matter of mathematical necessity – need the interests held by CLO Holdco (49.02%) and/or the Highland Principals (1% in the aggregate). Section 6.2, however, *expressly* prohibits CLO Holdco and the Highland Principals from transferring their interests to HarbourVest or its Affiliates without satisfying the ROFO. As set forth above, it is Section 6.2 that prevents control from being transferred away from the Dondero family without compliance with the ROFO. In fact, Section 6.2 would only break down if the limiting language in Section 6.2 were read out of it in the manner advocated by CLO Holdco.

37. Ultimately, Article 6 of the Members Agreement is clear as written and expressly allows HarbourVest to transfer its interests to HCMLPI. If CLO Holdco had an objection to the rights provided to HarbourVest under the Members Agreement, CLO Holdco

should have raised that objection three and a half years ago before agreeing to the Members Agreement. CLO Holdco should not be allowed to create ambiguity in an unambiguous contract or to re-write that agreement to impose additional restrictions on HarbourVest. *See Clardy Mfg. Co. v. Marine Midland Bus. Loans Inc.*, 88 F.3d 347, 352 (5th Cir. 1996) (enforcing the “unambiguous language in a contract as written,” noting that where a contract is unambiguous, a party may not create ambiguity or “give the contract a meaning different from that which its language imports”) (internal quotations omitted); *Texas v. Am. Tobacco Co.*, 463 F.3d 399, 407 (5th Cir. 2006) (“Courts interpreting unambiguous contracts are confined to the four corners of the document, and cannot look to extrinsic evidence to create an ambiguity.”).

38. It should go without saying, but CLO Holdco (and the other parties to the Members Agreement) should also be required to satisfy their obligations under the Members Agreement and execute the “Adherence Agreement” as required by Section 6.6 of the Members Agreement in connection with the Transfer of HarbourVest’s interests to HCMLPI or any other permitted Transfer.

39. Finally, and notably, although CLO Holdco spends considerable time arguing that HarbourVest should be required to comply with the ROFO, nowhere in the CLOH Objection does CLO Holdco state that it wishes to purchase HarbourVest’s interests in HCLOF. This omission is telling. CLO Holdco and the other Objectors have no interest in actually exercising their alleged right of first refusal contained in the Members Agreement. Rather, their only interest is in causing the Debtor to spend time and money responding to a legion of related (and coordinated) objections.<sup>18</sup>

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<sup>18</sup> *See Debtor’s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q; Exhibit T (email from Mr. Dondero as forwarded to Mr. Ellington stating “Holy bananas..... make sure we object [to the HarbourVest Settlement]”); Exhibit Y.

*[Remainder of Page Intentionally Blank]*

WHEREFORE, for the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court grant the Motion.

Dated: January 13, 2021

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

----- X  
In re: :  
: Chapter 11  
: :  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** : Case No. 19-34054  
: :  
Debtor. :  
: :  
: :  
----- X

**HARBOURVEST'S EXPEDITED MOTION FOR LEAVE TO FILE  
DOCUMENTS UNDER SEAL IN CONNECTION WITH THE HARBOURVEST  
REPLY IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER  
APPROVING SETTLEMENT WITH HARBOURVEST AND AUTHORIZING  
ACTIONS CONSISTENT THEREWITH**

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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) file this motion (the “**Motion to Seal**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting HarbourVest leave to file unredacted versions of certain exhibits described herein in connection with the *HarbourVest Reply in Support of Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* under seal in this proceeding.

#### **Jurisdiction and Venue**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **Basis for Relief**

2. On April 8, 2020, HarbourVest filed its relevant proofs of claim against Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”), claim numbers 143, 147, 149, 150, 153, and 154 (collectively, the “**Proofs of Claim**”)

3. HarbourVest and Highland engaged in arm’s-length negotiations regarding the settlement of HarbourVest’s claims which culminated in the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “**Settlement Motion**”)

4. A hearing on the Settlement Motion is currently scheduled for January 14, 2021 at 9:30 a.m. (the “**Settlement Hearing**”).

5. Three objections were filed to the Settlement Motion: (i) the *Objection to Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest* [Docket No. 1697] (the “**Dondero Objection**”), filed by James Dondero (“**Mr. Dondero**”); (ii) *Objection to Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* [Docket No. 1706] (the “**Trusts Objection**”), filed by Get Good Trust and The Dugaboy Investment Trust (collectively, “**The Trusts**”); and (iii) *CLO Holdco, Ltd.’s Objection to HarbourVest Settlement* [Docket No. 1707] (the “**CLO Holdco Objection**”), filed by CLO Holdco, Ltd. (“**CLO Holdco**”) (collectively, the “**Settlement Objections**”).

6. Concurrently with the filing of this Motion to Seal, HarbourVest has submitted or will submit its Reply to the Settlement Objections and in support of the Settlement Motion (the “**HarbourVest Reply**”).

7. On January 22, 2020, this Court entered the *Agreed Protective Order* [Docket No. 382] (the “**Protective Order**”), which “governs any document, information, or other thing that has been or will be produced or received by a Party . . . in the action *In re Highland Capital Management, L.P.*, Case No. 19-34054 (SJG).” Protective Order at 1.

8. Pursuant to the terms of the Protective Order, materials designated as “Highly Confidential” may only be disclosed to the United States Bankruptcy Court for

the Northern District of Texas if the information is filed under seal under the procedures set forth in Local Rule 9077-1. (Protective Order ¶ 4).

9. Certain arguments contained in the Settlement Objections refer to documents that other parties have recently requested be kept confidential. HarbourVest requests that the Court grant this Motion to Seal so that HarbourVest is able to address these arguments in the Settlement Hearing.

10. Specifically, the HarbourVest Reply includes as exhibits certain documents designated as Confidential and/or Highly Confidential pursuant to the Protective Order. The documents proposed to be filed under seal are described as follows:

- a. Articles of Incorporation of Highland CLO Funding, Ltd., Registered on March 30, 2015 and adopted by special resolution passed on November 15, 2017.
- b. November 15, 2017 Highland CLO Funding, Ltd. Offering Memorandum.
- c. November 15, 2017 Members Agreement between Highland CLO Funding, Ltd., the Members party thereto, and Highland HCF Advisor, Ltd.

#### **Relief Requested**

11. HarbourVest respectfully requests entry of an order, substantially in the form of the Proposed Order, allowing HarbourVest to file these materials under seal with this Court. HarbourVest further respectfully requests that the Court consider this Motion to Seal on an expedited basis so that HarbourVest may file such exhibits prior to the Settlement Hearing.

**Notice**

12. Notice of this Motion to Seal shall be provided to: (a) the Debtor; (b) counsel to the Debtor; (c) counsel to the Official Committee of Unsecured Creditors; (d) the United States Trustee; and (e) all those parties requesting notice pursuant to Local Bankruptcy Rule 2002.

*Continues on next page*

**Conclusion**

13. WHEREFORE, HarbourVest respectfully requests that the Court (i) grant the relief requested in this Motion to Seal, (ii) enter an order, substantially in the form of the Proposed Order attached hereto as Exhibit A, authorizing the filing of the documents described therein under seal, and (iii) grant HarbourVest such further and additional relief as the Court deems just and proper.

Dated: Dallas, Texas  
January 13, 2021

*/s/ Vickie Driver*

---

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VIII Secondary L.P., HarbourVest Skew Base AIF  
L.P., and HarbourVest Partners L.P., on behalf of  
funds and accounts under management*

**EXHIBIT A**

**PROPOSED ORDER**

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

----- X  
In re: : Chapter 11  
: :  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** : Case No. 19-34054  
: :  
Debtor. : :  
: :  
----- X

**ORDER GRANTING LEAVE FOR HARBOURVEST TO FILE DOCUMENTS UNDER  
SEAL IN CONNECTION WITH THE HARBOURVEST REPLY IN SUPPORT OF  
DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT  
WITH HARBOURVEST AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Upon consideration of *HarbourVest's Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith* (the "**Motion to Seal**") filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII

Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, "**HarbourVest**"), the Court finds that it has jurisdiction over this matter, that venue is proper, and that sufficient notice of the Motion to Seal has been given to all parties requiring notice. The Court has determined that the legal and factual bases set forth in the Motion to Seal establish just cause for the relief granted herein . It is therefore

**ORDERED** that:

1. The Motion to Seal is **GRANTED**.
2. HarbourVest is authorized to file unredacted versions of the following exhibits under seal:
  - a. Articles of Incorporation of Highland CLO Funding, Ltd., Registered on March 30, 2015 and adopted by special resolution passed on November 15, 2017.
  - b. November 15, 2017 Highland CLO Funding, Ltd. Offering Memorandum.
  - c. November 15, 2017 Members Agreement between Highland CLO Funding, Ltd., the Members party thereto, and Highland HCF Advisor, Ltd.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. HarbourVest is authorized to take all actions necessary to effectuate the relief granted in this Order.

### END OF ORDER ###

000536

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

-----	x
	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	:
	:
	:
-----	x

**HARBOURVEST REPLY IN SUPPORT OF DEBTOR’S MOTION FOR ENTRY OF AN  
ORDER APPROVING SETTLEMENT WITH HARBOURVEST AND AUTHORIZING  
ACTIONS CONSISTENT THEREWITH**

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### **Introduction**

1. HarbourVest holds significant, legitimate, and well-documented claims against Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”), and HarbourVest is fully prepared to pursue those claims on a litigated basis if necessary. That said, after lengthy and sometimes contentious arms-length negotiations, HarbourVest is prepared to settle its claims on the terms proposed in the Settlement Motion. As is the case with most heavily-negotiated settlements, the proposed arrangement (the “**Settlement**”) constitutes significantly less allowed claim value than would be available if HarbourVest prevails (as it expects to do) in litigation, but HarbourVest is prepared to move forward nevertheless because the settlement removes the distraction, expense and inherent risk of litigation and because a consensual resolution in the

context of the Debtor's proposed plan has the benefit of not further dissipating the debtor's assets through significant legal costs, which will improve the percentage recovery on unsecured creditor claims including those of HarbourVest. For these reasons, while it would otherwise vigorously pursue its claims in this court and any other appropriate forum, HarbourVest is prepared to move forward on the agreed terms at this time if this Court approves the settlement.

2. If the Settlement were not approved, HarbourVest's substantial claims would pose a serious threat to the value of the estate. As extensively documented in its proofs of claim and related pleadings, HarbourVest has numerous claims against Highland under Texas, U.S., and Guernsey law, sounding in fraud, mismanagement and misconduct, and breach of fiduciary duty, among other things. If successful, HarbourVest's remedies would include rescission of its investment in a Highland-managed vehicle, lost profits, consequential and out-of-pocket damages, punitive damages, and interest, easily totaling over \$100 million, pre-trebling. These claims have been documented in two detailed and unrefuted pleadings filed with this court, as well as in multiple presentations and follow-up negotiations with the Debtor and its counsel.

3. The Objections seek to attack the Settlement by calling into question HarbourVest's underlying claims and contending that additional litigation is needed to test their validity. In the first instance, there is no requirement to litigate HarbourVest's claims on the merits in order to approve a negotiated settlement. To do so would erode the very value that the Settlement seeks to preserve—incurring the expenses, distraction, and value destruction the parties are seeking to avoid through entry into the Settlement. That said, for all the reasons set forth in HarbourVest's prior filings and explained below, HarbourVest would have an excellent chance of success on the merits if it chose to litigate its claims to conclusion, which surely informed the Debtor's business judgement in agreeing to the Settlement. The Objections fail to

undermine HarbourVest's well-founded claims, let alone form a basis to question the Debtor's business judgment under Fed. R. Civ. P. 9019. Likewise, the Objections' baseless accusations of "vote buying" and "gerrymandering" have no foundation in fact or law.

4. Separate from the objectors' failed attacks on the substance of the Settlement, CLO Holdco attempts to throw up roadblocks to the negotiated agreement by arguing that one element of the Settlement – the transfer of HarbourVest's interest to the Debtor – is not permitted under the relevant corporate documents. In support of this challenge, CLO Holdco presents a tortured and technical argument relating to the terms of the Highland CLO Funding, Ltd. ("**HCLOF**") Members Agreement Relating to the Company (the "**Members Agreement**"). This argument asks the Court to rewrite the plain terms of the Members Agreement and other key deal documents to the detriment of the investors in HCLOF and in contravention of applicable law. As actually written, and consistent with the business deal among the members of HCLOF, the transfer contemplated by the Settlement is clearly and expressly permitted by the Members Agreement's terms.

5. For all these reasons, the Objections should be overruled, and the Settlement should be approved.

### **Background**

#### **Highland's Misrepresentations and Omissions to HarbourVest in 2017**

6. HarbourVest's claims against Highland arise from its November 15, 2017 investment in HCLOF, f/k/a Acis Loan Funding, Ltd. ("**ALF**"), to acquire a 49.98% interest as a passive investor (the "**Investment**").<sup>1</sup>

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<sup>1</sup> A more detailed discussion of the factual background and bases for HarbourVest's claims is contained in the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "**HarbourVest Response**") and the *Motion of HarbourVest*

7. The underlying events ultimately giving rise to those claims stem from extensive litigation between Highland and Joshua Terry (“**Terry**”), relating to Highland’s termination of Mr. Terry from his position as CLO manager for Acis Capital Management L.P. (“**Acis LP**”) in September 2016.<sup>2</sup>

8. As the initial litigation between Mr. Terry and Highland progressed, HarbourVest and Highland began preliminary discussions regarding the Investment in the second quarter of 2017. Over several months, HarbourVest conducted diligence and negotiated the terms of a potential investment with Highland, which included disclosures about pending litigation relating to the Investment, including the Terry dispute.<sup>3</sup>

9. On October 20, 2017, during the parties’ ongoing negotiations, Mr. Terry won an \$8 million arbitration award against Acis (the “**Arbitration Award**”). 4/13/2018 Involuntary Ruling, at 4. Highland informed HarbourVest about the Arbitration Award, but did *not* disclose that it had begun orchestrating a series of transfers (the “**Transfers**”) that would render Acis incapable of paying the Arbitration Award, including:

- On October 24, 2017, ALF acquired ALF shares owned by Acis LP for \$991,180.13. *Id.* at 17–18.
- On October 27, 2017, Acis’s portfolio management rights for ALF were transferred to Highland HCF Advisor, Ltd. and the target fund’s name changed from “Acis Loan Funding, Ltd.” to “Highland CLO Funding” (HCLOF). 4/13/2018 Involuntary Ruling at 19.

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*Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “**Rule 3018 Motion**”).

<sup>2</sup> Findings of Fact & Conclusions of L. in Supp. of Ords. for Relief Issued After Trial on Contested Involuntary Bankr. Pets. at 3–4, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018), ECF No. 118, A153 (hereinafter the “**4/13/2018 Involuntary Ruling**”). Around that time, on October 7, 2016, Acis LP sold Highland a participation interest in its expected future cash flow in CLO Collateral Management Agreements for \$666,655 plus a \$12,666,446 note payable from Highland to Acis LP (the “**Highland Note**”). *Id.* at 17.

<sup>3</sup> Email from H. Bradley Eden to D. Willard, dated August 15, 2017, A345; Highland Legal Summaries, attachment to Email from H. Bradley Eden to D. Willard, dated August 15, 2017, A347.

- On November 3, 2017, Acis LP transferred its interest in the Highland Note to Highland CLO Management, Ltd. *Id.* at 19–20. The balance owing on the Note was over \$9 million, but Acis received no consideration for the transfer. 1/31/2019 Confirmation Ruling, at 20–21, n.37.

10. On October 26, 2016, around the time that Highland informed HarbourVest about the Arbitration Award, it explained that it would change the portfolio manager for HCLOF from an Acis-branded entity to a Highland-branded entity, and make certain other structural changes, due to “reputational harm” that the Arbitration Award caused to Acis. HarbourVest conducted additional diligence around those changes, and the transaction closing date was delayed.

11. At the time, HarbourVest was not told that these changes were part of Highland’s broader campaign to strip Acis of assets, which was highly relevant information that would be crucial to any investor’s decision. Among other things:

- Highland never informed HarbourVest that Highland had no intention of paying the Arbitration Award and was undertaking steps to ensure that Mr. Terry could not collect on his judgment;
- Highland did not inform HarbourVest that it undertook the Transfers to siphon assets away from Acis LP and that such Transfers would prevent Mr. Terry from collecting on the Arbitration Award;
- Highland represented to HarbourVest that the reason for changing the portfolio manager for HCLOF was because Acis was “toxic” in the industry and reputational issues relating to Acis would harm the HCLOF investment;
- Highland indicated to HarbourVest that the dispute with Mr. Terry was founded on Mr. Terry’s termination for misconduct and numerous allegations he subsequently made when Highland refused to meet his demand for separation compensation to which he was not entitled;
- Highland informed HarbourVest that, in lieu of redemptions, it was necessary to reset the CLOs underlying the HCLOF investment was necessary and it would be easier to reset under the Highland CLO brand than the Acis CLO brand;
- Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs, not revealing that Highland was using HCLOF as part of its scheme to avoid paying the Arbitration Award (which clearly would have threatened to, and in fact did, complicate the ability to reset or redeem).

12. In reliance on Highland's misrepresentations and omissions, HarbourVest consummated the Investment on November 15, 2017, paying roughly \$75 million to acquire its interest in HCLOF and entering into the Members Agreement for HCLOF.<sup>4</sup>

13. Highland's misrepresentations and omissions continued after the initial Investment was made. For example, on November 27, 2017, in an email to HarbourVest attaching a Wall Street Journal article regarding the Terry dispute, Highland again assuaged concerns, asserting that the dispute "has no impact on our investment activities."<sup>5,6</sup>

#### The Acis Bankruptcy

14. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions (together, the "**Acis Bankruptcy**") against Acis LP and Acis GP, stating that the Transfers were Highland's "orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value." 4/13/2018 Involuntary Ruling, at 23.

15. During the Acis Bankruptcy, the Transfers and their effect on Acis quickly came to light. Highland's next move in its scheme was to falsely accuse HarbourVest of demanding that Highland remove Acis as portfolio manager for HCLOF. One by one, Highland-affiliated witnesses and filings falsely claimed to this Court that (i) HarbourVest invested in HCLOF only on the condition that Acis would not have anything to do with the CLOs going forward;<sup>7</sup> (ii) that

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<sup>4</sup> November 15, 2017 Members Agreement between Highland CLO Funding, Ltd. the Members party thereto, and Highland HCF Advisor, Ltd., A358.

<sup>5</sup> Email from H. Covitz to D. Willard, M. Pugatch, and N. Bellisario, dated Nov. 29, 2017, A351.

<sup>6</sup> Court filings indicate that additional questionable transfers continued thereafter. *See* Bench Ruling & Mem. Of L. in Supp. of: (A) Final Approval of Disclosure Statement; & (B) Confirmation of Ch. 11 Tr.'s Third Am. Joint Plan at 16, n.30, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), ECF No. 827, A207 (hereinafter "**1/31/2019 Confirmation Ruling**"); 4/13/2018 Involuntary Ruling at 22. On December 19, 2017.

<sup>7</sup> Joint Obj. of Alleged Debtors to Emergency Mot. of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(F), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C. § 363 at ¶ 31, *In re Acis Capital Mgmt, L.P.* No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), ECF No. 16, A255 (emphasis in original).

HarbourVest would demand its money back if a reset transaction was done with Acis;<sup>8</sup> (iii) that HarbourVest said, with absolute certainty, that it had no interest in doing business with Acis because the Acis brand was toxic, and demanded that Highland “get rid of Acis”<sup>9</sup>; and (iv) that HarbourVest could “dictate the terms of any reset transactions”<sup>10</sup> involving the HCLOF CLOs.

16. In short order, the Acis Trustee launched an investigation of HarbourVest, seeking extensive document discovery and a deposition from HarbourVest relating to the Investment and these accusations.<sup>11</sup> Seeking to clear its name, HarbourVest cooperated with the investigation, incurring significant legal fees defending itself against the unfounded allegations.

17. The scheme did not end there. Highland next used HCLOF as the financier for its escalating feud with Mr. Terry, in and out of the Acis Bankruptcy. HarbourVest has borne more than \$7.5 million to date of fees incurred by numerous parties in the Acis Bankruptcy and related litigation.<sup>12</sup> Highland’s mismanagement of HCLOF goes beyond these fees, as detailed in the HarbourVest Response, and provides further support for HarbourVest’s claims.

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<sup>8</sup> *Id.*

<sup>9</sup> Transcript of Hearing held on February 7, 2018, at 55–57, 202–04, No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 12, 2018), ECF No. 28 (hereinafter “**2/7/2018 Acis Bankruptcy Transcript**”) (Testimony of Highland General Counsel Scott Ellington), A289; Transcript of Hearing held on March 23, 2018 at 143–44, No. 18-30264-sgj11 (Bankr. N.D. Tex. Mar. 27, 2018), ECF No. 99 (Testimony of Highland CEO Jim Dondero), A306; *see also* 1/31/2019 Confirmation Ruling at 27, n. 56.

<sup>10</sup> 2/7/2018 Acis Bankruptcy Transcript at 226.

<sup>11</sup> Mot. for 2004 Exam. of Investor in Highland CLO Funding, Ltd. and Certain Affiliates Thereof, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Oct. 10, 2018), A313.

<sup>12</sup> *Decl. of Michael Pugatch in Supp. of Mot. of HarbourVest Pursuant to Rule 3018(A) of the Fed. Rules of Bankr. Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1208] ¶ 4 (the “**Pugatch Decl.**” or “**Declaration of Mike Pugatch**”).

## Procedural History

### Highland Bankruptcy

18. On October 16, 2019, Highland filed for bankruptcy in Delaware, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del.), and on December 4, 2019, on motion of the Official Committee of Unsecured Creditors, its case was transferred to this Court.<sup>13</sup>

19. Since filing the petition, the Debtor has been operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

### HarbourVest's Claims

20. On April 8, 2020, HarbourVest filed its relevant proofs of claim against Highland, claim numbers 143, 147, 149, 150, 153, and 154 (collectively, the “**Proofs of Claim**”).<sup>14</sup> HarbourVest's Proofs of Claim specifically identified factual bases underlying HarbourVest's claims, including the Terry litigation, the Acis bankruptcy, and Highland's “improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF.”<sup>15</sup> HarbourVest further alleged its significant financial harm therefrom, including from the diminishing value of its Investment (occasioned by, among other things, the Acis Bankruptcy that naturally resulted from the Transfers) and from fees and expenses wrongfully charged to HCLOF. HarbourVest asserted its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor.<sup>16</sup>

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<sup>13</sup> Order Transferring Venue of this Case to the U.S. Bankruptcy Court for the Northern District of Texas, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del. Dec. 4, 2019), ECF No. 184, A342.

<sup>14</sup> Exhibits 2 to 7 of *Decl. of John A. Morris in Supp. of the Debtor's Mot. for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1631-2 to 1631-7].

<sup>15</sup> *Id.*, Annex to Proof of Claim ¶ 2.

<sup>16</sup> HarbourVest's Proofs of Claim contained sufficient detail regarding HarbourVest's claims, as explained *supra* ¶ 20. In any event, an objection to the sufficiency of HarbourVest's Proofs of Claim offers no basis to reject the Settlement. *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 285 (Bankr. N.D. Tex. 2007) (creditor's objection to proof of claim was no bar to approving settlement because (i) 11 U.S.C. § 502 and [Federal

21. In July 2020, after HarbourVest approached the Debtor to discuss the HarbourVest Claims, the Debtor filed an omnibus objection, arguing HarbourVest’s claims were “erroneously assert[ing] a liability that is not reflected in the Debtor’s books and records.”<sup>17</sup> HarbourVest continued a dialogue with the Debtor regarding its claims, giving a thorough presentation of the factual and legal foundation for its claims to the Debtor in August 2020.

22. On September 11, 2020, HarbourVest filed the HarbourVest Response, fully detailing the nature and extent of HarbourVest’s claims against the Debtor.

23. On October 18, 2020, HarbourVest filed the Rule 3018 Motion seeking the temporary allowance of its claim for voting purposes in the amount of more than \$300 million. The Rule 3018 Motion and the accompanying Declaration of Mike Pugatch contained further detailed support for HarbourVest’s claimed damages as a result of Highland’s conduct.

#### Negotiations and Settlement with Debtor

24. In October 2020, HarbourVest and Highland discussed the possibility of resolving the Rule 3018 Motion. Thereafter, the parties’ discussions expanded to encompass a potential global resolution of HarbourVest’s claims. In pursuit of this goal, the parties and their counsel participated in several spirited discussions of their disparate perspectives concerning the facts and the law. During follow up meetings, the parties’ interests and positions became more defined.

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Rule of Bankruptcy Procedure] 9019 do not directly conflict, (ii) the rules do not require the court to hear claim objections before settlement motions, (iii) requiring litigation on the merits would undermine the policy of promoting settlements in bankruptcy, and (iv) the debtor has a fiduciary duty to all creditors to resolve claims in the best interest of the estate).

<sup>17</sup> *First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* ¶ 22 & Schedule 6 [Docket No. 906] (the “**First Omnibus Objection**”).

25. After a series of arm's-length, telephonic negotiations that involved, at various times, both principals and counsel, the parties ultimately reached the Settlement, which resolved the disputes over allowance of HarbourVest's claims both for voting purposes and for plan distribution purposes, upon the following key terms:

- HarbourVest shall transfer its entire 49.98% interest in HCLOF to an entity to be designated by the Debtor;
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan.<sup>18</sup>

26. On December 23, 2020 the Debtor filed the Settlement Motion.

#### Objections to the Settlement

27. Three parties in interest have filed objections to the Settlement:

28. The Dondero Objection contends that the Settlement is unreasonable because, among other things, HarbourVest does not have a valid underlying claim; HarbourVest's alleged damages are based on other causes, such as the impact of "market forces" on the Investment; and the agreements underlying the Investment "likely contain" provisions limiting liability arising from the Investment. Mr. Dondero further asserts that the Settlement was an inappropriate attempt to buy HarbourVest's vote on the Debtor's proposed Plan.

29. The Trusts Objection contends that the Settlement constitutes impermissible vote-buying and fails to explain (i) why the Debtor changed its mind about the strength of HarbourVest's claims; (ii) whether HarbourVest has authority under the governing agreements to

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<sup>18</sup> Exhibit 1 to *Decl. of John A. Morris in Supp. of the Debtor's Mot. for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith*, [Docket 1631-1] §§ 1, 5.

sell its interest in HCLOF to an entity controlled by the Debtor; (iii) how the sale of that interest would benefit the estate; and (iv) the basis for the valuation of that interest.<sup>19</sup>

30. The CLO Holdco Objection claims that the Members Agreement does not authorize HarbourVest to transfer its interest in HCLOF to an affiliate of Highland without first providing CLO Holdco a right of first refusal under the Members Agreement.<sup>20</sup>

### **HarbourVest Has Strong Claims Against Highland**

31. The HarbourVest Response and the Rule 3018 Motion describe HarbourVest's claims in significant detail. To avoid duplicative briefing, HarbourVest incorporates those filings in full and focuses here only on the most salient points that rebut the Objections.

### **HarbourVest Has Claims Directly Against Highland**

32. As an initial matter, HarbourVest's claims lie against Highland directly, not only against non-debtor entities, as the Dondero Objection incorrectly contends. Throughout the negotiation, diligence, and closing of the Investment, HarbourVest only communicated with Highland personnel, and Highland personnel made the misrepresentations and omissions that induced HarbourVest to invest in HCLOF. Highland promoted and negotiated the Investment, negotiated the Investment, and managed the Investment once made.<sup>21</sup> In fact, extensive testimony in the Acis Bankruptcy proceedings indicated that the Guernsey-based directors of HCLOF abdicated nearly all responsibility to Highland. *See* HarbourVest Response ¶¶ 42–45 (establishing Highland was a shadow or *de facto* director of HCLOF under Guernsey law).<sup>22</sup>

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<sup>19</sup> Trusts Objection ¶¶ 13–15, 18.

<sup>20</sup> CLO Holdco Objection ¶ 6.

<sup>21</sup> *See, e.g.*, Highland CLO Funding, Ltd. Offering Memorandum, A356.

<sup>22</sup> *See also* Companies (Guernsey) Law 2008 § 132(1); *Carlyle Capital Corp. Ltd. v. Conway & Others*, Royal Court of Guernsey, 4 September 2017, Judgment 38/2017 A1. All citations herein to “A\_\_” refer to Appendix

33. The Dondero Objection attempts to point the finger everywhere but at Highland. *First*, it contends that HarbourVest identified the TRO and injunction entered in the Acis bankruptcy as the “root cause” of the devaluation of its Investment. Dondero Obj. ¶ 17. This is a gross distortion. HarbourVest’s claims stem from the fact that its Investment was predicated on Highland’s misrepresentations and omissions regarding the Transfers. The resulting damages occurred in the context of the Acis Bankruptcy, all of which resulted from Highland’s bad acts and representations.

34. *Second*, the Dondero Objection claims that HarbourVest’s losses resulted from mismanagement of HCLOF’s CLO investments by Acis and other “market forces.” As explained in detail in the Rule 3018 Motion, HarbourVest’s claims are actually the result of Highland’s actions. Further, the Dondero contentions do not undermine HarbourVest’s entitlement to damages and rescission as a legal matter. A party fraudulently induced is entitled to full rescission of the relevant contracts.<sup>23</sup> *Ex post* arguments relating to loss causation are no bar to HarbourVest’s claims relating thereto as a matter of law.<sup>24</sup> The Debtor could not ignore that reality in reckoning with its risk of loss and significant damages if HarbourVest’s claims had been tried rather than settled.

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A, filed concurrently herewith. Due to their length, certain documents contained in the Appendix have been provided in excerpted form only. Full copies are available upon request.

<sup>23</sup> See, e.g., Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) (West) (rescission under the TSA); *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323 (Tex. 2011) (providing rescission for fraudulent inducement claims under Texas law).

<sup>24</sup> For example, under Texas Securities Act, the Act, “[a] person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made . . . not misleading, is liable to the person buying the security from him [or her].” Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) (2017). Loss causation is not an element of such a securities-violation claim. *Kubbernus v. Ecal Partners, Ltd.*, 574 S.W. 3d 444, 485 (Tex. Ct. App. 2017) (“appellees were not required to prove causation as an element of their claims for securities violations under the TSA”) (citing Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) and collecting cases)).

The Objections Do Not Rebut Key Facts Underlying HarbourVest's Claims or Even Mention HarbourVest's Guernsey Law Claims

35. The Objections attempt to raise a litany of purported defects with HarbourVest's claims, but perhaps are most notable for arguments they do not make.

36. *First*, HarbourVest has pointed to specific misstatements and omissions by Highland during HarbourVest's diligence and purchase of the HCLOF interest (without even having had the benefit of discovery to explore the full extent of such misrepresentations and omissions).<sup>25</sup> The Objections do not seriously engage with these claims at all.

37. *Second*, the Objections do not even attempt to dispute the validity and strength of HarbourVest's Guernsey law claims. Nor could they. As HarbourVest's prior filings make clear, HarbourVest has numerous Guernsey law claims against Highland related to the mismanagement of HCLOF, including breach of fiduciary duties, fraud and misrepresentations, misuse of Fund assets, and unfair prejudice.<sup>26</sup> Rather than pay an \$8 million judgment to Mr. Terry, Highland chose to embroil itself and its affiliates in years of litigation, wrongfully charging to HCLOF over \$15 million in fees related to the Terry dispute, the Acis Bankruptcy, and related litigation.<sup>27</sup> HarbourVest, as a member of HCLOF, has borne roughly half of those fees and has actionable Guernsey law claims against Highland therefor. The Objections cite not a single Guernsey case, statute, rule, or law that call into question these well-founded claims. Such claims alone justify the Settlement's value.

The Underlying Agreements Neither Vitiates Nor Mitigate Highland's Liability

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<sup>25</sup> The Objections further ignore Highland's false testimony regarding HarbourVest during the Acis Bankruptcy and the ensuing costs incurred by HarbourVest defending itself against baseless accusations.

<sup>26</sup> See HarbourVest Response ¶¶ 34–51, 60–62; Rule 3018 Motion ¶¶ 12–13.

<sup>27</sup> Pugatch Decl. ¶ 4.

38. The Dondero Objection next argues – apparently on speculation – that “the terms of the relevant contracts themselves *likely contain* a number of provisions that may call into question Debtor’s liability or would be otherwise relevant to merits of the HarbourVest Claim.” Dondero Obj. ¶ 23 (emphasis added). But contractual limitations of liability or damages do not bar recovery for claims of fraud in the inducement.

39. A party is not bound by a contract procured by fraud – either at common law or under the Texas Securities Act. *See, e.g., Formosa Plastics Corp. USA v. Presidio Eng’rs & Contractors, Inc.*, 960 S.W.2d 41, 46 (Tex. 1998); *see also Aegis Ins. Holding Co., L.P. v. Gaiser*, 2007 WL 906328, at \*15–17 (Tex. App. 2007). The HCLOF Members Agreement recognizes these time-honored principles, explicitly stating that the Agreement’s standard merger provision does not “**operate[] to limit or exclude any liability for fraud.**” HCLOF Members Agreement § 15.3. This ends the inquiry. The Dondero Objection’s contention that contractual provisions bar HarbourVest’s claims is thus unavailing against HarbourVest’s claims.

HarbourVest’s Claims Entitle It to Significant Damages

40. As explained in detail in the HarbourVest Response and the Rule 3018 Motion, HarbourVest’s claims, including its claims for fraud, fraud in the inducement, and securities fraud, entitle it to damages and remedies that include rescission for the full value of the Investment, plus interest at the Texas statutory rate, as well as lost profits and punitive damages. HarbourVest’s other claims, including its RICO claim, could result in treble damages, significantly increasing Highland’s potential liability if it did not settle HarbourVest’s claims.

41. Specifically, HarbourVest’s damages include:

- Investment-related losses as of August 31, 2020 of **more than \$100 million**, taking into account HarbourVest’s **\$78,521,429 of contributions to HCLOF plus 5% interest per year** and HarbourVest’s anticipated proceeds therefrom;

- HarbourVest’s share of years of staggering fees charged to HCLOF: **more than \$7.5 million to date**;
- **Exemplary or punitive damages** for Highland’s fraudulent behavior;
- HarbourVest’s own legal fees incurred as a result of the Acis Trustee’s investigation of HarbourVest in the Acis bankruptcy and HarbourVest’s protection of its own rights: **more than \$1 million to date.**<sup>28</sup>

42. This is before potential trebling for HarbourVest’s claims against Highland for RICO violations.<sup>29</sup>

43. The rescission remedy to which HarbourVest is entitled is, in certain ways, reflected in the Settlement. By returning its interest in HCLOF to Highland and receiving a Class 8 claim that accounts for a portion of HarbourVest’s damages and a Class 9 subordinated claim for the approximate balance of HarbourVest’s initial investment, the Settlement effectuates an “unwind” of the Investment that HarbourVest never would have made had it known the truth underlying Highland’s misrepresentations and omissions.

#### **The Transfer Agreement Is Permissible**

44. In the CLO Holdco Objection, CLO HoldCo argues that the Transfer by HarbourVest of its shares in HCLOF to HCMLP Investments, LLC (“**HCMLPI**”), a wholly owned subsidiary of the Debtor, is not permitted under the terms of the Members Agreement. Even a cursory perusal of the Members Agreements reveals that this is flatly incorrect. In fact, CLO Holdco is asking the Court to rewrite the actual terms of the Members Agreement—adding some words and deleting others—to reach a result more to its liking: providing CLO Holdco with the right to be offered HarbourVest’s shares in HCLOF before the Transfer takes place.

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<sup>28</sup> See HarbourVest’s Rule 3018 Motion and accompanying Pugatch Declaration for detailed factual and legal support for the above categories of claims.

<sup>29</sup> See 18 U.S.C. § 1964(c).

45. CLO Holdco has shown no apparent interest in actually purchasing the shares subject to the Transfer. Instead, CLO Holdco is raising a purely technical objection to a deal that its related party, Mr. Dondero, opposes on other grounds. This technical and opportunistic objection fails on its face. The Transfer—a transfer by HarbourVest to an affiliate of an initial member<sup>30</sup> of HCLOF—is expressly permitted by the clear terms of the Members Agreement, without the need for further consents or rights of first refusal of any kind from CLO Holdco. In its arguments to the contrary, CLO Holdco ignores both the written words of the Members’ Agreement and other documents, as well as fundamental rights and protections of the other HCLOF members.

#### Relevant Contractual Provisions

46. The CLO Holdco Objection does identify the relevant provisions of the Members Agreement: (i) Section 6.1, governing when a transferring member of HCLOF (a “**Member**”) is required to obtain the consent of the “Portfolio Manager” (Highland HCF Advisor, Ltd.) and (ii) Section 6.2, governing when a transferring Member is required to first make an offer to the other Members to purchase their pro-rata share of the equity being transferred (such an offer, the “**ROFO**”). Each of these provisions contains an express carveout to any consent or ROFO requirements for transfers to “Affiliate[s] of an initial Member.” This same carveout also appears in several other important (and heavily negotiated) transaction documents, including in Section 18.1 and 18.2 of the HCLOF Articles of Incorporation, adopted November 15, 2017 (the “**Articles of Incorporation**”) and on pages 88 and 89 of the Offering Memorandum relating to

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<sup>30</sup> The initial members of HCLOF were: (1) CLO Holdco, Ltd., (2) HarbourVest Dover IX Investment L.P., (3) HarbourVest 2017 Global AIF L.P., (4) HarbourVest 2017 Global Fund L.P., (5) HV International VIII Secondary L.P., (6) HarbourVest Skew Bae AIF L.P., (7) Highland Capital Management, L.P., (8) Lee Blackwell Parker, III, (9) Quest IRA, Inc. FBO Lee B. Parker III, Acct. # 3058311, (10) Quest IRA, Inc. FBO Hunter Covitz, Acct. # 1469811, (11) Quest IRA, Inc., FBO Jon Poglitsch, Acct. # 1470612, and (12) Quest IRA, Inc., FBO Neil Desai, Acct. # 3059211. Members Agreement, *Recitals*, Ex. 358.

the HCLOF investment, dated November 15, 2017 (the “Offering Memorandum”). The specific phrasing of the carveout was deliberately and repeatedly chosen by the parties to embody their business deal.

47. It is undisputed that HCMLPI is an “Affiliate of an initial Member”—the Debtor. All that is at issue is whether that phrase actually means what it literally says in the context of the Members Agreement, the Offering Memorandum, and the Articles of Incorporation, or whether these straightforward words should instead be given a meaning not found on the page, as advocated by CLO Holdco.

#### Guernsey Law Contract Interpretation Principles

48. Guernsey Law governs the HCLOF Members Agreement, a fact ignored by all of the objecting parties, including CLO Holdco. Members Agreement § 22. Accordingly, Guernsey law should guide the Court’s interpretation of the contract. *In Re Acis Capital Management, L.P.*, 600 B.R. 541, 551-52 (Bankr. N.D. Tex. 2019) (applying Texas law because the parties’ choice of law clause was enforceable); *In re Perry*, 423 B.R. 215, 253 n.25 (Bankr. S.D. Tex. 2010) (applying Texas law because the Purchase Agreement reflected the parties’ intention to be bound by Texas law and the parties entered into the Agreement in Texas); *3D/Int’l, Inc. v. Romano*, 811 Fed. App’x. 244, 248-51 (5th Cir. 2020) (upholding Texas choice-of-law provision because Mexico did not have a materially greater interest in the enforceability of the agreement).

49. Guernsey courts apply an objective, contextual approach to contract interpretation. The court seeks to determine the parties’ intent by reference to what a reasonable person, in possession of all the background knowledge the parties had at the time of contracting, would have understood the contractual language to mean. *Arnold v Britton* [2015] UKSC 36 [2015] AC 1619 ¶ 15. Words are given their ordinary meaning, in the context of the document

as a whole. *In the matter of the C Trust* [2013] GLR 105 ¶ 21 (citing *In the matter of the Internine and the Intertraders Trusts* [2005] JLR 236 ¶ 62). Importantly, the words chosen by the parties are of “primary importance” and “one must be astute *not to rewrite the contract* so as to protect one of the parties from having entered into a bad bargain.” *Federal Republic of Nigeria v JP Morgan Chase Bank NA* [2019] EWHC 347 ¶ 32 (Comm) (emphasis added).

50. CLO Holdco may not like the bargain it struck, but the terms of the Members Agreement leave no doubt as to what that bargain was. The Members Agreement explicitly allows HarbourVest to transfer its interest in HCLOF to an “Affiliate” of an initial Member without giving CLO HoldCo a right of first refusal, and “no principle of interpretation [] entitles a court to re-write a contractual provision simply because the factor which the parties catered for does not seem to developing in the way in which the parties may well have expected.” *Arnold v Britton* [2015] UKSC 36 ¶ 41.

#### CLO Holdco’s Incorrect Interpretation.

51. CLO Holdco’s Objection attempts to rewrite certain provisions of the Members Agreement for its own benefit—changing some words and removing others. It claims that, when Sections 6.1 and 6.2 are read together, “it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to its own Affiliate, without required consents and effectuating a Right of First Refusal.” CLO Holdco Objection ¶ 10.

52. This assertion effectively argues that the repeated description of “Affiliates of an initial Member” should instead be rewritten as “Affiliates of ~~an~~ such initial Member.” CLO Holdco offers no basis that could justify editing the Member Agreement after the fact. If the signatories to the Member Agreement had intended to adopt CLO Holdco’s meaning, they would have used different language (in the Members Agreement as well as in the Offering Memorandum and the Articles of Incorporation).

53. In fact, reading an extra “such” into the provisions causes them to break down entirely and lose all coherence, so further judicial edits would be required. Sections 6.1 and 6.2 are not just provisions restricting transfers by initial Members. They restrict transfers by all Members. All Members (whether initial Members or subsequent Members) may only transfer their interest in HCLOF to “Affiliates of an initial Member”—not freely to their own affiliates. It makes no sense to speak in terms of a subsequent Member (who is not an initial Member) being able to transfer its interests only to affiliates of such “initial Member”. Accordingly, CLO’s reading requires also deleting the word “initial” from two Sections of three key deal documents.

54. Altogether, according CLO Holdco’s argument, the very simple phrase “Affiliates of an initial Member” must actually be construed to mean “Affiliates of an such ~~initial~~ Member.” Such a rewrite is wholly incompatible with Guernsey law; it would also have a prejudicial and substantive effective on the rights of the Members going forward. As actually drafted, transfers to persons other than initial Member affiliates (and, in the case of CLO Holdco and Highland Principals, an even smaller group) trigger the ROFO, allowing Members to protect themselves against transfers to true third-parties. In contrast, on CLO Holdco’s reading, subsequent Members could freely transfer their interest to their own affiliates without Manager consent and without running the ROFO.

55. Absent such an unjustified rewrite, the plain language of Sections 6.1 and 6.2 operates just as it should. “Affiliates of an initial Member” describes a category of persons to whom any Member (except CLO Holdco or Highland Principals, who are held to a more rigid standard) can transfer its interests without consent and without triggering a ROFO. This

interpretation respects the parties' intent to grant initial Members greater privileges than subsequent Members and to guard against transfers to true third-parties.

The Members Agreement Contains No Surplusage

56. CLO Holdco's purported justification for junking the plain terms of the parties' agreement and rewriting the Member's Agreement is that it is necessary to avoid "surplusage." In the first instance, CLO Holdco does not demonstrate that, under Guernsey law, avoiding alleged surplusage is actually an important or significant objective that could justify rewriting the clearly-stated and unambiguous contractual protections of the Members Agreement. CLO Holdco is also just incorrect: no language is rendered surplus under the plain reading of the documents.

57. Specifically, CLO Holdco points to the phrase "or, in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal" in 6.2—the exception to the ROFO for CLO Holdco and Highland Principals—as potential surplus. The CLO Holdco Objection states "[i]f, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates." CLO Holdco Objection ¶ 12. This is not true. The two phrases do not wholly overlap; instead, they describe two different universes of transferees that do not require a ROFO: one narrower set for CLO Holdco and Highland Principals, and another broader set for all other initial Members.

58. CLO Holdco erroneously refers to this specific, purposeful language as "surplusage." To the contrary, it has a substantive and intentional effect on the scope of permitted transfers for the various parties to the Agreement—one which provides important protection to the members under the Members Agreement, including against transfers by CLO

Holdco of its interests to persons who are not part of the Highland group of affiliated entities. The fact that CLO Holdco now does not like that it is subject to a more restrictive ROFO obligation than HarbourVest is no basis for rewriting the deal that was struck, nor for regarding the result as absurd.

59. In sum, motivated only by its desire to throw roadblocks in the way of the Debtor's resolution of its case, CLO Holdco is asking the court to conduct an after the fact rewrite of the terms of the Members Agreement and to gut key investor protections under the HCLOF deal documents. The Court should reject this request, and enforce the Members Agreement as it is actually written, which reflects the business deal of the parties thereto. The contract, and the deal it represents, definitively permits the Transfer.

**The Settlement Meets the Fed. R. Civ. P. 9019 Standard  
and Passes Muster Under the Code**

60. For the reasons explained in the Debtor's Reply to the Objections (which arguments HarbourVest adopts), the Settlement is fair and equitable, and readily satisfies Fed. R. Civ. P. 9019, including the factors typically considered by the Court in such inquiry. *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (under Rule 9019, a "proposed settlement must be 'fair and equitable' and in the best interests of the estate"); *see also In re Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 356 (5th Cir. 1997) (noting that the court's task is to compare "the terms of the compromise with the rewards of litigation").

61. In an effort to streamline briefing, HarbourVest further joins in the Debtor's Response to the Objections regarding the vote-buying and gerrymandering claims made in the Dondero Objection and the Trusts Objection. The Settlement reflects the validity and strength of HarbourVest's claims against the Debtor and is a fair compromise. HarbourVest strongly

disputes any suggestion that the Debtor settled with HarbourVest to “purchase votes”—as opposed to because HarbourVest has significant and viable legal claims.

62. The law does not require the Debtor to engage in extensive litigation before settling HarbourVest’s claims. Indeed, continued litigation would waste the assets of the estate.<sup>31</sup> The Debtor recognized this. HarbourVest recognized this. It is time the objecting parties did as well.

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<sup>31</sup> See, e.g., *In re Heritage Org.*, 375 B.R. at 285 (“requiring litigation on the merits would undermine the policy of promoting settlements in bankruptcy”).

**Prayer for Relief**

63. HarbourVest respectfully requests this Court (i) grant the Settlement Motion; (ii) enter an order approving the Settlement; and (iii) grant HarbourVest such other and further relief to which it may be justly entitled, both at law and in equity.

Dated: Dallas, Texas  
January 13, 2021

/s/ Vickie L. Driver

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HarbourVest Partners L.P., on behalf of funds and  
accounts under management*

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

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- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

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		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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000940	01/14/2021	1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021	1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021	1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

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Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
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002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

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

-----	X	
	:	
In re:	:	Chapter 11
	:	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	:	Case No. 19-34054
	:	
Debtor.	:	
	:	
	:	
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**APPENDIX TO HARBOURVEST REPLY IN SUPPORT OF DEBTOR'S  
MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH  
HARBOURVEST AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

**Appendix to HarbourVest Reply in Support of Debtor’s Motion for Entry of  
an Order Approving Settlement with HarbourVest and Authorizing Actions  
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**EXHIBIT A**



**Carlyle Capital Corporation Limited v Conway Others**  
Royal Court  
4<sup>th</sup> September 2017

**JUDGMENT**  
**38/2017**

Action for damages/financial contribution

**IN THE ROYAL COURT OF GUERNSEY**  
**(ORDINARY DIVISION)**  
**CIVIL ACTION NO. 1510**

**BETWEEN:**

- (1) **CARLYLE CAPITAL CORPORATION LIMITED (IN LIQUIDATION)**  
  
(2) **ALAN JOHN ROBERTS, NEIL MATHER, ADRIAN JOHN DENIS RABET,**  
**solely in their capacity as Joint Liquidators**  
**of Carlyle Capital Corporation Limited (In Liquidation)**

**Plaintiffs**

**-AND-**

- (1) **WILLIAM ELIAS CONWAY JR**  
(2) **JAMES H. HANCE JR**  
(3) **JOHN CRUMPTON STOMBER**  
(4) **MICHAEL J. ZUPON**  
(5) **ROBERT BARCLAY ALLARDICE III**  
(6) **HARVEY JAY SARLES**  
(7) **JOHN LEONARD LOVERIDGE**  
(8) **CARLYLE INVESTMENT MANAGEMENT LLC**  
(9) **TC GROUP LLC**  
(10) **TCG HOLDINGS LLC**

**Defendants**

**Before: Her Hon Hazel Marshall QC, Lieutenant Bailiff**

**Counsel for the Plaintiffs:** Advocates J M Wessels & Abel R Lyall  
**Counsel for the First to Fourth Defendants:** Advocates I C Swan, Anna Guggenheim  
& Bryan de Verneuil-Smith  
**Counsel for the Fifth to Seventh Defendants:** Advocate Gareth Bell  
**Counsel for the Eight to Tenth Defendants:** Advocate Simon Davies

**Dates of hearing:** 20<sup>th</sup> – 24<sup>th</sup> and 27<sup>th</sup> – 30<sup>th</sup> June,  
4<sup>th</sup> – 7<sup>th</sup>, 11<sup>th</sup> – 14<sup>th</sup>, 18<sup>th</sup> – 21<sup>st</sup> and 25<sup>th</sup> – 28<sup>th</sup> July,

1<sup>st</sup>, 8<sup>th</sup> – 11<sup>th</sup>, 15<sup>th</sup> – 18<sup>th</sup>, 22<sup>nd</sup> – 24<sup>th</sup> and 30<sup>th</sup> August,  
12<sup>th</sup> – 15<sup>th</sup>, 19<sup>th</sup> – 22<sup>nd</sup>, 26<sup>th</sup>, 27<sup>th</sup> and 30<sup>th</sup> September,  
3<sup>rd</sup> – 5<sup>th</sup>, 10<sup>th</sup> – 12<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> October,  
9<sup>th</sup> and 28<sup>th</sup> – 30<sup>th</sup> November,  
1<sup>st</sup>, 2<sup>nd</sup>, and 6<sup>th</sup> – 9<sup>th</sup> December 2016.

**Judgment handed down on: 4<sup>th</sup> September 2017**

**Cases, Texts and Legislation referred to:**

**1. Legislation**

**(a) Guernsey**

The Companies (Guernsey) Law 1994, ss 67b 67C, 67F, 94, 95, 106, 117  
The Companies (Amendment) (Guernsey) Law 1996  
The Royal Court (Reform) (Guernsey) Law 2008 s 113  
The Companies (Guernsey) Law 2008, ss 131, 132, 157, 407, 422, 434, 522, 527  
The Evidence in Civil Proceedings (Guernsey and Alderney) Law 2009, ss 1-4

The Royal Court Civil Rules 2007, r 10  
The Companies (Transitional Provisions) Regulations 2008. reg 10  
The Evidence in Civil Proceedings (Guernsey and Alderney) Rules 2011, rr 2, 8

**(b) England and Wales**

Companies Act 1862 s 80  
Companies Act 1907 s 28  
Companies Act 1948 ss 333, 455  
Companies Act 1985 ss 518, 741  
Insolvency Act 1986 ss 123, 214, 212  
Companies Act 2006 s 250

**2. Cases**

**(a) Guernsey**

*Carlyle Capital Corpn Ltd (in Liq) v Conway and others* (Guernsey Judgment 29/2011)  
*Carlyle Capital Corpn Ltd (in Liq) v Conway* (2011-12) GLR 562 (CA)  
*Emerald Bay Worldwide Ltd v Barclays Wealth Directors (Guernsey) Limited* (2014) (CA. No 02/2014)  
*Flightlease Holdings (Guernsey) Ltd v Flightlease (Ireland) Limited* [2009-2010] GLR 38  
*In re Montenegro Investments Limited (in administration)* 2013 GLR 345  
*Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd* (2015)(CA. No 35/2015)  
*Perpetual Media Capital Ltd v Enevoldsen* (2014) GLR 57 (CA)  
*Romain Zaleski v GM Trustees Ltd* (2015) (Guernsey Judgment 42/2015)  
*Savile AD4 Limited v Marlborough Trust Company Limited* (2016) (Guernsey Judgment 3/2016)

**(b) England and Wales**

*Aberdeen Railway Co v Blaikie Brothers* (1854) 17D (HL) 20  
*AIB Group (UK) plc v Mark Redler & Co Solicitors* [2015] AC 1503  
*Armory v Delamirie*, (1722) 93 ER 664  
*Bilta (UK) Ltd v Nazir (No 2)* [2016] AC 1  
*Bishopsgate Investment Management Ltd v Maxwell (No 1)* [1994] 1 All ER 261  
*BNY Ltd v Eurosail* [2013] 1 WLR 1408

711. The Plaintiffs have further and more detailed arguments with regard to the precise or possible application of the terms of the various exoneration and indemnity clauses, upon their true construction, and they have also raised arguments as to the extent to which Article 174(2) of CCC's Articles might be void for being contrary to public policy. Again, these arguments were not gone into in oral submissions at the trial in the interests of time. If they require consideration, then that will be better and more effectively done in the light of relevant findings of detailed fact, rather than at the level of legal principles. I will again, therefore, revert to these points only if and when necessary, and will invite further argument if I think appropriate.

(iii) *Statutory discretion*

712. Lastly, for the sake of completeness, I record that the Defendants would, if ultimately necessary, seek to invoke the court's statutory discretion under s 522 of the 2008 Companies Law, to excuse a director from liability on the grounds that he "*acted honestly and reasonably and .... ought fairly to be excused*". (There appears to have been no equivalent provision in the 1994 Companies Law, but the court's powers here depend on the law in force when it comes to make its decision.) This is again, obviously, a provision which would require to be applied in the context of detailed findings of fact, and I will accordingly defer any consideration of it until it may be appropriate.

(7) **The Entity Defendants as Directors**

713. The first seven Defendants are individuals who were formally appointed directors of CCC, as its first directors, in accordance with its Articles of Association. The Plaintiffs' claims are made against them as such. The Entity Defendants were not appointed directors of CCC. The Plaintiffs nonetheless claim that, on the facts of this case, they each can and should be held liable as if they had been validly appointed directors of CCC, on the basis that they were, in Guernsey law, either *de facto* directors of CCC or "shadow" directors of CCC, and that they therefore owed to CCC the same duties as if they had been duly appointed directors. There is little or no Guernsey law on this topic, but there is a large body at least of English law on the requirements for making out either qualification.

(a) ***De facto* directors**

714. The term "*de facto* director" does not appear in Guernsey company legislation. The material Law in this case is the 1994 Companies Law, as amended in 1996. This was the Law in force at the time of the events complained of; the 2008 Companies Law did not come into effect until 1<sup>st</sup> July 2008.

Section 117 of the 1994 Companies Law provides that

*"In this Law unless the context otherwise requires,*

*.... 'director' means a person occupying the position of director, by whatever name called*".

715. This is slightly different from s.131 of the 2008 Companies Law, and indeed from all the recent English Acts at the time – the Companies Act 1948 s 455(1), Companies Act 1985 s

741(1) and Companies Act 2006, s 250. In all of these the definition is inclusive, rather than exhaustive, as exemplified by s. 131 of the 2008 Companies Law, which reads:

*“In this Law “director” includes an alternate director and any person occupying the position of director, by whatever name called.”* (emphasis added).

716. On a straightforward reading, s. 117 therefore deals only with nomenclature, making it clear that a company officer is to be treated as a “director” if he functions as such, even if he has a different official title. It does not refer to persons acting with no official position or title at all. However, since the thrust of s. 117 is that liability in the eyes of the law arises from “*occupying the position of ‘director’*” (ie carrying out the functions of a director) an appropriately purposive construction suggests that the definition covers persons acting as a director but with no title at all, ie no formal appointment to any office. I would so read it, and I therefore conclude that the minor difference in wording between s. 117 of the 1994 Companies Law and s 131 of the 2008 Companies Law is not of significance for this case, and neither, here, is the fact that the 1994 Companies Law, though modelled on the English statute, used this slightly different wording. In particular, I am satisfied that English authority provides useful assistance as to the scope of de facto directorship under the 1994 Companies Law.

717. The concept of a *de facto* director in English law was first recognised, in the 19<sup>th</sup> century, in the case of a person who had acted as a company director, but whose appointment was defective. Such a person could not escape responsibility as a director of the company by relying on the invalidity of his appointment. He had acted as a director *de facto*.

718. The first English case to extend the concept beyond this, to a person who had never even purportedly been appointed as a director of the company, appears to have been *Re Lo-Line Electric Motors Ltd* [1988] Ch 477. The defendant there had never been formally appointed, but was found to have been held out by the *de iure* directors of the company as being a director, and he had behaved as such. He was held to be a *de facto* director. This led Millett J (as he then was) in *Re Hydrodan (Corby) Limited* [1994] 2 BCLC 180, to explain the concept in the following terms:

*“...a de facto director is a person who assumes to act as a director. He is held out as a director by the company, and claims and purports to be a director although never actually or validly appointed as such. To establish that a person was a de facto director of a company it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director. It is not sufficient to show that he was concerned in the management of the company’s affairs or undertook tasks in relation to its business which can properly be performed by a manager below board level.”* (emphasis added).

719. The concept was later extended yet again to include persons who were not even held out by the company as directors but who purported to act as directors of the company with no authority at all. It thus extends to those who “interfere” in the company’s affairs.

720. All this shows, though, that the focus is on the defendant’s acts. The reason for imposing liability is that those who in fact act as company directors should be held responsible as such. However, the extension simply to those who meddle brings a need to define and delimit the factual basis which does import liability. Thus, in the passage of Millett J’s judgment cited

above, the passage emphasised is of central importance. The principle is that liability as a director is incurred by a defendant for doing acts, in relation to the company, which could be properly done only by a director. It is therefore necessary to decide if that condition is made out by identifying what acts can only be done by a director in the particular company. This requires investigating and identifying the corporate governance structure of the company, so as to see whether the relevant acts of the defendant are “directorial” (as I shall now refer to them) in that context.

721. Jumping slightly ahead, the most recent English case in which the authorities with regard to *de facto* directorship have been reviewed is *Smithton Ltd v Naggar* [2014] EWCA Civ 939, relied on by the Plaintiffs. Arden LJ there synthesised the cases, concluding that

*“where a person had never been even invalidly appointed a director, it was necessary to examine the governance system of the company in order to assess whether he acted as a director”.*

At [35] – [42] she set out a series of practical points material to determining whether a person was a *de facto* director. I distil those which are material to this case, as follows;

- (i) A party may be a *de facto* director even if there is no invalid appointment; the question is whether he carried out the function, and thus assumed responsibility to act as, a director;
- (ii) To answer that question, the court may have to determine in what capacity the alleged director was acting;
- (iii) The court will in general also have to determine the corporate governance structure of the company, (which can and will vary from company to company), so as to decide whether, in relation to the company’s business the defendant’s acts were “directorial” in nature; it is important that a first instance judge make findings in this regard;
- (iv) The court is required to look at what the party actually did and not any job title he had;
- (v) The test is objective; neither the party’s intention, nor his belief that he was or was not acting as a director, is of any relevance;
- (vi) The test is fact and circumstance dependent. It may be appropriate to look at the party’s actions “in the round” but equally, in an exceptional case even a single act may be taken to constitute a person a *de facto* director; and
- (vii) Whether the company held the party out as being a director would be a relevant factor; whether third parties regarded him as being a director may be material evidence.

722. I will adopt and apply these principles. I also add my own comments and emphasis to them, being points which I derive from looking at the authorities generally.

723. First, and as to (iii) above, in *Holland v HMRC* [2010] UKSC 51, Lord Collins observed at [91] that

*“it is just as difficult to define “corporate governance” as it is to identify those activities which are essentially the sole responsibility of a director or board of directors”.*

724. It seems to me that these are two ways of stating what is really the same test. Once one finds “directorial” acts, then whether one describes these as rendering the actor part of the corporate governance structure of the company, or whether one simply says that he must be taken to have assumed the functions of a director by so acting, is simply a matter of language.
725. Also as to (iii), the qualification noted by Millett J in *Hydrodan* remains; the test requires the finding of actual “directorial” acts on the part of the defendant and merely being involved in the management of the company, or exercising a degree of influence over its decision making, is not in itself enough, although in the former case it may become enough if there is no other person involved in the management of the company in practice. That, however, is not this case.
726. Next, because liability as a *de facto* director is brought upon a defendant as the legal consequence of his own acts and their being found to be “directorial acts”, it is imposed only in respect of such directorial acts; a “*de facto* director” does not automatically become responsible for the totality of the company’s acts or activities.
727. Identifying what are or are not “directorial” acts in any particular case may not be easy. At the company’s inception, all its powers to act are vested in its directors (by whatever name called) as a result of company legislation and the particular company’s articles of association. Subsequently, such powers can be delegated, to a greater or lesser degree. In the case of a small and simple company, authority to act for the company and deal with its assets may well remain with its directors, both at the high level of strategic decision-making and the low level of everyday decisions and acts of implementation. In the case of companies with large enterprises, employees, advisers and agents will be engaged to carry out the more everyday work, and where the nature of the business is complex or requires expertise, others may be involved in high level decision-making or activities. The structure will vary with the particular needs of the company and the particular skills of the directors. Insofar as the directors delegate active functions, their involvement will then, quite properly, become more supervisory than operational, although a residue of supervisory function will always remain at the core and be non-delegable. Therefore, whilst decisions within the retained area(s) of control remaining with the directors will certainly be “directorial” in nature, how far, within the spectrum of possible structures, actual delegation of power to act may have gone can differ from company to company, and will be fact-specific. Whilst the authorities acknowledge the difficulty of generally identifying what are or are not “directorial” acts in respect of a company, it seems to me that, in practice and like the proverbial elephant, one is likely to be able to recognise such an act in context, even if one cannot easily define it.
728. Thus far, however, the cases have been concerned only with holding a natural person to be a *de facto* director of a company. What is here alleged is that another corporate entity should be held to have been a *de facto* director of a company, and this adds yet another dimension to the concept of a *de facto* director.
729. The important case of *Holland v HMRC* [2010] UKSC 51 illustrates the analytical issues which have to be grappled with when the factual situation extends to corporate entities. In simple terms, in *Holland*, the subject company (S) was owned by another company (H) which

was in turn owned by Mr Holland with his wife, and Mr Holland was the sole director of company H. The sole director of company S was company H. The issue was whether, through being the sole director of Company H which was the corporate director of Company S, and carrying out acts on behalf of Company S, Mr Holland had been a *de facto* director of Company S, so as to incur personal liability for an undoubted misapplication of Company S's funds. It was held by the majority of the Supreme Court (led by Lord Collins) that Mr Holland was not a *de facto* director of Company S, even though every decision of Company S was actually taken by him and implemented by him. This was because he was to be taken to have done those acts as the appropriate organ of, or agent for, Company H, the *de iure* corporate director. His acts were therefore the acts of Company H.

730. This decision was driven by respect for the distinction between the legal personality of a company and its owners, and a reluctance to pierce the corporate veil, (see [25]), influenced by the fact that company legislation permitted one company to be a director of another company. The dissenting minority, (led by Lord Hope) agreed that merely being a director of a corporate director (H) of a company (S) did not *ipso facto* render that person a *de facto* director of company S, and that something “more” (compare *Hydrodan* (above) at p 184B) was required. However, they considered that the extensive nature of the acts actually performed by Mr Holland in regard to Company S did amount to that something “more”, and they would have found him to be a *de facto* director.
731. On any basis, though, the entire Supreme Court plainly felt it right to reject, as an acceptable basis for the imposition of liability, an impressionistic “broad brush” argument that Mr Holland was “really” a director of the subject company, in the sense that he was its directing mind in a generalised way. All members tested the position by a principled legal analysis of the corporate structures which had been set up, and the position, authority and pertinent acts of the defendant which were claimed to have made him a *de facto* director. (It is to be borne in mind that no argument as to Mr Holland's being a *shadow* director of Company S arose in this case.)
732. I do not overlook that the reasoning in the *Holland* case may well have been influenced by the particular development of English law as regards the use of corporate directors. English company law had expressly provided that a corporation could be the director of a company in the Companies Act 1985, but it had intervened again in the Companies Act 2006 (s.155(1)) to decree that a company must have at least one natural person as a director. This was to avoid the unacceptable consequence that a company might have no natural person who could be held accountable for misapplication of its assets.
733. No such developments have featured in Guernsey law, at any rate at the time with which I am concerned. Corporate directors were (and still are) permitted, by the combined effects of s 117 of the 1994 Companies Law quoted above and the Interpretation (Guernsey) Law 1948, which enacts that unless the context otherwise requires, a reference in any enactment to a “person” means either a natural or a legal person. It follows that the actual decision in *Holland*, which would not be binding on this court, might be inappropriate in a Guernsey law context. I can see that it also might be thought that there was some force in the minority approach in that case.
734. However, this is not a point which arises for decision here. The actual decision in *Holland* is not directly material to this case, because there the claim was to hold an individual liable as a

*de facto* director because of his own personal acts, whereas here the claim is the reverse; it is to hold another company liable as a *de facto* director because of the acts of individuals associated with that company.

735. What is to be derived from *Holland*, and other cases such as *Kuwait Asia Bank EC v National Mutual Life Nominees Ltd* [1991] 1 AC 187 (which decides that a party with the power to appoint a director to a company does not thereby become liable for the acts of such director, whether vicariously as his employer, or at all), is the importance of the capacity in which a natural person is acting, for the purpose of the correct legal analysis of the overall situation.
736. It is material in at least two different ways. The first is the requirement already noted that the relevant act within the subject company must be an act required to be done by someone with the capacity of a director. If the defendant could have carried out the acts in question in some other capacity, either because they were not acts which only a director could carry out (*Hydrodan*) or because the defendant enjoyed some other capacity in which he could properly do them (*Holland*), then the defendant is not a *de facto* director.
737. The second is that, since a corporate entity can only act through a natural person, where it is sought to make a corporate entity liable as a *de facto* director, one must find not only directorial acts done by the relevant natural person on behalf of the subject company, but also that that natural person was carrying out those acts as agent of the corporate entity sought to be made liable as its *de facto* director. Not only that, but it seems to me that, analysing the authorities, he must be found to be doing so only in such capacity.
738. It follows, in my judgment, that it will be well-nigh impossible to fix a corporate entity with liability as a *de facto* director of another company through the acts of any individual who was a *de iure* director of that other company at the time. That individual will obviously be carrying out “directorial acts” in his capacity as a director of the company, and not as agent for the targeted defendant.

**(b) Shadow directors**

739. The term “shadow director” is found in the 1994 Companies Law only through having been introduced by amendment in 1996. It was introduced, though, only for the purpose of the new section 67C, which relates to wrongful trading:-

“67C ... (7) In this section “director” includes a shadow director, which means a person in accordance with whose directions or instructions the directors of the company are accustomed to act” (emphasis added).

740. It follows that the Plaintiffs can certainly invoke the doctrine of shadow directorship against the Entity Defendants with regard to their wrongful trading claims. The question whether they can do so with regard to their claims based on the general fiduciary duties or duties of skill and care owed by a director to his company is not so clear.
741. The concept of the “shadow director” was enacted into Guernsey law more broadly in the 2008 Companies Law (see s. 132), but that was, of course, only as from 1<sup>st</sup> July 2008, and even then the enactment did not extend the term “director” as used in the Companies Law generally to include a “shadow director” as there defined. Rather, it enacted that where the term “shadow director” was itself used in the 2008 Companies Law, this meant a “*person in accordance with*

*whose directions or instructions the directors of the company are accustomed to act*”, and in s 132(3) it specifically extended the meaning of the word “director” in particular sections of the Law (ss 160 and 162-4, which have no relevance here) to include a “shadow director”, as so defined.

742. Thus, in both the 1994 Law and the 2008 Law, the operation of the defined concept of a “shadow director” is confined to the two situations, first where that term is actually used in the Law itself, and second where it is specifically directed to be treated as if it had been used. These situations do not include the operation of the company director’s fiduciary duties or duties of skill and care, neither of which is actually laid down in the Companies Laws at all. Neither Law enacted that wherever the term “director” was being used or applied in the Law, it included a shadow director.
743. The significance of this is that liability as a *de facto* director of a company applies because the office of a “director” in company law has been held, by judicial interpretation of that term (in English law but with Guernsey law reasonably following suit), to extend to a person who acts as a director of a company in actual fact, even though not as of right. However, liability as a shadow director is not the result of judicial interpretation, but of legislative enactment. It is therefore confined to the cases stipulated by the enactment.
744. It consequently seems to me, that it is only if the concept of *de facto* directorship itself could be extended to include the shadow directorship situation that this would enable a finding of liability for breach of fiduciary duty or of duty of skill and care to be made against a shadow director. This would be a perfectly reasonable interpretation. The basis for imposing liability on persons as *de facto* directors of companies is that of imposing duties and responsibilities to the company on those who are in practice taking the operative decisions on its behalf. This principle can be applied just as readily to the shadow director situation as it does to the conventional *de facto* director situation.
745. If it were open to me to do so, I would readily construe the Guernsey Companies Laws to the effect that a person could “occupy the position of director” of a company by issuing directions or instructions to its *de iure* directors which those directors were accustomed to act upon, and thus that person would be a director of the company, in any material respect according to the facts.
746. However, albeit with reluctance and on balance, I do not think that doing so is open to me. It seems to me that the terms of the Companies Laws - and it is even more clear in the 2008 Law - treat the concept of shadow directorship and the situation giving rise to it as being a separate and distinct concept in its own right. The legislature has then prescribed the situations in which the situation of a person falling within that concept is to be taken to impose director’s liabilities or duties, initially on a very limited basis in 1996, and subsequently in a wider range of situations in 2008. That being the case, it seems to me that the legislature has to be taken to have intended those situations to be exhaustive with regard to shadow directorship, and that in enacting those express provisions it was implicitly ruling that the term “director” did not, itself, extend to them. The consequence is that the legislation seems to me to have ruled out any permissible judicial extension of the principles of *de facto* directorship to include shadow directorship.
747. It would follow that liability as a shadow director in Guernsey law applies only where the applicable Companies Law directly stipulates. I would hold, therefore, that the allegation of

shadow directorship against the Entity Defendants is available only in respect of the Plaintiffs' claim for wrongful trading. However, I have to consider the legal principles regarding a shadow director for the purpose of the wrongful trading claim in any event. I therefore do so generally and what I say below are my findings on the scope of the concept of shadow directorship in Guernsey law, whether its application is limited as just discussed or not.

748. First, a minor point of construction. Under the 2008 Companies Law, the definition of a shadow director was extended by adding the further qualification that a person was

*“not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity”* (s. 132(2)).

749. I do not think this makes any substantive difference to the meaning of the concept under s 67 of the 1994 Companies Law as amended. In my judgment, this qualification is really implicit in the original wording, not least because “advice” and “directions or instructions” are different things. I accept that “advice” could conceivably be rendered in such a way that it could fairly be characterised as either “directions” or “instructions”. However, that would be a matter of fact to be proved, and does not mean that advice generally is to be taken as falling naturally within such a description.
750. I do not think that I was urged by Advocate Wessels to infer, from the introduction of this qualification on 1<sup>st</sup> July 2008, that prior to that time a professional adviser in Guernsey on whose advice directors of a company would generally act was to be taken to be a shadow director of the company, but I would in any event decline to do so. To do so would, in my judgment, be attributing far too much inferential weight to amendments to companies legislation which were probably inserted for the avoidance of doubt, and would in fact be contrary to what I have indicated I would regard as the natural meaning of the words in context, according to their obvious policy intention.
751. I approach the matter, therefore, on the basis that the court is looking for “directions” or “instructions”, even though it would not be precluded from finding, on appropriate facts, that communications which were termed “advice” nonetheless fell into those categories in substance.
752. Once again, the English case of *Re Hydrodan (Corby) Ltd* (above) provides a useful starting point for formulating the appropriate test. Millett J, at p 183 c-e, and having emphasised the contrast with a *de facto* director, (in that the former openly acts as a director, whereas the latter claims not to be a director at all), determined that the statutory definition required proof of

*“(1) who are the directors of the company, whether de facto or de jure; (2), that the defendant directed those directors how to act in relation to the company or that he was one of the persons who did so; (3) that those directors acted in accordance with such directions; and (4) that they were accustomed so to act. What is needed is first, a board of directors claiming and purporting to act as such; and secondly, a pattern of behaviour in which the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others.”*

753. Later English authority has established that it is not necessary for all the directors to act in accordance with the relevant directions or instructions; a governing majority will suffice: see *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 at [1272]. It is also not necessary that

an alleged shadow director should control all the decisions of the directors, or all the company's field of activities: *Secretary of State for Industry v Deverell* [2001] Ch 340 per Morritt LJ. There must, though, be actual "acts" by the Board which are being controlled in the manner described, because this is what is stated in the statutory definition. There must also be a pre-existing pattern of such allegedly controlled acting. This is necessary in order to satisfy the requirement of "being accustomed": see *Ultraframe* (above) at [1277-8].

754. The essence of this concept is that the alleged shadow director is, in reality, the actual director or the "directing mind" of the company in the relevant respects, (ie the offending acts of the *de jure* – or it could even be: *de facto* - directors), because those who are actually carrying out the particular offending acts are merely the conduits of his wishes and decisions.
755. Lewison J in *Ultraframe* expressed some reservations as to the extent of fiduciary duties properly imposed on shadow directors, since they would usually be incurring liability precisely because they would be operating with a conflict of interest as regards another person or entity (at [1290]). I would decline to follow that dictum on any basis, though, for being what I would regard as an unguarded comment, since the whole point of imposing liability for shadow directorship is precisely to hold liable the persons who are in fact directing a company's affairs contrary to what would otherwise be its directors' duties. Fortunately, in *Vivendi SA v Richards*, [2013] EWHC 3006, Newey J clarified the position sensibly, concluding that shadow directors did owe fiduciary duties to the company, and that

*"A shadow director can, I think reasonably be expected to act in the company's interests rather than his own separate interests when giving such [sc. such as the directors will be accustomed to act upon] directions and instructions."* [143].

756. Once again, though, discussion of this topic shows the need for careful analysis of what is actually going on in substance, especially as regards defendants with a potential conflict of interest. This is highlighted by some of the examples considered in *Ultraframe*, which discuss (see [1266-9]) the position of funders, lenders, suppliers, etc, who may be able to dictate the actions of the company to its board because of the strength of their commercial negotiating position. Lewison J accepted and endorsed the view that doing so would not make that counterparty a shadow director of the company. He also accepted that a creditor of the company is entitled to protect his own interests as creditor without necessarily becoming a shadow director of the company. This is a realistic approach and, on a more general plane, it underlines that the courts will be careful, in making judgments in the context of commercial matters, to give appropriate recognition to the realities of the business world. Such recognition, together with the exception of trusted professional advisers from liability, emphasises both the focus of the policy that imposes liabilities on shadow directors, and that any finding is dependent on facts.
757. Advocate Wessels took me to *Secretary of State for Industry v Deverell* (above) as his principal authority and as epitomising the test for shadow directorship. Morritt LJ summarised his conclusions at [35] in five propositions:

*"...(1) The definition of a shadow director is to be construed in the normal way.....it should not be strictly construed....."*

*"(2) The purpose of the legislation is to identify those, other than professional advisers, with real influence in the corporate affairs of the company. But it is not necessary*

*that such influence should be exercised over the whole field of its corporate activities.....*

*“(3) Whether any particular communication from the alleged shadow director, whether by words or conduct, is to be classified as a direction or instruction must be objectively ascertained by the court in the light of all the evidence. In that connection I do not accept that it is necessary to prove the understanding or expectation of either giver or receiver. In many, if not most, cases it will suffice to prove the communication and its consequence. Evidence of such understanding or expectation may be relevant but it cannot be conclusive. Certainly the label attached by either or both parties then or thereafter cannot be more than a factor in considering whether the communication came within the statutory description of direction or instruction.*

*“(4) Non-professional advice may come within that statutory description. The proviso excepting advice given in a professional capacity appears to assume that advice generally is or may be included. Moreover the concepts of “direction” and “instruction” do not exclude the concept of “advice” for all three share the common feature of “guidance”.*

*“(5) It will, no doubt, be sufficient to show that in the face of “directions or instructions” from the alleged shadow director the properly appointed directors or some of them cast themselves in a subservient role or surrendered their respective discretions. But I do not consider that it is necessary to do so in all cases. Such a requirement would be to put a gloss on the statutory requirement that the board are “accustomed to act” “in accordance with” such directions or instructions.....a qualification beyond that justified by the statutory language.”*

758. I would broadly accept these propositions but with the following qualification.

759. First, I do not think that Mr Wessels sought to argue that the “real influence” referred to in proposition (2) can be viewed as either an accurate paraphrase for, or an alternative expression of, the qualifying test for being a shadow director contained in the statutory definition itself. i.e. the requirement of there being “directions or instructions.” If he did, so, then I reject that argument. In my judgment, it is not available, certainly not insofar as it is inconsistent with the actual words of the statute. A test of “real influence” is not only not the statutory requirement, but is both so vague as to be unworkable, and departs too far from the essence of the concept, which is that a “shadow” director is a person who is, in reality, running the company in the relevant respect, albeit doing so through the actions of others who compliantly do his will. It may be possible that a person who has serious influence on the affairs of the company because his views or advice are habitually sought and acted on out of deference could fall within the definition of shadow director, but that would depend on whether the circumstances justified the relevant findings of fact as to the communications amounting to “directions or instructions”.

760. Second, I do not understand Morritt LJ to be saying, in proposition (3), that “directions or instructions” can arise without the intention and objective of, at least, the alleged giver of the instructions being that the Board should act in accordance with his expressed wishes. If he is so saying, then I respectfully disagree. There is a difference of quality between advice, even if forcefully expressed, and a direction or instruction, and that difference is that the maker of the communication is doing so with the intention of procuring a result for his own ends. Of

course, that state of mind may be capable of being inferred from indirect evidence in the usual way, but it does not seem to me that the statute authorises dispensing with such a finding. The statute requires a finding that the *de iure* directors were accustomed to act in accordance with the “directions or instructions” of the alleged shadow director and not merely in accordance with his presumed wishes or interests.

761. Third, I note, and Mr Wessels accepted, that the requirement to find “directions or instructions” requires the finding of actual communications, from the alleged shadow director to the Board Members, which constitute “directions or instructions”. This is plain from Morritt LJ’s proposition No (3). Such a finding is, of course, a matter of evidence and subject to the usual processes of pleading and proof. Again, though, it cannot simply be glossed over or assumed as part of some postulated bigger picture. Any inference that there were “directions or instructions” must be made as a finding of actual fact, justified, on balance of probability by evidence.
762. Fourth, it is clear from the cases such as *Kuwait Asia Bank*, (above) that the element of influence or even control over a company’s affairs which arises from either holding its shares, or having control over the employment position of its directors, is not sufficient on its own to constitute a party – generally there a company, - a shadow director. This underlines, again, the need for proof of the factual situation which constitutes shadow directorship, and that mere allegation of a relationship of influence, or similar, is not enough.
763. Fifth, and at the risk of stating the obvious, if it is sought to make a corporate entity liable as a shadow director, then it is necessary to find directions or instructions in the form of communications issued by that entity. Since a corporate entity can only act by human agency, then even if actual communications by a human being can be pointed to, issues of the capacity in which those communications were made will still need to be examined, to decide whether the communication was actually that of the corporate entity. In other words, any “directions or instructions” will have to be established to be *those of the corporate entity*, and this also requires affirmative proof on the evidence. This is not surprising, as the actual director of the company will already be liable, and fixing a shadow director with liability is an extension of liabilities arising out of the corporate structure.
764. Finally I make some general observations. There has been dispute in the English cases as to whether the concepts of *de facto* and shadow directorships are or are not mutually exclusive. In my judgment, and for the reasons given by Millet J in *Re Hydrodan* (above), logic dictates that they have to be, certainly now that statute has intervened to delimit the concept and application of the liability of shadow directors as discussed at the beginning of this section. In this situation, it may be possible to be a shadow director and a *de facto* director at the same time, but not in respect of the same acts, because the test for each basis of liability is materially different. A *de facto* director is fixed with liability because of what he does. A shadow director is fixed with liability because of what he procures. Fortunately this seems more of an academic dispute than one of real consequence. I have indicated above the extent to which I am concerned with it here.
765. Again, and although not bearing directly on the facts of *de facto* or shadow directorships, it is helpful context, in my judgment, to keep in mind that a party which is entitled to appoint a director to the board of another company does not *ipso facto* become either a shadow, or a *de facto*, director of the company. Whether he (or it) does so has to be judged on the basis of the

actual facts; for example, he is plainly more likely to do so if he is in fact able to appoint a majority of the Board. However, the position in law is that by appointing another person as a director of a company, the appointor is taken to authorise the appointee to perform conscientiously the duties of such a director, and therefore to exercise his own judgement and to act in what he perceives to be the best interests of the company, rather than those of his appointor. The appointee becomes agent of the company and not of his appointor.

766. As mentioned in relation to *de facto* directors, if a company which is entitled to appoint a director to the Board of another company appoints one of its own employees, then even though the employee carries out his directorial functions as part of his employment duties, the employer is not vicariously liable *ipso facto* for the acts of the employee as such director: see. *Kuwait Asia Bank EC v National Mutual Life Nominees Ltd* [1991] 1 AC 187 (PC) – an instructive and useful case on the position of nominee directors and the proper scope of duties thereby owed. Once again, this principle recognises that the office of director imposes freestanding personal and independent liabilities on the party holding that office, regardless of the origins of his appointment. Of course, if the actual facts demonstrated that the employee director had been following instructions issued to him by his employer, then the situation would be different.
767. Insofar as the foregoing points are not of direct relevance to this case, I find them to provide helpful guidance as to the proper approach to the concept of shadow directorship as it does come to be applied in this case. To distil the essential points for the present case:-
- (i) To fix any of the Entity Defendants with liability as a shadow director of CCC the Plaintiffs need to prove that the actual directors (*de iure* or possibly *de facto* if already found) were accustomed to act in accordance with “directions or instructions” given by that corporate entity. This requires proof, on the evidence in the usual way, of actual directions or instructions.
  - (ii) “The directors” would include a relevant voting majority of the board of directors.
  - (iii) It is insufficient to establish one instance only of obedience to such direction or instruction; there has to be a series of such acts so as to prove the requirement of being “accustomed” so to act. However, that does not necessarily have to be on the same subject matter, and in an appropriate case, relatively minimal evidence of previous biddability might well suffice.

## 6. The issues to be determined

768. Having now determined the law which I will be applying, it is convenient to marshal the issues which, in consequence, arise for determination, before turning to the evidence and the witnesses.
769. Turning to the allegations in the case, the Defendants say that they have identified 187 separate allegations of breach of duty pleaded against them in the Cause, although I confess that I have not counted them. They appear (from the Defendants’ comments on the unagreed “Concise List of Issues” referred to below) to be the total number of sub-paragraph allegations contained in Paragraphs 263C-263H, 308D-308J, 339B-339G, 367D-367I, 369T-369Y, 390B-390G, and finally 417, 418B-E, 418I-418L, 419, 422 and 424B-424E of the Amended Cause.

2508. As already observed there is no claim in wrongful trading with regard to this period. However, in my judgment, CCC never reached a point where it was unable to meet its debts, even as “they fell due”, before the time of the sudden avalanche of margin calls which were prompted by the brewing liquidity crisis of March 2008. Carlyle was not pressing for payment of the loans it had made. CCC always succeeded in obtaining financing as required up to that time and it paid all margin calls up to that date. Also, in my judgment, there was no point prior to the point when they actually did so that the Directors of CCC ought to have concluded that CCC stood no reasonable prospect of continuing to do so and thus avoiding insolvent liquidation. Whilst this may be a very sudden change of fortune, the evidence shows that, in the financial markets, fortunes can indeed change that quickly.

#### **Final Conclusions as regards the individual Defendants and CIM as investment manager**

2509. It follows from the above that, in dismissing the Plaintiffs’ claims against the individual Defendants for breaches of duty and in relation to CIM for breach of contract/tort in this period, I have now dismissed all such claims in the action.

#### **15. The Claims: Liability of the Entity Defendants as de facto or shadow directors.**

2510. I have so far not considered at all the allegations of liability made against the Eighth to Tenth Defendants other than to dismiss the claims of breach of contract or negligence *qua* investment manager against CIM, and I now turn to these.

#### **Preliminary – limits of case**

2511. Paragraph 80 of the Cause is the foundation paragraph for the Plaintiffs’ claims against the Entity Defendants. Within it, though, the Plaintiffs asserted, not just a claim founded on allegations of *de facto* and/or shadow directorship, but also (it appeared) an additional basis of claim, namely that the matters complained of amounted to breaches of “*other duties*” owed to CCC arising out of the nature of the relationship between the Entity Defendants and CCC, as asserted in paragraphs 76 and 77 of the Cause. Those paragraphs contained allegations, first of “*pervasive control*” of CCC by the Entity Defendants and second of a “relationship of trust and confidence” between CCC and the Entity Defendants. From this, it appeared that the Plaintiffs might be intending to argue some other grounds for imposing liability on one or other of the Entity Defendants outside the two recognised concepts of *de facto* or shadow directorship; the second phrase, in particular, is usually found in the pleading of a cause of action based on undue influence.

2512. However, in answer to a specific query from the bench as to whether this was so, Advocate Wessels confirmed that it was not. Following their closing submissions, the Plaintiffs expressly confirmed in writing that as against the Entity Defendants, their claims against TCG and Holdings rested entirely on the allegation that those Defendants were either *de facto* or shadow directors of CCC and thus themselves owed to CCC the various duties of directors. They alleged no other grounds of claim against TCG and Holdings, although as against CIM, they alleged both those bases of claim and also the further or alternative claims of breach of contract and/or non-contractual negligence.

2513. Turning, therefore to the claims based on *de facto* or shadow directorship, in my judgment these claims fail against each of these Entity Defendants *in limine*. The factual requirements

for such liability are simply not made out on the evidence before me, and are scarcely even pleaded.

### The pleaded claims of de facto and shadow directorship

2514. The basic pleading of the Plaintiffs' case appears at Paragraph 80 of the Amended Cause:

“80. *Carlyle each controlled the affairs of CCC and performed functions properly discharged by a director of CCC and/or was part of CCC's corporate governing structure, such that each of Carlyle and CIM was a de facto director under Guernsey Law. Further or alternatively, the majority of the directors of CCC took direction from and were accustomed to act in accordance with the directions of Carlyle and CIM such that each of Carlyle and CIM was a shadow director of CCC under Guernsey Law.*”

2515. The authorities show that the “*and/or*” in the first sentence above cannot stand except as “*and*”. The test for *de facto* directorship is emphatically what the defendant actually did, and merely “being” part of the corporate governing structure is not enough.

2516. A more technical point is that the term “Carlyle” as used in the Cause is stated to be a “*collective*” reference to Holdings and TCG. I doubt whether a joint directorship is possible even in theory. In my judgment a cause of action alleging either shadow or *de facto* directorship has to be made against a single individual. I will, though, benevolently treat the “collective” definition as being disjunctive, and the allegations of *de facto* or shadow directorship as being made separately against each of TCG and Holdings.

2517. I have already referred to the pattern of the Cause in making the same general allegations against groups of Defendants in respect of the times in point, but in places with further elaborations particularly relevant to that group. In the case of the Entity Defendants (referred to in the Cause as “*Carlyle and CIM*”) the extra allegation is generally a reference to the claim of the “pervasive control” of CCC exercised by Carlyle and/or CIM. These allegations are ultimately found in Paragraphs 412R to 412ZF of the Amended Cause, where the complaints against CIM, TCG and Holdings are collected under the side heading “*Carlyle and CIM's pervasive control of CCC*”. Attempting brevity, I summarise these paragraphs here.

2518. The Plaintiffs initially recite the ownership relations between the Founders and the Entity Defendants, and set out the circumstances of the appointment of the various personnel who actually conducted CCC's affairs day to day, in particular Mr Stomber and Messrs Greenwood, Trozzo, Rella and Green. They stress the instrumentality of “the Founders” (in places “*on behalf of*” Carlyle and/or CIM) in setting up these structures. They also stress the practical power of the Founders over the employment position of each of such senior personnel.

2519. A specific allegation of the shadow directorship of the Entity Defendants is made at Paragraph 412Z, and matters relied on for this then follow. First, at paragraph 412ZA, the Plaintiffs plead 14 individual written statements made by Mr Stomber between November 2006 and 14<sup>th</sup> March 2008, which they say show that Mr Stomber “*at all material times*” acted “*in accordance with Carlyle's wishes and its interests and ...primarily to protect and advance the interests and reputation of Carlyle*”. These might be argued to show a mindset of servility, or even sycophancy, on Mr Stomber's part, but they do not even mention any directions or instructions from an Entity Defendant.

2520. The Plaintiffs next plead the provisions in CCC's Articles of Association which confide special powers of approval to a majority of the Independent Directors as previously noted, and they plead in Paragraph 412ZD that in exercising those powers, rather than exercising their own independent judgement and responsibility the three Independent Directors were instead

*"accustomed to act in accordance with the directions and instructions of Carlyle, expressed through communications made by persons acting for and on behalf of, or alternatively in the interests of, Carlyle".*

2521. One can just about extract from this an assertion of the giving of instructions or directions (to the Independent Directors, therefore) by a person acting on the authority of TCG or Holdings, but it does not condescend to the necessary identification of the giver of the instructions or the alleged material instructions themselves. This could, though, be remedied by the four matters which are then pleaded as founding this allegation. They are

- i. *"as a consistent course of conduct ...acceding unquestioningly to requests"* (maker not specified) for approval to reductions/suspensions in CCC's key risk management measures (including the minimum liquidity cushion),
- ii. *"acceding unquestioningly"* to Mr Conway's alleged *"decision"* to refrain from selling RMBS,
- iii. *"acceding unquestioningly"* to Mr Conway's alleged *"decision"* and/or Mr Stomber's *"recommendation"* not to seek to raise additional equity capital,

and lastly

- iv. refraining from requiring more frequent Board meetings and instead simply *"permitting Carlyle and CIM to operate CCC as they saw fit"* - particularly as regards continuing to operate without maintaining a minimum liquidity cushion as a known *"fundamental"* element of CCC's business model.

None of the above however is an allegation of a direction or instruction from TCG or Holdings being followed, whether customarily or otherwise, by Messrs Allardice, Sarles and Loveridge.

2522. The Plaintiffs next plead (Paragraph 412ZE) that *"Carlyle and CIM, through the Founders and Senior Carlyle Personnel, controlled and directed the affairs of CCC"* in that they

- "1. regularly undertook functions in relation to CCC which could only be properly discharged by a director, and formed part of CCC's corporate governance structure; and/or*
- 2. exercised a degree of control over the business and affairs of CCC that was at least on an equal footing with that exercised by its de jure directors; and/or*
- 3. were held out to, and regarded by, CCC's shareholders and creditors as part of the corporate governance structure of CCC, and responsible for its success; and/or*
- 4. were the substantial or predominant influence in directing the affairs of CCC."*

2523. Although sounding initially like an allegation of shadow directorship, the details only mention aspects of *de facto* directorship in (1) and (3), but even none of these allegations is specific; they ring more of a submission than statements of fact and are mostly mere assertion. They do not plead specifically any fact capable of bringing home liability to any of the Entity Defendants arising from having acted as either a shadow or *de facto* director of CCC in any material respect in this action. A finding of *de facto* directorship has to be founded on proof of the doing of a specific (offending) “directorial act” by the relevant defendant, and a finding of shadow directorship has to be based on proof of actual directions or instructions given by the defendant.
2524. This could, again, be cured by further particulars, and the Plaintiffs do indeed go on to plead further matters at Paragraph 412 ZF, although they do this as “*further or alternatively*” rather than as particulars of Paragraph 412E. They plead here that Carlyle and CIM

*“through the Founders and Senior Carlyle Personnel, controlled and directed the affairs of CCC”,*

listing 16 individual occasions of such alleged control or direction between the inception and the demise of CCC, in which Messrs Rubenstein, Mayrhof, Buser, Nachtwey, Harris, Ms Cosiol or unspecified senior Carlyle personnel, sometimes in conjunction with Mr Conway, took some step in relation to CCC’s affairs. There is no need to recite all of them, but as a flavour, they include matters as diverse as seeking investment in CCC, forming plans in case its IPO did not proceed, overseeing CCC’s publicity materials, dealing with CCC’s funding counterparties and auditors, and receiving or making reports on CCC’s affairs. However, only one such allegation is in respect of a matter which is alleged to have caused loss to CCC. This is at Paragraph 412ZF.5, which cites the familiar decision not to sell RMBS (etc) in August 2007, and the potential provision of a further loan from Carlyle to CCC in September 2007, but pleads that these were decisions of Mr Conway, acquiesced in by the other *de iure* directors of CCC. Mr Conway was, of course, a *de iure* director of CCC. Thus, this allegation neither alleges any “directorial acts” of CCC effected by personnel who were agents of an Entity Defendant, nor the communication of any “direction or instruction” to a *de iure* director of CCC by an Entity Defendant.

2525. The next material Paragraphs of the Cause are those at 419 – 421, in a section headed “*CIM’s wrongful conduct*”. There is first pleaded against CIM, 21 matters of conduct each said to be reckless, grossly negligent (or negligent), wilful misconduct, and a breach of the fiduciary “*or other*” obligations owed by it to CCC, and then, at Paragraph 420, it is pleaded that

*“as a shadow and/or de facto director of CCC... , CIM owed the same fiduciary duties to CCC...”*

as its actual directors owed, and that CIM breached these, through the conduct pleaded, not (oddly enough) in para 419, but in Paragraphs 417.4 -417.24 and 418A- 418N - even though these are allegations of misconduct by the individual directors, of whom at least three, the Independent Directors, had nothing to do with CIM. On close and laborious examination, none of these alleged facts is anything which could be argued to have been done by CIM otherwise than as part of its functions as CCC’s investment manager, or amounted to “directions or instructions” to the directors of CCC rather than being professional advice.

2526. In Paragraphs 422 - 424, the Plaintiffs then plead exactly the same matters as those previously pleaded in Paragraphs 419-421 against CIM, but now against “*Carlyle*”, and the same points arise.

2527. In Paragraphs 424A –G, under the heading “*Additional particulars of breach by Carlyle and CIM*” the Plaintiffs then repeat a large number of earlier paragraphs of the Cause and allege, at intricate length, that the breaches of various fiduciary duties and duties of skill and care pleaded previously in those paragraphs were also breaches of such duties owed by CIM and “*Carlyle*”. Again, it does not seem to me that these paragraphs contain allegations of the facts necessary to constitute either *de facto* or shadow directorship, as recognised in law.

2528. It thus seems to me that the Cause barely pleads a sustainable basis for a claim that the Entity Defendants incurred liability as either *de facto* or shadow directors of CCC for the breaches of duty alleged to have caused CCC loss. However, as the nature of the claim is reasonably apparent, I go on to consider what are the requirements for any such claim, and whether these can be made out on the evidence in the trial.

### ***De facto* directorship – discussion and conclusion**

2529. This is not a case of acting under an invalid appointment: none of the Entity Defendants was purportedly appointed a director of CCC.

2530. Nor is it a case of CCC having held out TCG or Holdings (or CIM) as a director despite the fact that they were not, with TCG or Holdings or CIM having joined in and purported to act as a director. Although such holding out is pleaded in respect of TCG and Holdings, there is no evidence of this even on a general basis, and certainly none in respect of the only material allegations of breach of duty, ie those alleged to give rise to the loss suffered by CCC.

2531. The type of *de facto* directorship alleged here is the third category of *de facto* directorship, identified above under Legal Principles, ie that of interference. It requires that the Entity Defendants can be shown to have meddled in the affairs of CCC by themselves carrying out acts which only a director of CCC had power to carry out, and which were culpable on the part of a director of CCC in the ways pleaded. To be a qualifying act, for the purpose of founding proof of *de facto* directorship in this case, the relevant act must satisfy four criteria. It must be

- (i) an act carried out on behalf of CCC, that only a *de iure* director of CCC could perform,
- (ii) an act carried out by the relevant entity sought to be fixed with liability (ie by a human actor who is either an empowered officer, or the duly authorised agent, of that entity, and for that purpose),
- (iii) an act which the relevant actor could not be legitimately doing in a capacity other than that of a director of CCC,

and, in addition, in order to give rise to liability

- (iv) an act which was in some way causative of the damage to CCC of which complaint is made.

2532. Leaving aside the fourth requirement for the moment, as regards TCG and Holdings, there is no acknowledgment of the first three criteria in the pleading, and there is neither pleading, nor evidence, to show how it is maintained that the only actions which are claimed to have caused actual loss to CCC, namely the decisions not to sell RMBS or seek to raise further equity capital from July 2007 onwards, were carried out by TCG or Holdings, as a matter of fact. Certainly facts demonstrating the necessary authority from TCG or Holdings to the person(s) who actually did any such material acts would have to be pleaded and proved. There is nothing approaching this.
2533. Even overlooking the absence of a properly pleaded case on the pleadings, but applying the correct legal principles to the evidence in this case, I find the allegations of the *de facto* directorship of CCC, whether by CIM, TCG or Holdings to be unsubstantiated. The allegation is little more than assertion, founded totally on the argument that the relationship of TCG and Holdings (or CIM) to CCC should be characterised as one of “control”, and arguing that “therefore” any material decision or act of CCC or its Board can be regarded as being “really” that of TCG or Holdings (or CIM). That is neither principled, nor is it the law.
2534. The short point is that the only decisions which are alleged to have caused loss to CCC are the decisions made at various points between July 2007 and March 2008 not to sell RMBS (or not to try to raise equity capital) but instead to hold on to those assets and to continue the necessary borrowings to do so, and, on the evidence, those decisions were taken or endorsed, and the implementation of those acts was authorised, by the *de iure* directors of CCC. Even if the scope of relevant decisions is extended to include such ancillary matters as authorising the suspension of the Investment Guidelines, those decisions were also still taken by the *de iure* directors of CCC.
2535. There is no evidence of any such decision being taken by anyone in the capacity of agent for TCG or Holdings. Whilst it might be argued that some such decisions were taken or implemented by CIM, such acts were properly done in CIM’s capacity as investment manager for CCC, appointed under the IMA. They are plainly referable to that status; they are not CIM’s officiously assuming the functions of a director of CCC.
2536. Even where distinctions in capacity might begin to become blurred in practice (I note, for example, that Mr Green resigned from CIM, and thus what was effectively his position as CFO of CCC at the end of January 2008 shortly before the end of the material time, and the result was that Mr Buser of TCG rendered more assistance to the operations of CCC in his place), that makes no difference to the fundamental point that to make out *de facto* director liability it would be necessary to prove that an individual acting on behalf of TCG or Holdings did material acts on behalf of CCC which could only have been done by a director of CCC. I was in fact not even addressed on the basis that there were any such examples in the evidence. The whole pattern of the Plaintiffs’ submissions in this regard was simply reliance and emphasis on the strength of the alleged “pervasiveness” of the Carlyle ethos and influence in the running of CCC’s affairs, and that this somehow made TCG or Holdings tantamount to directors of CCC, such that they could be called *de facto* directors of CCC. An alternative submission was that as Mr Stomber and Mr Conway, in particular, failed themselves (it is said), to distinguish the capacities in which they might be acting, that opened up the door to treat their acts as being carried out on behalf of TCG, or Holdings (or I think, CIM), simply because they had authority to act on behalf of those entities (Mr Conway) or were effectively employed by those entities

(Mr Stomber, even though that proposition is not really accurate as he was employed by CGEC). In my judgment that simply is not enough.

2537. In their closing submissions, the Plaintiffs argue that “*the appropriate inference to be drawn*” from the evidence (including, they say, the absence of any evidence given by any other Carlyle/CIM personnel who had involvement in CCC’s affairs beyond those called by the Defendants) is that

“...*the Defendants, the Senior Carlyle Personnel and CCC’s authorised Officers were acting concurrently on behalf of Carlyle, CIM and CCC at all relevant times*”.

2538. This vague and broad brush approach is neither correct as a matter of legal analysis of the facts, nor is it a permissible basis of liability. I unhesitatingly reject it.

2539. Thus the allegation of *de facto* directorship of CCC made against the Entity Defendants, in respect of the acts which are material to the alleged causing of damage to CCC therefore fails on this fundamental point of evidence.

#### **Shadow directorship – discussion and conclusions**

2540. As regards the allegation that CIM, TCG or Holdings was a shadow director of CCC in respect of any material decision, I find that the Plaintiffs’ case also fails.

2541. The key point here, in my judgment, is that the Plaintiffs must identify some “directions or instructions” emanating from the relevant entity and in accordance with which the actual directors of CCC (or, if applicable, the relevant voting majority of such directors) was “accustomed to act”. As the entities sought to be made liable are corporate entities, CIM, TCG or Holdings, it is therefore their directions or instructions which have to be proved. This requires a finding against either CIM, TCG or Holdings that that entity gave directions or instructions to the directors of CCC, or the relevant majority of them, in respect of any relevant act and such that there is a discernible pattern of those directors “doing as they were told” by CIM, TCG or Holdings rather than exercising their own judgment in respect of the relevant act or aspect of CCC’s business. This in turn means proving the communication of relevant “directions or instructions” by some person who was doing so in the capacity of either the appropriate organ or a duly authorised officer or agent of the entity (CIM, TCG or Holdings) in question.

2542. Again, taking TCG and Holdings first, the Plaintiffs have not, it seems to me, even focused on making out this requirement as a matter of evidence. No evidence has been adduced or elicited, of any material “directions or instructions” being given to the Directors of CCC with regard to any of the decisions or failings complained of by any person, let alone any person shown to be acting in that regard on behalf of and with the authority of TCG or Holdings. Neither is there any evidence of conduct from which it might be properly inferred as a fact that directions or instructions were being given by either TCG or Holdings to CCC’s directors (or to any material group of them such as “Allardice, Sarles and Loveridge”), and in accordance with which they were “accustomed to act”. Indeed, I do not think that it was ever suggested to any of the last three directors that they were acting on directions or instructions at all, as contrasted with it being suggested that they exercised no independent judgement and unquestioningly did what either Mr Stomber or (as the allegation more often is) Mr Conway requested, proposed or recommended. That is not the same thing.

2543. I have already noted when considering legal principles that the authorities show that the mere fact of holding a company's shares, or a majority of them, is insufficient to constitute an entity a shadow director of the relevant company. Thus, even if the voting shares in CCC were to be treated as held by either TCG or Holdings, that would not justify a finding of shadow directorship.
2544. There is, I find, no evidence sufficient to found a conclusion that the *de iure* Directors of CCC (or a relevant majority of them) were accustomed to act in accordance with instructions or directions given by TCG or Holdings, let alone that they did so act in the respects which are alleged to have caused CCC loss. There is no evidence of actual directions or instructions. Mere influence is insufficient, even if it is considerable, and "control" would likewise only be sufficient if it manifested itself in the form of the necessary pattern of instructions given and customary compliance. None of that is made out here.
2545. Moving to CIM, since CIM was CCC's investment adviser, it is necessary to consider in what capacity any communications to CCC's directors which are established as being from CIM were given and whether they were, in substance, advice being given in a professional capacity or, rather, "directions or instructions" as to how to act. I have no hesitation in finding that any such communications were the former. Even assuming that communications from Mr Stomber to the other directors of CCC were to be treated as coming from CIM, rather than (as I would have thought more reasonable) from CCC's own CEO director, there is, once again, simply no evidence to support the proposition that Mr Stomber was conveying CIM's "directions or instructions" to the directors of CCC, as contrasted with CIM's investment advice.

#### **Final Conclusions as regards the Entity Defendants as directors**

2546. For all the above reasons, therefore, the claims against the Entity Defendants based on allegations of their *de facto* or shadow directorships of CCC fail completely.
2547. As the Plaintiffs' claims against the Entity Defendants have now become defined, my conclusions on this aspect of the claim are sufficient to dispose of all claims which have been maintained against TCG and Holdings. The Plaintiffs' action against those entities will therefore be dismissed. As regards CIM, they dispose of the claims founded on *de facto* or shadow directorship. The Claims against CIM made on the basis of breach of contract or negligence have been considered above.

#### **16. Causation and Quantum**

##### **Preliminary**

2548. The arguments in this case have never got as far as any detailed consideration of damages calculations. It has not been worth doing so in advance of findings of fact which would enable a properly focused exercise to take place.
2549. Because I have held that the Defendants committed no breach of duty (and nor, consequently, misfeasance) and were not guilty of wrongful trading, it is strictly unnecessary for me to deal with issues of damage and quantum. The question is therefore whether I should nonetheless consider these points in case this matter goes further (to use the traditional phrase).

**EXHIBIT B**

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[1986]

of the house will of course be an important factor in many cases. But in other cases, contributions by way of the labour or other unquantifiable actions of the claimant will also be relevant. A

Taking into account the fact that the house was intended to be the joint property, the contributions to the common expenditure and the payment of the fire insurance moneys into the joint account, I agree that the plaintiff is entitled to a half interest in the house.

B

*Appeal allowed with costs.  
Order for costs not to be enforced  
without leave of court.  
Plaintiff to have half beneficial interest  
in house pending sale and in net  
proceeds of sale when house sold.  
Legal aid taxation of both parties  
costs.  
Leave to appeal refused.*

C

*Solicitors: Livingston Solomon; Singh Karran & Co., Southall, Middlesex.*

D

S. H.

E

[COURT OF APPEAL]

*In re BIRD PRECISION BELLOWS LTD.*

F

1985 July 1, 2, 3

Oliver and Purchas L.JJ.

*Company—Oppression—Conduct of affairs—Quasi-partnership private company—Exclusion of two directors from participation—Order for purchase by majority of minority shares—Price to be determined by court—Whether shares to be valued pro rata or at market value as minority holding—Companies Act 1980 (c. 22), s. 75(1)(3)(4)(d)* G

The company was formed in August 1975 in order to combine B.'s expertise in the manufacturing of precision bellows with the general experience of A. and N. in financial, commercial and industrial matters. At the first meeting of directors A. was appointed chairman, N. was appointed financial director and company secretary, neither of them receiving remuneration as directors, and B. was appointed as managing director, with a yearly salary. The company's capital was so arranged that the petitioners, A. and N. and N.'s family, held 26 per cent. of the issued share capital. Restrictions were placed by the articles of H

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A association on the transfer of shares. Between 1975 and mid-  
 1980 the company's affairs worked smoothly, and the company  
 began to prosper, but thereafter the relationship of mutual  
 confidence became impaired and in April 1981, at an  
 extraordinary general meeting, A. and N. were removed as  
 directors. The petitioners presented their petition, under section  
 75 of the Companies Act 1980,<sup>1</sup> for an order that their shares  
 should be purchased by the respondent majority shareholders at  
 their fair value. Vinelott J. ordered, by consent, pursuant to  
 section 75 of the Act that the majority shareholders should  
 purchase the petitioners' shares "at such price as the court shall  
 hereafter determine." The order gave liberty to all parties to  
 apply for, inter alia, "directions as to the payment of the  
 purchase price and interest if appropriate." On the hearing to  
 determine the appropriate purchase price of the shares Nourse J.  
 found that the company constituted a quasi-partnership and that  
 the exclusion of A. and N. from the company had been  
 unjustified and amounted to conduct unfairly prejudicial to the  
 petitioners' interests; and he held that, that being so, the fair  
 basis for valuing the petitioners' shares was to fix the price pro  
 rata according to the value of the shares of the company as a  
 whole without any discount because they represented a minority  
 holding. The judge further held that the petitioners were not  
 entitled to interest on the purchase price for any period before  
 it had been determined.

On appeal by the majority shareholders and cross-appeal by  
 the petitioners on the issue of interest:—

*Held*, (1) dismissing the appeal, that section 75 of the  
 Companies Act 1980 conferred on the court a wide discretion to  
 do what was fair and equitable in all the circumstances so as to  
 put right the unfair prejudice to a petitioner and cure it for the  
 future; that that discretion extended to the terms of an order  
 for the purchase of a petitioner's shares under section 75(4)(d),  
 so that the proper price for a petitioner's shareholding was the  
 price which the court, pursuant to that discretion, determined to  
 be proper in all the circumstances of the case; that, on its true  
 construction, the consent order entitled the court to exercise in  
 full its discretion under section 75; and that, in so doing, the  
 judge was right in concluding that it was appropriate to treat  
 the company as a quasi-partnership and value its shares as a  
 whole and the petitioners paid the proportionate part of that  
 value which corresponded to their shareholding and not its  
 market value as a minority shareholding (post, pp. 669D–F, G–H,  
 673H–674B, 677F, 678F–H, 679B–C).

*Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959]  
 A.C. 324, H.L.(Sc.); *In re Jermyn Street Turkish Baths Ltd.*  
 [1970] 1 W.L.R. 1194 and *In re Westbourne Galleries Ltd.*  
 [1973] A.C. 360, H.L.(E.) applied.

(2) Dismissing the cross-appeal, that the liberty to apply for  
 directions in the consent order was provided to enable the court  
 to order payment of interest on the purchase price after the  
 court had fixed the price should it remain unpaid; and that,  
 accordingly, the judge was right in rejecting the claim for  
 interest (post, pp. 677C–E, F, 679C, D–F).

Decision of Nourse J. [1984] Ch. 419; [1984] 2 W.L.R. 869;  
 [1984] 3 All E.R. 444 affirmed.

<sup>1</sup> Companies Act 1980, s. 75: see post, p. 665D–F.

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The following cases are referred to in the judgment:

- Dean v. Prince* [1954] Ch. 409; [1954] 2 W.L.R. 538; [1954] 1 All E.R. 749, C.A. A  
*Jermyn Street Turkish Baths Ltd., In re* [1970] 1 W.L.R. 1194; [1970] 3 All E.R. 57  
*Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324; [1958] 3 W.L.R. 404; [1958] 3 All E.R. 66, H.L.(Sc.)  
*Westbourne Galleries Ltd., In re* [1973] A.C. 360; [1972] 2 W.L.R. 1289; [1972] 2 All E.R. 492, H.L.(E.) B

The following additional cases were cited in argument:

- Company (No. 002567 of 1982), In re A* [1983] 1 W.L.R. 927; [1983] 2 All E.R. 854  
*House Property & Investment Co. Ltd. v. James Walker, Goldsmith and Silversmith Ltd.* [1948] 1 K.B. 257; [1947] 2 All E.R. 789 C  
*Purcell v. F.C. Trigell Ltd.* [1971] 1 Q.B. 358; [1970] 3 W.L.R. 884; [1970] 3 All E.R. 671, C.A.  
*Sudbrook Trading Estate Ltd. v. Eggleton* [1983] 1 A.C. 444; [1982] 3 W.L.R. 315; [1982] 3 All E.R. 1, H.L.(E.)  
*Talbot v. Talbot* [1968] Ch. 1; [1967] 3 W.L.R. 438; [1967] 2 All E.R. 920, C.A.  
*Ward v. James* [1966] 1 Q.B. 273; [1965] 2 W.L.R. 455; [1965] 1 All E.R. 563, C.A. D  
*Westminster Property Group Plc., In re* [1985] 1 W.L.R. 676; [1985] 2 All E.R. 426, C.A.

APPEAL from Nourse J.

The respondents, Philip Arthur Bird, Mrs. E. M. Bird, Stanley Rowden and Pipe-Chem Holdings Ltd., to a petition dated 12 October 1981 by Ernest Armstrong Stanley David Nin, his wife Edith Nin and his three children, appealed from the judgment of Nourse J. dated 28 October 1983 whereby the judge determined, pursuant to section 75 of the Companies Act 1980, that the fair price at which the respondents, as majority shareholders ("the majority shareholders"), should buy the petitioners' shares in Bird Precision Bellows Ltd. was £18.25 per share, making a total price of £142,350. The majority shareholders sought an order that a fair price at which they ought to purchase the petitioners' shares should be determined at £10.04 per share, making a total price of £78,312. F

The grounds of appeal were that (1) the judge was wrong in law in disregarding the market price of the shares (which, according to the evidence of both valuers was to be fixed by taking the value of the company as a whole, calculating the pro rata price for the shares in question, and discounting the price by 45 per cent.) by reason of the fact that, as the judge decided, the company was a quasi-partnership; (2) the judge failed to take account of the parties' rights as set out in the articles of association of the company which provided the only, or the only fair, basis for valuing the shares, and which basis would have produced a value of £10.04 per share; (3) the judge made a distinction which was valid neither in law nor in logic between the fair value to be ascribed to the petitioners' shares if they wished to sell their shares voluntarily (when a discount was to be applied) and if they wished to G H

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In re Bird Precision Ltd. (C.A.)

- A sell their shares because they had been unfairly prejudiced by the way in which the company was run (when no discount was to be applied); (4) if that distinction was correct, the judge was wrong in law in applying it to the present case (i) in the light of the compromise of the petition by the parties without any admission of any oppression or unfair prejudice or any ground entitling the petitioners to present a petition, and (ii) in which the company was a respondent; (5) in failing to apply the discount to the price of the shares in accordance with the evidence of both parties' valuers, and in the circumstances of the instant case, the judge was effectively giving damages to the petitioners, notwithstanding that (a) he had no power so to do in the absence of evidence to the effect that the value of the company had been reduced by any acts of the majority shareholders, (b) the petitioners, by their counsel, at the outset of the hearing before the judge, abandoned any claim for damages and (c) the petition had been compromised without any admission of wrongdoing by the majority shareholders or any of them, and the judge's function merely involved determination of a price; (6) the judge failed to determine a fair price for what was effectively a piece of property in the hands of the petitioners, but rather sought to compensate them for some uncertain and unqualified loss; and (7) in the light of the judge's findings as to the petitioners' conduct, alternatively Mr. Nin's conduct, in relation to an agreement as to the sale of Pipe-Chem (Holdings) Ltd.'s shares in the company, the judge was wrong in failing to apply a discount on the basis that the petitioners had constructively offered their shares, or Mr. Nin had constructively offered his shares, for sale or on the basis that by reason of such conduct, it would be unfair not to apply a discount.
- B
- C
- D
- E

By a respondent's notice dated 29 December 1983 the petitioners sought to have the judge's order affirmed on the following additional grounds that (1) on the true construction of the articles of association of the company the value to be attributed to a share of the company was a rateable proportion of the value of the shares of the company as a whole; (2) a valuation of shares pursuant to section 75 of the Act of 1980 should not be less favourable to the petitioners than a valuation pursuant to the articles; (3) the consent order dated 23 November 1981 precluded the majority shareholders from contending that that was not an appropriate case for relief under the section and/or from relying on the petitioners' conduct.

The petitioners further contended, by way of cross-appeal, that in addition to £18.25 per share awarded to them they should be awarded interest, or its equivalent, on the total purchase price of £142,350 at the short term investment rate from time to time from 23 November 1981 until payment (or at such other rate and for such other period as the Court of Appeal should think fit) and that the judge was wrong to refuse to make such an award in his further judgment given on 25 November 1983.

The grounds of the cross-appeal were that (1) the judge failed to exercise his discretion to award interest, or its equivalent; (2) the judge should have held (in so far as he did not) that the court had power to award interest, or its equivalent, under section 75 of the Act of 1980 and

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In re Bird Precision Ltd. (C.A.) [1986]

should further have held that it was appropriate to award interest, or its equivalent, at the rate and over the period aforesaid; (3) the judge wrongly characterised the petitioners' claim for interest, or its equivalent, as "damages;" (4) the judge wrongly held that the majority shareholders might not have had sufficient opportunity to deal with the claim for interest, or its equivalent, having regard to (a) the liberty to apply reserved to the parties in the order of 23 November 1981, (b) the fact that the hearing as regards interest was adjourned and that the majority shareholders took the opportunity to adduce evidence on that point either during the trial itself or at the adjourned hearing and (as regards the adjourned hearing) did so; (5) the sum awarded to the petitioners, amounting to £142,350, was in excess of any offer the majority shareholders had made and in particular exceeded the sums of (a) £120,000, which the petitioners had been prepared to accept in satisfaction of all or any claims prior even to the commencement of proceedings herein, and (b) £115,000, offered by the majority shareholders in full settlement prior to the hearings.

The facts are stated in the judgment of Oliver L.J.

*Charles Sparrow Q.C. and I. E. Jacob* for the appellant majority shareholders. There is, here, an agreement between the parties clothed in the consent order: *Purcell v. F. C. Trigell Ltd.* [1971] 1 Q.B. 358. Since that order the case has depended on the true interpretation of that agreement which provides directly and simply for the purchase of the minority shares by the majority shareholders. "Purchase" is an ordinary word and courts have consistently given to its ordinary meaning which is "purchase for an ordinary and reasonable price." The courts have assessed reasonable price as a fair price and fair valuation: *Sudbrook Trading Estate Ltd. v. Eggleton* [1983] 1 A.C. 444; *In re Westminster Property Group Plc.* [1985] 1 W.L.R. 676 and *Talbot v. Talbot* [1968] Ch. 1.

Nourse J. expressly held [1984] Ch. 419, 426F, that there was no "rule of universal application" that the value of a minority holding had always to be fixed pro rata according to the value of the company's shares as a whole or that the price of a minority holding had always to be discounted. It follows, therefore, that such valuation should be, throughout, an exercise of expert principles that determine value as a fact and the judge was wrong in regarding this issue as "a question of law to be decided by the court:" [1984] Ch. 419, 436A. He was also wrong to regard such valuation as involving a "discounted" price. The valuation for which the majority shareholders contend does not involve "discounting" a price. It is directed to ascertaining a price of the minority shareholding: *In re A Company (No. 002567 of 1982)* [1983] 1 W.L.R. 927. It is true that the court has power to make an order for compensation. Such an order has to be to compensate for some loss: *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324. The order, here, is not an order of that nature.

As to valuation, the judge found that the petitioners did not deserve their exclusion from the company's management. It does not necessarily

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- A follow that the measure of valuation should be valuation of the company's shares as a whole. That approach is inconsistent with ascertaining the actual value of the particular minority. It would amount to an extra element of consideration to the purchase price and is outside the consent order. [Reference was made to *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194.]
- B *William Stubbs Q.C.* and *Charles Purle* for the petitioners. Vinelott J.'s order dated 23 November 1981 gave the court a complete discretion as to the criteria to be adopted for determining the price to be paid for the petitioners' shares. There is no justification for reading any limitation into the order. It was, in fact, a consent order and was expressly stated to be made "pursuant to section 75." In order to have jurisdiction to make any order under the section the court had to be satisfied that the
- C petition is well founded: see section 75(3). Thus, the consent by the majority shareholders to the making of the order necessarily involved the admission by them that the petition was well founded, that is to say, there had been unfair prejudice to the interests of the petitioners. The express reference in the order of Vinelott J. to section 75 also confirms the intention that under section 75(4)(d) in determining the price to be
- D paid for the petitioners' shares, the court was to have an unfettered discretion to impose upon the parties whatever settlement the court considered just and equitable. Accordingly, Nourse J. was to fix what he regarded to be a fair price on the basis of a rateable part of the value of the company's total issued share capital. [Reference was made *Ward v. James* [1966] 1 Q.B. 273.]
- E An appellate court will only interfere with the exercise of this discretion if it was plainly wrong. That general principle also applies to appeal on the question of valuation. [Reference was made to *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324.] Nourse J. was not wrong. He postulated a general rule that where in the case of a quasi-partnership company, a minority shareholder's interest have been unfairly prejudiced by the manner in which the affairs of the
- F company have been conducted by the majority and an order under section 75(4)(d) for the purchase of the minority shareholder's interests is made then the correct course is to fix the price pro rata according to the value of the shares as a whole and without any discount. In the context of section 75 the expression "just and equitable" is very wide: see Lord Wilberforce in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 374-375, 379, about the same words in section 222(f) of the Companies Act 1948. The nature of the just and equitable solution to be
- G imposed under section 75(4)(d) of the Act of 1980 cannot depend merely on objective concepts of value. It is appropriate for the court to take into account the underlying nature of the company, the agreed basis on which it was established by the shareholders, and of the conduct of the parties prior to the presentation of the petition. Only by doing this can the court enable a minority shareholder to obtain a
- H proper price for his shareholding: see Lord Cross of Chelsea in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 385. *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324 also supports Nourse J.'s approach.

Nourse J. appears to be of the view [1984] Ch. 419, 431G-H, that, A  
 even outside the context of an order under section 75, the fair price,  
 payable for shares in a quasi-partnership, would normally be a pro rata  
 one. That view is correct. The pro rata basis is the normal basis  
 provided for in articles of partnership in respect of a voluntary  
 retirement, and is also the basis often adopted in quasi-partnership  
 companies where, as not infrequently happens, the quasi-partners make  
 express contractual provisions. Such an approach is consistent with that  
 adopted by the House of Lords to quasi-partnerships in *In re Westbourne*  
*Galleries Ltd.* [1973] A.C. 360. B

If it is accepted that the court has a very wide discretion under  
 section 75(4)(d) of the Act of 1980 it can fix a higher price than that  
 which, under the relevant company's pre-emption articles, a majority  
 would be required to pay on a transfer notice voluntarily given by the  
 minority. As a general rule however it cannot be right for the price so  
 fixed to be lower than the price payable under the articles. On the true  
 construction of the pre-emption provisions of the company's article 21  
 any valuation by the auditor must be a pro rata valuation: *Dean v.*  
*Prince* [1954] Ch. 409, 427-428, 430-431. C

On cross-appeal, section 75(3) of the Act of 1980 gives power to the  
 court to grant such relief as it thinks fit. That power is wide enough to  
 cover the award of interest on the purchase price of the shares to the  
 shareholders whose shares are being bought under a court order.  
 Nourse J. was wrong not to award such interest. [Reference was made  
 to *House Property & Investment Co. Ltd. v. James Walker, Goldsmith*  
*and Silversmith Ltd.* [1948] 1 K.B. 257.] Furthermore, Vinelott J's  
 order, on its true construction, gives liberty to apply in effect for all the  
 things the petitioners complained of, including the question of damage  
 caused to them. D E

*Sparrow Q.C.* in reply. Section 75(3) of the Act of 1980 cannot apply  
 unless the court is satisfied that the petition under the section is well  
 founded. The order of 23 November 1981 was a consent order without  
 any admission on the part of the majority shareholders that the petition  
 was well founded. The subsection, thus, cannot be invoked. The  
 petitioners cannot be entitled to interest for a further reason that there  
 was no principal until the price was fixed by the court and, thus, no  
 interest can be charged on it. F

OLIVER L.J. This is an appeal against an order of Nourse J. made on  
 28 October 1983 determining, pursuant to an order previously made by  
 Vinelott J. on 23 November 1981, that shares in a private company  
 which were to be purchased by the appellants in this appeal, who were  
 the respondents to a petition, at a price of £18.25 each. I read at this  
 stage only the last three lines of the judge's judgment [1984] Ch. 419,  
 436: G

"I value the shares of the company as a whole at £547,500. I  
 determine the price at which the respondents are jointly and  
 severally to purchase the shares of the petitioners at £18.25 each." H

The way in which this matter came before the court was this. The  
 company was a private company, Bird Precision Bellows Ltd., which

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A had been incorporated in 1975. The petitioners, Mr. Armstrong and Mr. Nin, were the holders of some 7,800 shares out of the total issued capital of 30,000 shares. The judge found that the company had been incorporated in the first instance as a sort of quasi-partnership between the petitioners and the respondents who were the majority shareholders, for the exploitation of certain processes with which the principal shareholder, Mr. Bird, was very much concerned and in which he was very expert. The two petitioners were there substantially, I think, in the role of consultants and gave their services to the company in the early stages of its career at very much less than the value which was properly to be attributed to those services.

B It is unnecessary to go in any great depth into the facts. The parties fell out in August 1981. The petitioners were then removed from the board of directors of the company and in October 1981 they presented a petition under section 75 of the Companies Act 1980, in which they claimed that they should be bought out. There was also at that stage, although it was subsequently dropped by amendment, an alternative claim to have the company wound up.

C I think I should read the material parts of section 75, because that section has some bearing on what subsequently occurred:

D “(1) Any member of a company may apply to the court by petition for an order under this section on the ground that the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial. . . . (3) If the court is satisfied that a petition under this section is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of. (4) Without prejudice to the generality of subsection (3) above, an order under this section may”—and then there are various things which can be done, terminating with—“(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company’s capital accordingly.”

E What happened in this case was that there appears to have been considerable correspondence between the parties with regard to the possibility that the majority shareholders should buy out the petitioners and there was some disagreement as to how the price of a purchase ought to be arrived at. Ultimately, when the matter came before the Companies Court, as it did on 23 November 1981, it was dealt with by agreement and a consent order (although it is not expressed as such) was made by Vinelott J. on that day. The order recites the petition and the evidence which had been filed on it up to that point, and it went on:

F “This court doth order pursuant to section 75 of the Companies Act 1980 that the respondents”—and then it names them—“do jointly and severally purchase the 3,900”—it is common ground that that was a mistake for 7,800—“shares of the company registered in the

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Silver Ltd.

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name of the petitioners”—and then it names the petitioners—“at such price as the court shall hereafter determine provided that such purchases may subject to the approval of this court be effected by means of a reduction of the share capital of the company. And it is ordered that on the question of the appropriate purchase price for the said shares the evidence of the petitioners be filed within 14 days of the date of this order the evidence of the respondents be filed within 21 days thereafter discovery by exchange of lists do take place on or before 11 January 1982 with inspection within 14 days thereafter and exchange of reports by experts within 28 days after inspection.”

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B

There is a paragraph as regards costs, which I need not read, which provides in effect that the respondents, the majority shareholders, should pay the petitioners’ costs of the petition down to and including the foot of the order. Then there is a final paragraph:

C

“Liberty to all parties to apply (1) for further and better particulars of the allegations in the affidavits (2) for directions as to the payment of the purchase price and interest if appropriate and (3) generally.”

D

Following that order there was a substantial amount of evidence filed; experts were engaged and their reports were, as I understand it, duly exchanged and the matter came on for hearing before Nourse J. It appears to have proceeded, up to the date of the hearing before Vinelott J. and at least for a month or so thereafter, with commendable celerity, but thereafter it adopted a somewhat molasses-like speed, and it finally terminated in the matter coming before the court on 25 November 1983. The judge, having considered all the evidence and the reports of the valuers, concluded in the way which I have read [1984] Ch. 419, 436. The basis of the judge’s valuation is to be found in two passages from the judgment, at pp. 429 and 430: and there is a further passage at p. 431. The judge said, at pp. 429–430:

E

“Although both sections 210”—which of course was the predecessor of section 75—“and 75 are silent on the point, it is axiomatic that a price fixed by the court must be fair. While that which is fair may often be generally predicated in regard to matters of common occurrence, it can never be conclusively judged in regard to a particular case until the facts are known. The general observations which I will presently attempt in relation to a valuation of shares by the court under section 75 are therefore subject to that important reservation. Broadly speaking, shares in a small private company are acquired either by allotment on its incorporation or by transfer or devolution at some later date. In the first category it is a matter of common occurrence for a company to be incorporated in order to acquire an existing business or to start a new one, and in either event for it to be a vehicle for the conduct of a business carried on by two or more shareholders which they could, had they wished, have carried on in partnership together. Although it has been pointed out on the high authority to which I will soon refer that the

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- Ch. In re Bird Precision Ltd. (C.A.) 667 Oliver L.J.
- A description may be confusing, it is often convenient and it is certainly usual to describe that kind of company as a quasi-partnership. In the second category, irrespective of the nature of the company, it is a matter of common occurrence for a shareholder to acquire shares from another at a price which is discounted because they represent a minority holding. It seems to me that
  - B some general observations can usefully be made in regard to each of these examples.”

Nourse J. then referred to the well known passage from the speech of Lord Wilberforce in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 379, and went on:

- C “His Lordship, having observed that it is not enough that the company is a small one, or a private company, identified three typical elements, one, or probably more, of which will characterise the company as a quasi-partnership. They are, first, an association formed or continued on the basis of a personal relationship involving mutual confidence; secondly, an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business; and, thirdly, restrictions on share transfers. No doubt
- D these three elements are the most familiar, and perhaps the most important, but they were not intended to be exhaustive. In my view there may be other typical and important elements, in particular the provision of capital by all or some of the participants.”

Next comes a passage which I think has assumed some importance in the argument, so perhaps it is worth reading:

- E “I would expect that in a majority of cases where purchase orders are made under section 75 in relation to quasi-partnerships the vendor is unwilling in the sense that the sale has been forced upon him. Usually he will be a minority shareholder whose interests have been unfairly prejudiced by the manner in which the affairs of the company have been conducted by the majority. On the assumption
- F that the unfair prejudice has made it no longer tolerable for him to retain his interest in the company, a sale of his shares will invariably be his only practical way out short of a winding up. In that kind of case it seems to me that it would not merely not be fair, but most unfair, that he should be bought out on the fictional basis applicable to a free election to sell his shares in accordance with the company’s articles of association, or indeed on any other basis which involved
- G a discounted price. In my judgment the correct course would be to fix the price pro rata according to the value of the shares as a whole and without any discount, as being the only fair method of compensating an unwilling vendor of the equivalent of a partnership share. Equally, if the order provided, as it did in *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194, for the purchase of the shares of the delinquent majority, it would not merely not be fair, but most unfair, that they should receive a price which involved an
- H element of premium.”

Then, Nourse J. said, at p. 431:

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“Next, I must consider the example from the second category of cases in which, broadly speaking, shares in a small private company are acquired. It is not of direct relevance for present purposes, but I mention it briefly in order finally to refute the suggestion that there is any rule of universal application to questions of this kind. In the case of the shareholder who acquires shares from another at a price which is discounted because they represent a minority it is to my mind self-evident that there cannot be any universal or even a general rule that he should be bought out under section 75 on a more favourable basis, even in a case where his predecessor has been a quasi-partner in a quasi-partnership. He might himself have acquired the shares purely for investment and played no part in the affairs of the company. In that event it might well be fair—I do not know—that he should be bought out on the same basis as he himself had bought, even though his interests had been unfairly prejudiced in the meantime. A fortiori, there could be no universal or even a general rule in a case where the company had never been a quasi-partnership in the first place.”

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Nourse J. said, in summary, that there is no general rule and then comes the passage to which particular criticism has been directed:

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“On the other hand, there is a general rule in a case where the company is at the material time a quasi-partnership and the purchase order is made in respect of the shares of a quasi-partner. Although I have taken the case where there has in fact been unfairly prejudicial conduct on the part of the majority as being the state of affairs most likely to result in a purchase order, I am of the opinion that the same consequences ought usually to follow in a case like the present where there has been an agreement for the price to be determined by the court without any admission as to such conduct. It seems clear to me that, even without such conduct, that is, in general, the fair basis of valuation in a quasi-partnership case, and that it should be applied in this case unless the respondents have established that the petitioners acted in such a way as to deserve their exclusion from the company.”

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The judge went on to conclude that the petitioners had not in fact deserved their exclusion on the facts of this case.

I have read those passages because they serve to indicate the approach of the judge to the problem with which he was confronted under the terms of the order. That approach has been criticised by Mr. Sparrow on two grounds: first of all, on the general ground that it was a wrong order in any event, or a wrong approach in any event, under section 75; and, secondly, on the ground that it was a wrong order, or a wrong approach, having regard to the specific terms of the consent order in this case which, as Mr. Sparrow rightly says, has to be looked at as a contract between the parties agreeing to the consent order.

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What Mr. Sparrow suggests is this. I take the two points which he makes in inverse order, that is to say, I am taking his second point first. He suggests that an order made under section 75(4) is simply an order for a purchase, without any discretion in the court to give directions

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- 1 Ch. In re Bird Precision Ltd. (C.A.) Oliver L.J. 669
- A which might have the effect of increasing or reducing the value of the shares in the open market, as shares in a private company. If the shares with which the purchase order is concerned are a majority holding, they are to be valued as such; if they are a minority holding they are to be valued as such, and in his submission the court is not entitled to look behind the company and to reflect, in the order for purchase or for sale, the actual relationship between the parties. According to this approach,
- B any agreement which has been made between the parties as to the basis upon which they were to participate in the company's affairs, or as to the way in which the company's affairs were to be conducted, any contribution which the petitioner may have made to the company's success, any absence of any contribution at all by the respondent, apart from the mere fact of his shareholding, is to be ignored. The court, in
- C other words, is to be rigidly restricted, if it is to make an order under section 75(4)(d) at all, to making an order for a purchase at a market price of the holding being purchased, to be arrived at only by the ordinary valuation principles, which will take into account the proportionate size of the holding in relation to the issued capital as a whole and to the control of the company.

- D For my part I find myself quite unable to accept this submission. It seems to me that the whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I
- E find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which the price is to be assessed. It has been pointed out, and I mention it again, that section 75(4) is merely a collection of possible methods of giving effect to section 75(3), and it is expressed to be without prejudice to the generality of subsection (3), which gives the court a very wide discretion as to the granting of relief in general terms
- F in respect of the matters of which complaint has been made.

We have been referred to the speech of Lord Cross of Chelsea in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 385, where he said in a very short passage, to which Mr. Stubbs drew attention:

- G "What the minority shareholder in cases of this sort really wants is not to have the company wound up—which may prove an unsatisfactory remedy—but to be paid a proper price for his shareholding."

- H It is on the question of a "proper" price that the parties here divide. So, Mr. Sparrow's second submission, which I have dealt with first, I find myself quite unable to accept. In my judgment, the "proper" price is the price which the court in its discretion determines to be proper having regard to all the circumstances of the case.

I come now to Mr. Sparrow's first submission, namely, that as a matter of interpretation of the order which, as he says and as I mention again, is a consent order, there is to be implied a contractual obligation

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that the shares should be purchased at the market value as a minority holding. The basis for this submission is that the consequence which I have outlined is one which flowed simply from the use in the order of the word "purchase;" and it is said that "purchase" ordinarily means purchase at market value, and therefore one reads into the order the words "a purchase at market value to be determined by the court." I confess that I am entirely unable to see why that should be. In my judgment, "purchase" ordinarily means no more than purchase for a money consideration; what that consideration is is at large and the order is one which only makes sense, and indeed can only be given any operative life, if the purchase price is fixed in the exercise of the full discretion vested in the court by section 75. The court has no jurisdiction, as it seems to me, to act as a sort of arbitrator between experts, and if Vinelott J. had been told that that was what was intended, and that all that was intended was simply that there should be submitted to the court the decision of the issue of what was the market value of the petitioners' holding, I confess that I doubt very much whether he would have made the order in that form, or indeed would have considered that he had any jurisdiction to do so.

Essentially what is suggested is that in assessing the price Nourse J. was wrong to consider the evidence which had been filed in support of the petition, and indeed subsequently, or to enter into any consideration of the merits of the case, the inception of the relationships between the parties and so on. I would find that a difficult submission to accept in any event, but the submission might have had more force, I think, if, as might at first be supposed from the terms of the order, the court was simply being asked to embark on an inquiry into the value of the shares on the assumption that it had been conceded in some unspecified way that the petitioners had been subjected to unfair prejudice and that it was therefore irrelevant to consider the manner in which they had in fact been unfairly prejudiced.

But it is the majority shareholders' own case, and it was so put to the judge, that no such admission had in fact been made. As I have pointed out, the terms of section 75(3) are perfectly clear. They simply provide that if the court is satisfied that a petition under this section is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of. If of course it is not so satisfied, then it has no jurisdiction to give the relief which is referred to in section 75(3) or in section 75(4). As it seems to me, this only has to be read for it to be seen straight away that the court, in making a valuation of the shares, can only do so if it is satisfied that the petition is well founded.

The judge therefore had to go into these questions, because it was expressly said that there was no admission of any unfair prejudice, and so the judge had to go into the question of whether there had been unfair prejudice to the petitioners and how it had taken place, in order to see whether he had any jurisdiction at all to embark on the inquiry which he was invited to undertake. The judge referred to the question of whether he ought to inquire into these matters as follows [1984] Ch. 419, 426:

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A “The first question which arose was whether the respondents, by consenting to the order of 23 November 1981 and, I suppose, by agreeing to pay the petitioners’ costs to date, had effectively admitted that they had been conducting the affairs of the company in a manner unfairly prejudicial to the petitioners as members. There was some disagreement between counsel as to what was or was not said on the respondents’ side at the hearing before

B Vinelott J., but on what I saw and heard I was satisfied that there had been no admission to that effect. The respondents had merely agreed to buy out the petitioners at a price to be determined by the court. Assuming that unfair prejudice might sometimes affect the price which ought to be paid for the shares, I was nevertheless unable to see how, in the absence of some explicit statement of the

C respondents’ position, they could be taken to have made any admission as to that matter.”

He went on, at p. 427:

D “It was unfortunate that the hopes and expectations of both sides for a shorter hearing should have been disappointed, but that was made inevitable by my decision on the first of the preliminary points and by the positions which the parties adopted in regard to the second and third. I myself suggested certain ways in which the hearing might be shortened by agreement, but without success. In future, parties who wish to limit the issues or the evidence in a case of this kind would be well advised to go further than a mere agreement that the price of the shares shall be determined by the

E court.”

Then he said, at p. 434:

F “I have to say that I regard the evidence of both Mr. Bird and Mr. Rowden on the bribery question as having been extremely unsatisfactory. If it had been necessary for me to make any finding on that question, I would have rejected their evidence in its entirety and accepted that of Mr. Nin and Mr. Armstrong. Having said that, I do not think that it is either necessary or desirable that I should go into this or any of the many other matters which were made the subject of allegations and counter allegations between the parties, both at the time and in evidence in this court. Having considered all the material evidence, I am satisfied that the exclusion of Mr. Armstrong and Mr. Nin was wrongful and that in that and certain

G other respects into which I need not go, the affairs of the company were conducted in a manner unfairly prejudicial to the interests of them and the other petitioners as members. That finding, although strictly speaking unnecessary on the view which I take of the case, is one which I feel that I ought to make, if only in fairness to Mr. Armstrong and Mr. Nin and after a full and exhaustive investigation of the merits.”

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If I have any criticism of the judge’s judgment, it is only that he based his inquiry on the supposition that the merits might affect only the question of the basis of the valuation of the shares, as indeed in my

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judgment they clearly can. But it was, I think, much more fundamental than that. Unless unfair prejudice was proved, the court was simply being asked to undertake a sort of arbitration in vacuo, which it had no jurisdiction to do. It seems to me quite unarguable that the judge, having perforce considered the merits and having heard evidence from the parties, should be expected, or indeed required, by the terms of this order, then to put that entirely out of his mind when it came to the question of the terms of the purchase.

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We have been referred to a number of authorities, first of all to a decision of Pennycuik J. in *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194, 1208, and I read an extract from his judgment:

“Section 210 gives the court an unlimited judicial discretion to make such order as it thinks fit with a view to bringing to an end the matters complained of, including an order for buying out one faction by the other. It is not disputed on behalf of the respondents that in prescribing the basis on which the price of such a sale is to be calculated the court can in effect provide compensation for whatever injury has been inflicted by the oppressors.”

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In *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324, 369, Lord Denning said:

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“One of the most useful orders mentioned in the section—which will enable the court to do justice to the injured shareholders—is to order the oppressor to buy their shares at a fair price: and a fair price would be, I think, the value which the shares would have had at the date of the petition, if there had been no oppression. Once the oppressor has bought the shares, the company can survive. It can continue to operate. That is a matter for him. It is, no doubt, true that an order of this kind gives to the oppressed shareholders what is in effect money compensation for the injury done to them: but I see no objection to this. The section gives a large discretion to the court and it is well exercised in making an oppressor make compensation to those who have suffered at his hands.”

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What I think is being suggested here is that these citations in some way support the arguments of the majority shareholders, because it is said that what in effect the judge was seeking to do was to compensate the oppressed shareholders, and that that was not within the terms of the order. I do not read what the judge did as doing that at all. Speaking for myself, I have been quite unable to see why these two authorities should be supposed to support the arguments which the majority shareholders have advanced. They seem to me to be entirely against them because, as it seems to me, they indicate as clearly as can be the wide discretion which the court has in directing the basis on which shares should be valued for the purpose of a purchase ordered under this section. It may be true that it can be compensatory, but what the court is required to do, in the exercise of its very wide discretion, is that which is just and equitable between the parties.

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It does not seem to me in any event that the matter ends simply with the mere fact that the order, to be effective as an order under section 75

A necessarily has to invoke the discretionary jurisdiction of the court, because there are in fact, as it seems to me, positive pointers in the order that that is exactly what was intended.

B Going back to the terms of the order, it starts with the words “this court doth order pursuant to section 75 of the Companies Act 1980.” I have already said that I do not for a moment think that the mere use of the word “purchase” which then follows—“that the respondents . . . do jointly and severally purchase”—contains any implication at all that they should purchase necessarily at market value. It seems to me that quite the contrary is imported by the words “pursuant to section 75.” What they are doing is purchasing pursuant to section 75, and it is pursuant to that section that the court is to determine price. That brings in, as it seems to me, by necessary implication the general discretion of the court to do what is fair and equitable.

C Secondly, one wonders, if all that was being asked for was an order for purchase at market price, what the purpose was, as Mr. Stubbs says, of involving the court in the matter at all. A market price could quite easily be determined outside the court by arbitration, or by submitting the matter to two valuers and their umpire. It seems to me to be quite evident from the first paragraph of the order that what was intended was that the matter should be approached in the full sense as an application under section 75 of the Act, and that the court was expected, in arriving at the price to be paid, to take into account all the circumstances of the case.

D That, as it seems to me, is underlined by the next part of the order, where it goes on with the question of the “appropriate” purchase price for the shares, and proceeds with directions as to evidence. The evidence is quite clearly intended to be general evidence with regard to all the circumstances—there are provisions for discovery. So far as the accountancy aspect is concerned, that is dealt with by the last words of this section of the order: “and exchange of reports by experts within 28 days after inspection.” So quite clearly, as it seems to me, the whole concept of the order was that there would be a full investigation into the circumstances, with evidence filed on both sides, and, indeed, that is what took place.

F Finally we come to the liberty to apply:

G “Liberty to all parties to apply (1) for further and better particulars of the allegations in the affidavits (2) for directions as to the payment of the purchase price and interest if appropriate and (3) generally.”

So the parties were to have liberty to apply for further and better particulars, and again it seems to me that that could only be on the footing that the judge was to inquire fully into the circumstances of the case and into the affidavits that were directed to be filed.

H Speaking for myself, I am quite satisfied, as a matter of construction of the terms of the order, that the judge was entitled to exercise in full his discretion under section 75(3) and (4). Those subsections give him a very wide discretion, and I am quite satisfied that no ground has been shown for interference by this court with the actual manner in which the

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judge in fact exercised the discretion which was vested in him by the section, and by which he concluded that this was a quasi-partnership case, and that being so it would be appropriate that the shares of the company should be valued as a whole and that the petitioners should then simply be paid the proportionate part of that value which was represented by their shareholding, without there being made a discount for the fact that this was a minority shareholding. A

In my judgment, the judge was perfectly entitled to arrive at the conclusion at which he did. I think that I myself, certainly on a reading of the judgment and on such material as we have had, would not have come to any other conclusion, and I am fortified in the view that I have taken by an additional point which Mr. Stubbs takes on the articles of association of the company. This company, as one might expect, had articles of association which contained a pre-emption provision in the ordinary form. It was one which had this perhaps unusual feature, that it had a specific provision relating to the way in which a transfer notice was to be treated. I can read the relevant paragraphs very simply; it is the usual form of article which enables shares to be transferred to other members, or to members of their family, and then provides that apart from that no share shall be transferred until the pre-emption rights have been exhausted. Article 21(c) provides: B C D

“Except where the transfer is made pursuant to subarticle (a) hereof, the person proposing to transfer any share (hereinafter called ‘the proposing transferor’) shall give notice in writing (hereinafter called ‘the transfer notice’) to the company that he desires to transfer the same, and such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company (or to any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership) at the price so fixed or, at the option of the purchaser, at the fair value to be fixed by the auditor in accordance with subarticle (e) of this article.” E

Then there is this important sentence: “The transfer notice may include two or more shares, and in such case shall operate as if it were a separate notice in respect of each.” In paragraph (e) we have the valuation: F

“In case any difference arises between the proposing transferor and the purchaser as to the fair value of a share the auditor shall, on the application of either party, certify in writing the sum which in his opinion is the fair value, and such sum shall be deemed to be the fair value, and in so certifying the auditor shall be considered to be acting as an expert and not as an arbitrator; and accordingly the Arbitration Act 1950 shall not apply.” G

Mr. Stubbs has referred us to two passages in *Dean v. Prince* [1954] Ch. 409. Denning L.J. said, at pp. 427–428: H

“*The right to control the company.* Harman J. said that the auditor should have taken into account the fact that the 140 shares were a majority holding and would give a purchaser the right to control the

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A company. I do not think that the auditor was bound to take that fact into account. Test it this way: Supposing it had been Prince who had died, leaving only 30 shares. Those 30 shares, being a minority holding, would fetch nothing in the open market. But does that mean that the other directors would be entitled to take his shares for nothing? Surely not. No matter which director it was who happened to die, his widow should be entitled to the same price per share, irrespective of whether her husband's holding was large or small. It seems to me that the fair thing to do would be to take the whole 200 shares of the company and see what they were worth, and then pay the widow a sum appropriate to her husband's holding. At any rate if the auditor was of opinion that that was a fair method, no one can say that he was wrong. The right way to see what the whole 200 shares were worth, would be to see what the business itself was worth: and that is what the auditor proceeded to do."

Wynn-Parry J. refers to a particular article in the company's articles in these terms, at pp. 430-431:

D "the fair value shall be the auditor's valuation of the current worth of the company's shares.' That language appears to me to preclude the auditor from placing any extra value on a block of shares because it constitutes, or will in the hands of the particular transferee constitute, a controlling interest."

E It is of course true that in the instant case the articles did not contain that rather important provision; but they did have this extraordinary provision for each share to be treated separately, as if it had been comprised in a separate transfer notice. As I have said, one does not have an express provision to value the company's shares as a whole, but one has an express provision that, if a transfer notice is given in respect of more than one share, it is to be treated as a separate notice in respect of each. So the valuer has, theoretically, to go through the process of ascertaining the value separately in relation to each share concerned, and I am bound to say that it is difficult to see then how there could be any room for any account to be taken of whether the shares comprised in a transfer notice as a whole formed a minority or a majority holding. Without expressing any concluded view on the matter, I am very much inclined to the view that the valuation of a share under the pre-emption articles in this case ought to be on the same basis as that held by this court to be appropriate in *Dean v. Prince* [1954] Ch. 409, and that if the valuer was unwise enough to give his reasons for valuation, and to indicate that in those reasons he had taken into account the fact that all the shares which were being offered by all the deemed separate transfer notices together constituted a majority or minority holding, I think his valuation could be upset.

H But, as I say, it is unnecessary to express any concluded view on the matter, because in a sense this is a makeweight submission. If it is right it would, to say the least, have a very odd result if the effect of an order designed to enable the court to do what is just and equitable between the parties under section 75 should result in a minority

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holding being bought out at a price which is less than that which it would be expected to achieve on a sale under the articles of association. A

For all the reasons I have given, therefore, I have no hesitation in dismissing the appeal.

I turn now to the petitioners' cross-appeal, which arises in this way. Under the last paragraph of the order there was liberty to apply in relation to interest and, the judge having determined the price at which the shares were to be bought out, application was then made for an award of interest on the amount of the purchase price when ascertained, as from a date which I think was not actually specified at that time, because argument then proceeded as to whether in principle interest could or could not be awarded. That argument was adjourned and it came before the judge again on 25 November 1983, when he determined that there could be no award of interest on the purchase money. B C

The petitioners challenge that, and they seek an order that interest should be paid up to 9 December 1983. There was, as the result of a hearing before the judge, an agreed order as to the way in which, subject to this appeal, the purchase was to be carried into effect, and that provided for interest; no question of interest arises after 9 December 1983. But by their notice of cross-appeal the petitioners asked for interest, either from 31 August 1980 or, if that is rejected, from the date of the presentation of the petition, which was 12 October 1981; or, if that is rejected, from the date of the judge's order; or again, if that be wrong, from Vinelott J.'s order, and if that be wrong, from 7 August 1981, when the petitioners were removed from the board. D

The judge rejected the claim on two grounds. First of all it was argued that, although it was conceded, I think, that there was no orthodox ground for payment of interest, nevertheless interest could be paid under the general discretion which is contained in section 75(3), in effect as a means of awarding damages in respect of matters which had occurred in the course of the carrying on of the company's business constituting the unfair prejudice. The judge rejected that, saying [1984] Ch. 419, 437: E F

"I have never heard of interest being payable before there is an obligation to pay principal. On analysis, it appears that what Mr. Purle is really saying is that the court has power under section 75(3) to award something equivalent to interest. That must, I think, be damages for loss of the use of the purchase moneys during a period when they ought to have been in hand. As will appear, the view which I take of this case makes it unnecessary for me to express a view on that point and I do not do so." G

He then went on to what was the real ground of his decision:

"In the present case there was an agreement that the respondents should buy out the petitioners on a certain basis, i.e., at such price as the court should determine. That price was held to be a sum equivalent to the fair value of the shares. There was no agreement that the price should bear interest from some date prior to its determination or, indeed, from any date. An agreed H

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A liberty to apply for directions as to the payment of interest, if appropriate, is not an agreement that the price should bear interest. There was no agreement that the petitioners should receive damages for loss of the use of the purchase moneys. Moreover, even if, which I emphatically refute, such an agreement could be implied, it is far too late to make that claim. A claim for

B damages, even of that limited character, would have entitled the respondents to adduce evidence and make submissions to the effect that the petitioners' loss was by no means what it might have seemed. Mr. Purle says that the order has not yet been drawn up. That may be so, but it is no reason for allowing the petitioners to re-open the trial under the guise of a claim for

C interest, or so-called interest, before judgment in the present case, and I therefore do not propose to enter into any questions of date or rate."

D Mr. Stubbs, on behalf of the petitioners, has submitted that the true construction of the order, in giving liberty to apply for interest, is giving liberty to apply on the hearing before the judge, in effect for damages for all the things of which the petitioners complain and that therefore the judge was wrong in refusing to entertain, as he did, the claim as being in effect a sort of disguised claim for damages.

E I find myself quite unable to accept that submission. It seems to me as plain as can be that the liberty to apply for directions as to payment of interest on the purchase price was simply inserted for the purpose of enabling the court, when it fixed the terms of the purchase, to provide, if the purchase price was not paid, for interest to be paid on it as from a certain date. It seems to me that the judge was perfectly right in refusing to allow any question to be ventilated as to the payment of interest, as it were, in lieu of damages. I would therefore dismiss the cross-appeal.

F So in my judgment the appeal fails, and so does the cross-appeal.

PURCHAS L.J. I agree that this appeal should be dismissed. Out of respect to the able argument of Mr. Sparrow, I propose to add a few words of my own.

G The short issue raised is whether, in valuing the shares that were to be transferred, the valuer should apply a discount in recognition of the fact that the holdings being transferred were minority holdings in the company. The starting point is an order made by Vinelott J. on 23 November 1981. The material parts of that order have already been cited by Oliver L.J., but I propose for the sake of convenience to repeat the critical words only:

H "This court doth order pursuant to section 75 of the Companies Act 1980 that the respondents"—who are there named—"do jointly and severally purchase the [7,800 shares] of the company registered in the name of the petitioners . . . at such price as the court shall hereafter determine . . ."

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Mr. Sparrow submits that the phrase “at such price as the court shall hereafter determine” can only mean the price, being the fair market price, which would have been agreed between a willing buyer and a willing seller in the open market, including the discount which stems from the very nature of the holding being sold. It must ignore the concept of the authority to which Oliver L.J. has already referred in *Dean v. Prince* [1954] Ch. 409. A

It would also exclude the basis upon which the powers under section 75 of the Act of 1980 arise as defined in subsection (1), and further would exclude the whole basis upon which the parties came together in the commercial enterprise and upon which the petitioners accepted their respective minority shareholdings. The judge found that the basis of this was fairly described as a “quasi-partnership” as considered in the leading case, *In re Westbourne Galleries Ltd.* [1973] A.C. 360 and in particular in the part of the speech of Lord Wilberforce, at p. 379. B C

Mr. Sparrow submits that to do otherwise would in effect be to award compensation either in respect of the prejudicial conduct which was the basis, albeit not admitted by the majority shareholders, of the jurisdiction under section 75, and/or the determination of the quasi-partnership; that is, the loss of the continuing rights, if they were of any value, attributable to the minority shareholders for the loss of their future participation. D

Mr. Sparrow submitted that to grant such an extra element of consideration to the purchase price would therefore be outside the terms of the consent order itself. Put another way, his submission was that under the terms of that consent order the function of the judge, or the court, envisaged in the future by that order, would be merely one of an arbitrator, namely, to determine the quantum of the price regardless of the other aspects which would be considered by the court were it acting in the ordinary way under the provisions of section 75 of the Act. E

I think Mr. Sparrow conceded that had this petition been fought through, rather than concluded, partly at least, by consent under the provisions of section 75, and particularly subsection (3), the relief ordered by the court in its discretion could have been such as to effect the transfer of shares as a consideration valued on a pro rata distribution of the whole value of the company. But whether he made that concession or not, I am for my part quite unable to make the distinction which Mr. Sparrow attempted to import into the existence of the consent order in the terms restricting the power of the court to section 75(4) as Mr. Sparrow would interpret that section; that is, the purchase of the shares at a market value. F G

I agree with all that has been said by Oliver L.J., that the effect of section 75(4) is merely to expand the wide powers granted under section 75(3), and not in any way to restrict them. Moreover, the use of the expression in the consent order “the purchase of the shares” is not, in my judgment, intended in any way to restrict the powers otherwise enjoyed by the court. If it were, as Mr. Stubbs has submitted and as Oliver L.J. has already commented, the purpose of the order and the purpose of the future involvement of the court would be negated. H

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A In my judgment, the proper interpretation of this order importing, as it does, the consent between the parties was to leave in the discretion of the court the full jurisdiction which it would have enjoyed had the matter been fought, and the effect of the consent order was merely to exclude the earlier part of the process under section 75 and to select the means by which the court, being certainly hypothetically satisfied of the sound basis of the petition for this purpose—and of course, that is the only basis upon which the court could act—that it would chose the particular course provided by section 75(4)(d) to give relief in the terms of section 75(3) in respect of the matters complained of in the petition.

B For those reasons, in my judgment, the judge was right to accept the submission that the powers were unfettered and that, therefore, taking into account the quasi-partnership nature of the interests held by the petitioners in this particular instance, the method of valuation should be on a pro rata basis.

C For these reasons and those already given by Oliver L.J., I agree that this appeal should be dismissed.

D I also agree that, so far as the cross-appeal is concerned, that also should be dismissed. I echo only the words of the judge [1984] Ch. 419, 437:

“The first point to be made is that in a normal section 75 case, where there has been no agreement of any kind, I cannot see how there can be any question of interest being payable before a purchase order is made.”

and the order is not complete in this case until the judgment of the court, which is the judgment at present under appeal.

E The reliance placed by Mr. Stubbs on the final paragraph of the order made by Vinelott J., in my judgment, takes his submission no further. The liberty to apply which was given to all parties was clearly for the further carrying out of the order, and certainly could not form the basis of a jurisdiction, or a consent, on the part of the parties that the court should proceed to calculate an award of interest as a matter of general jurisdiction.

F For those reasons I also agree that the cross-appeal should be dismissed.

*Appeal and cross-appeal dismissed.  
Petitioners’ appeal on costs below  
allowed so that they were entitled  
to costs of hearing before Nourse J.  
Costs of appeal and cross-appeal to  
be taxed. Appellants to pay five-  
sixths of petitioners’ costs.  
Leave to appeal refused.*

G

*Solicitors: Goldberg Blackburn & Howards, Manchester; Knight and Sons, Newcastle under Lyme.*

H

A. R.

**EXHIBIT C**

## Re Little Olympian Each-Ways Ltd

CHANCERY DIVISION

LINDSAY J

28 MARCH, 20, 21 APRIL, 5 MAY 1994

*Minority oppression – Appropriate parties to the petition – Jurisdiction of the court to make an order against a non-member – Companies Act 1985, ss 459, 461.*

The petitioner was a preference shareholder in the respondent company. The petitioner alleged that the affairs of the company had been conducted in a manner which was unfairly prejudicial to its interest as a member. Broadly it claimed that the company's business had been transferred to Newco at a gross undervalue. Initially there were six respondents to the petition. As a result of discovery, it was shown that the business of Newco had been transferred to Star Vacations Ltd (Star) which in turn had transferred it to Owners Abroad Group plc (OAG). In the present proceedings leave was sought to add OAG as respondents to the petition. The relief sought was inter alia that OAG should with the other respondents purchase the shares of the petitioner. The question before the court was twofold: (a) whether the court had jurisdiction to join OAG in that OAG was not a member of the company and was not alleged to be a wrongdoer (*the jurisdiction point*), and (b) if the court did have such jurisdiction, whether this was an appropriate case in which it should exercise it to join Newco (*the discretion point*).

**Held** – As regards the *jurisdiction point*, the court had jurisdiction and as regards the *discretion point*, this was not an appropriate case in which the jurisdiction should be exercised.

(1) The language of ss 459 and 461 conferred the widest jurisdiction on the court as regards parties against whom relief could be sought. In an appropriate case, relief can be sought against a non-member, or against a person not involved in the conduct complained of (at least if that person could be affected by the relief sought), and in appropriate cases a person could be made a respondent even though no relief was sought against that person. However, the court could strike out a petition, even against a person who had been involved in the allegedly unfairly prejudicial conduct, if no remedy was sought against that person. There may be circumstances where the prospects of an order being made were perfectly hopeless and hence where it would be an abusive use of the process to require the respondent to remain as such or to be added as such.

(2) On the facts, no court would make the buy-out order sought against OAG and accordingly the court would not exercise its discretion to join OAG as a respondent.

### Cases referred to in judgment

*Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] 2 All ER 409,

[1986] 1 AC 965, [1986] 2 WLR 1051, HL.

*Baltic Real Estate Ltd, Re, (No 1)* [1993] BCLC 498.

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*BSB Holdings Ltd, Re* [1993] BCLC 246.

- a *Bovey Hotel Ventures Ltd, Re* (31 July 1981, unreported), Slade J.  
*Company, Re a (No 005287 of 1985)* [1986] BCLC 68.  
*Company, Re a (No 007281 of 1986)* [1987] BCLC 593.  
*Noble (RA) & Sons (Clothing) Ltd, Re* [1983] BCLC 273.

**Application**

- b The petitioner, Supreme Travel Ltd, who had, on 30 August 1991, presented a petition under s 459 of the Companies Act 1985 in the matter of Little Olympian Each-Ways Ltd (the company) against various respondents, applied to the court to amend its petition to add, as eighth respondent, Owners Abroad Group plc (OAG), the amended petition claiming, inter alia, by way of relief, an order that the respondents, including OAG, should buy the petitioners' preference shares in the company on described bases. OAG had never been a shareholder in, or a director, nor manager or person responsible for the conduct of the company whose affairs were said to have been conducted in a manner unfairly prejudicial to the interests of the petitioner, nor was it alleged to be a wrongdoer. The facts are set out in the judgment.
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- d *Robin Potts QC* and *David Mabb* (instructed by *Withers*) for the petitioner. *Richard Snowden* (instructed by *Taylor Joynson Garrett*) for the respondents. *Charles Aldous QC* and *Alastair Walton* (instructed by *Herbert Smith*) for OAG.

e *Cur adv vult*

5 May 1994. The following judgment was delivered.

- LINDSAY J. I have before me an application which, amongst other issues, raises questions as to the boundaries of ss 459 and 461 of the Companies Act 1985. A petitioner under a s 459 petition seeks here to amend its petition to add a respondent and to include amongst the relief sought an order against that new respondent, Owners Abroad Group Plc (OAG). OAG has never been a shareholder in, nor a director or manager or person responsible for the conduct of, the company whose affairs are said to have been conducted in a manner unfairly prejudicial to the interest of the petitioner. Nor is OAG alleged to be a wrongdoer. None the less, if the relief claimed were to be granted, OAG would become obliged, with others, to buy from the petitioner the petitioner's shares in that company. Does s 459 confer a jurisdiction so broad that such an order could be made against such a respondent? Even if it does, should leave for such joinder and amendment here be granted?
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- h I shall first outline the position as it is before the amendment which is sought. On 30 August 1991, Supreme Travel Ltd, a company incorporated in Jersey (the petitioner) presented a petition to the Companies Court under s 459 of the Companies Act 1985 in the matter of Little Olympian Each-Ways Ltd (the company). The company was incorporated under the Companies Act 1948 and its registered office is in London. The petitioner describes itself
- i in the petition as holding 1,017,472 preference shares in the capital of the company and as having held the same for more than the necessary six months.

[1994] 2 BCLC 420

000614 49/350

The original petition was relatively short – some nine pages. It described the only shareholders of ordinary shares in the company as being Olympic Vacations Ltd (OVL) (51%) and a Mr George Michalias (49%) and said that the company and OVL were members of a group of companies known as the Olympic Holidays Group, of which the ultimate holding company was said to be Star Vacation Ltd (Star), a company incorporated in Cyprus. The directors of the company were described as being Mr Pyliotis, Mr Michalias and Mr Christoforou, each of whom was a director of OVL. It is not necessary for me to set out, even in summary, all the matters complained of in the original petition but, in outline, one material complaint ran as follows:

(1) on 24 November 1990 2,448,000 preference shares in the company were transferred to a company referred to as Newco, which was owned by Star and Mr Christoforou;

(2) on 21 March 1991 at an extraordinary general meeting of the company it was purportedly approved that the business and goodwill of the company should be transferred to Newco in return for which Newco would take over the company's liabilities and would be obliged to pay the company £1;

(3) that resolution was implemented on 30 April 1991;

(4) the company was thereafter left as a shell. It ceased to trade;

(5) the consideration given by Newco was grossly inadequate;

(6) there were breaches of pre-emption provisions which should have operated in the petitioner's favour as a holder of existing preference shares and breaches, too, of provisions requiring notice to have been given to the petitioner of the extraordinary general meeting;

(7) those and other matters led to an allegation that the affairs of the company had been conducted in a manner unfairly prejudicial to the interests of the petitioner.

The petition was intended to be served on the company itself, on OVL, on the three individuals I have mentioned – Mr Michalias, Mr Pyliotis and Mr Christoforou (referred to as the trio) and also on Olympic Holdings Ltd, the name assumed by Newco, but which I shall continue to call Newco.

In due course affidavits were sworn in support of and in opposition to the petition and there was a very substantial discovery. The story emerging from this mass of paper was, the petitioner began to see, a story going well beyond the bare bones of the original petition. For various reasons, counsel originally instructed by the petitioner could not continue with their case and a new team, Mr Potts QC and Mr Mabb were instructed in their place to consider the mass of new information.

In the result, on 1 March 1994 a summons was issued by the petitioner addressed to the six persons on whom the original petition had been served (whom I shall call together the original respondents), who appear before me by Mr Snowden. The summons asks, inter alia, that the petitioner should have leave to amend the petition by adding Star as a seventh respondent and OAG as eighth respondent. Leave is sought for a comprehensive amendment to the petition. The proposed amended petition is now a creature of some 94 pages in length. Again, I do not need to summarise all of it but the story now alleged (so far as material for immediate purposes) alleges far more complicated wrongdoings than the relatively simple sale of the company's assets to Newco for what was said to be the grossly inadequate consideration of £1 plus assumption by Newco of the company's liability as alleged in the original

a petition. In broadest outline the most material allegations in the amended petition (as I shall call it for convenience, although leave to amend is not yet given and is resisted) are as follows:

(i) the company of whom the trio were directors sold the business and goodwill of the company for a grossly inadequate consideration to Newco, a company of which the trio were directors, and the capital of which was owned by Star, a company in which the trio were shareholders;

b (ii) the company was thus reduced to a shell and the shares in it not held by the petitioner were next sold for £1 to Star;

(iii) Star then sold the shares in Newco (which by then represented the value of the erstwhile business and goodwill of the company and, says the petitioner, nothing else) to OAG for a variable price likely to reach £10m.

c The basic complaints in the original petition remain. The petitioner is left with a holding in a shell company whilst the trio and some others have shared a substantial jackpot no part of which has come to the petitioner. Leaving aside how far various heads of relief asked for need to be alternative to one another, the amended petition claims by way of relief, inter alia, that the respondents (that is to say including OAG) should buy the petitioner's preference shares in the company on described bases which I apprehend are intended to reflect the true value of the shares had there been no wrongdoing; that Newco, now a subsidiary of OAG, should account for certain benefits to the company as constructive trustee; that Newco should make certain payments to the company and that the transfer of assets from the company to Newco should be declared voidable.

e The first question I have to decide is whether, as Mr Potts and Mr Mabb argue for the petitioner, the court has *jurisdiction* to add OAG as the eighth respondent. It is common ground OAG is not a member of the company but it is, urges Mr Potts, a person against whom relief is properly sought in the amended petition. It is, he says, also a person involved in the misdeeds alleged in the amended petition and a person affected by the relief claimed against others in the amended petition in that the position of its wholly-owned subsidiary Newco would be radically affected were the relief there claimed against Newco, or even some of it, to be granted. If I have the jurisdiction to add OAG, then the question becomes whether I should, in the exercise of the discretion conferred on me by the rules as to amendment and as to the joinder of parties, exercise it to join OAG and to allow the amendment against OAG. Mr Aldous QC and Mr Walton for OAG argue that the court does not have the necessary jurisdiction and further, even if it had, that in point of discretion the joinder and amendment so far as concerns OAG should be refused.

h I shall first look at the question as to jurisdiction and, initially, shall do so without reference to the authorities that have been cited to me. The relevant sections are ss 459 and 461 of the 1985 Act. I shall not set out either in full. I go first to s 461 which begins by conferring on the court by sub-s (1) a power to give relief in very wide terms. If the court is satisfied that the petition under s 459 is well founded, then 'it may make such order as it thinks fit for giving relief in respect of the matters complained of.'

i The relief does not, for example, necessarily have to compensate for or prohibit the recurrence of the matters complained of. The only nexus required between relief and complaint is that the former has to be 'in respect of' the latter.

Then s 461(2) opens with the words 'Without prejudice to the generality of sub-s (1) the court's order may' and it goes on in paras (a) to (d) to give examples of relief within the wider generality which is not to be prejudiced. Mr Potts argues that the two sections, ss 459 and 461, read together are an example of a practice exemplified by the provisions considered in the well known case of *Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] 2 All ER 409, [1986] 1 AC 965 whereby Parliament confers an exceptionally wide jurisdiction and leaves it to the courts or to a rule-making body or to both to find for themselves boundaries, not to the jurisdiction proper, but, by way of the exercise of the discretion in individual cases, to the areas in which and the manner in which, in practice, the jurisdiction would be likely, save in exceptional circumstances, to lead to relief.

I do not think it profitable to determine how far *Aiden Shipping Co Ltd v Interbulk Ltd* is or is not a wholly acceptable analogy but I do see force in Mr Potts' submission which, in my view, is supported also by the legislative history of s 459 and its predecessors. As to that history, a precursor of s 459, s 210 of the Companies Act 1948, was reported on in 1960 by the Jenkins Committee as appearing not to have produced the results expected of it, and it was given in evidence to that committee that the section needed amendment if effective protection was to be given to minorities in the circumstances in which it had been intended that it should be (see the Jenkins Report 1960, para 200).

Section 210 was then superseded by s 75 of the Companies Act 1980, but s 75, which required that the prejudice should be suffered by 'some part of the members', inevitably led to doubts and discussion as to whether the section afforded relief in cases where the prejudice was suffered by the whole membership. There was thus, once again, the need to widen the statutory provision. Although the width of the jurisdiction conferred by ss 459 and 461 is, of course, a matter of the construction of the language Parliament has used, the earlier sequences of statutory provision, construction by the court, a dawning recognition of shortcomings later followed by a statutory extension is at least consistent with there having been engendered in the legislature by 1985 a sense that the thing to do was to give a very wide jurisdiction and to let the courts get on with it.

The broad provisions of the Companies (Unfair Prejudice Applications) Proceedings Rules 1986, SI 1986/2000 are examples of the same view. In relation to who is to be respondent, those rules provide that on the return date 'the court shall give such directions as it thinks appropriate with respect to . . . (a) service of the petition on any person' (see r 5) and for a day upon which 'unless the court otherwise directs, the petitioner and any respondent . . . shall attend before the registrar . . . for directions to be given in relation to the procedure on the petition.' (see r 3(3)).

The impression given both in the sections and in the rules is that the greatest possible flexibility was intended by the legislature to be given to the courts. Thus s 459 does not, for example, require that it is by a respondent or by the respondents to the petition that the company's affairs are being or have been conducted in the manner complained of. It does not require that the respondents to the petition should be limited to members of the company or to its directors or to those conducting its affairs and, of course, it is a familiar practice that the company itself should be a respondent (see r 4(1)).

I am unable to find in s 459 itself any language which points to who may be, who has to be or who cannot be respondents to a petition under its terms.

a Those are subjects which it does not attempt to address.

Mr Aldous and Mr Snowden argue that some restrictions in the jurisdiction have to be read in. For example, they say that there is no jurisdiction to require a person to be a respondent where no relief is claimed against him and where he is not affected by any relief which is sought. A distinction needs to be drawn, says Mr Aldous, between the conduct and position of those who are in control of the company or who are members, on the one hand, and, on the other, the position and conduct of third parties, 'outsiders', as he calls them, in respect of whom the company has no cause of action and whose involvement may be no more than that, innocent of any intent to prejudice anyone and innocent also of any foresight that anyone might be prejudiced, they are, as third parties, concerned in the activity complained of as being prejudicial. That some distinctions will in some cases need to be drawn is, I accept, likely enough, but I cannot find any warrant in the language of ss 459 and 461 for introducing them as matters of jurisdiction.

Leaving aside what the authorities I next turn to require of me, I do not feel able to decline the joinder of OAG and to refuse the proposed amendment of the petition against OAG on the ground that the petition, if so amended, would be trespassing outside the statutory jurisdiction. It may be material to add that a decision to exclude as a matter of jurisdiction would have the result not only of excluding respondents, such as OAG, who wish not to be joined, but also of excluding those who, in a corresponding position, would wish to be joined as, or to continue as, respondents.

I now turn to the authorities cited to find out what guidance I am given. First in time of the cases cited to me was *Re RA Noble & Sons (Clothing) Ltd* [1983] BCLC 273 per Nourse J. It was cited by Mr Aldous only so as to lead to the citation in it (at 290) from *Re Bovey Hotel Ventures Ltd* (31 July 1981, unreported) of a passage in which Slade J held, in relation to s 75 of the 1980 Act, that the test of unfairness was an objective one; it was not necessary for the petitioner to show that those who had de facto control of the company acted in the conscious knowledge that what they were doing or omitting to do was unfair to the petitioner. Mr Aldous argues that it would be remarkable if a person, a stranger to the company, could properly find himself a respondent to a s 459 petition without, as *Re Bovey Hotel Ventures Ltd* indicates, the least conscious knowledge that he was being, or was likely to be, unfair to anyone, but simply because he was involved in some transaction which was unfairly prejudicial to the petitioner. I see the force of that but, as I have said, I cannot find any words, either in or necessarily to be implied into ss 459 and 461, which would aid in excluding a respondent as a matter of jurisdiction in such a case. Whilst I would not quarrel with a line of *Re Bovey Hotel Ventures Ltd*, I do not see it as restrictive of the jurisdiction conferred by s 459.

The next authority was *Re a company (No 005287 of 1985)* [1986] BCLC 68, a decision of Hoffmann J in a case where the erstwhile controlling shareholder of the company, H, sought to strike out a petition which was under s 459 and, alternatively, for the winding up of the company. H had, it was alleged, conducted the company in breach of his fiduciary duties and in a manner unfairly prejudicial to the petitioners. Negotiations began before

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a petition was presented but, when it was found that H had transferred his shares to an offshore company, the petitioners then issued their petition under s 459 requiring H to account for payments of company money made without authority. The petitioners found a little later that H had left this jurisdiction and had sold the company's assets for cash. The petitioners then sought to make amendments to the petition and to include a request for an order that H and the offshore company should jointly and severally buy the petitioners' shares. Unabashed, H argued that in respect of the original relief it was only the offshore company that should have been respondent (see at 70). There was no justification, he argued, for extending relief to relief against persons, the company itself apart, who had ceased to be members (see at 71), but the petitioner could, it was argued, proceed against H by derivative shareholders' action. Hoffmann J thought that would be inconvenient, and he went on to say (at 71):

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'I would be reluctant to come to the conclusion that this form of duplication was necessary unless it was clear that the jurisdiction under ss 459 and 461 did not permit the whole matter to be dealt with on the petition. It seems to me that although it is true that s 461(2) shows that the normal order under s 461 will be an order against the company or another member, there is no reason why the words of s 461(1) should not be given their full effect and allow the court to give relief in respect of a complaint that the company's affairs have been conducted in a manner unfairly prejudicial to the interests of members, even when this would involve giving relief against a respondent who is no longer a member. For that reason, I am not willing to strike out H as a party to the petition.'

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Turning to H's opposition to the buy-out relief sought to be added by amendment and in response to H's argument that no such order could be made against a non-member, Hoffmann J said (at 71):

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'Section 461(2)(d), which I have already read, provides for such an order being made against members of the company but says nothing about the order being made against a non-member. Counsel for the petitioners, on the other hand, says that there are cases in which a person may be, for the purposes of giving relief, identified with a company which he controls and that it may be possible to obtain an order to that effect against H either under the broad jurisdiction of s 461(1) or by identifying H with the Gibraltar company [the offshore company I have mentioned]. It is not necessary for me to express any view on whether that can be done because I do not think it would be right to strike out the paragraph seeking such relief unless I was satisfied that the possibility of obtaining it was perfectly hopeless. I do not feel in a position at the moment to say that and I do not think it would prejudice H very greatly if the paragraph seeking that relief were to remain in the petition, given that in the light of the conclusion to which I have already come he will remain as a respondent to the petition in respect of the relief sought under para 2.'

a It is notable that, despite his reading ss 459 and 461 together (he speaks (at 71) of 'the jurisdiction under ss 459 and 461') Hoffmann J sees no reason why the words of s 461(1) should not be given their full effect. Mr Aldous can point to the judge's more cautious approach to the buy-out jurisdiction but, even there, where he is saying 'I do not think it would be right to strike out . . . relief unless I was satisfied that the possibility of obtaining it was perfectly hopeless' his words look to me more the language of a judge who b considered that there might well be jurisdiction (but one which it was urged was hopeless in point of its exercise) rather than that of a judge who is indicating his concluded views on whether or not there was a jurisdiction.

c Mr Aldous points to the facts that H had been a controller of the company, a person responsible for the unfair conduct alleged, had been a member of the company, was personally accused of wrongdoing and could have been the object of a derivative action. I can see that *Re a company (No 005287 of 1985)* thus falls well short of deciding the case before me but I nonetheless attach some importance to the fact that Hoffmann J, upon his reading the two sections together, had seen no reason why the words of s 461(1) should not be given their full effect and accordingly had permitted the addition of a claim for a buy-out against a non-member.

d Next in time was *Re a company (No 007281 of 1986)* [1987] BCLC 593, a decision of Vinelott J. An investment company, 3i, which had provided working capital, held cumulative convertible participating preferred ordinary shares and cumulative redeemable preference shares in the company. The company's articles had elaborate provisions as to pre-emption rights. One of e the directors was voted off the board. He found the other directors had set up a rival group of companies and had stripped the company of its assets, so he presented a petition under s 459. 3i was a respondent to the petition notwithstanding that it was not said that it had taken any part in or had been concerned in any way in the unfairly prejudicial conduct. No relief was sought against it. The primary relief sought was the purchase of the petitioner's f shares by the three other directors but the petition asked, alternatively, for such other relief under s 461 as the court should think just. Vinelott J held that as 3i was a member of the company and was affected by the relief sought in that an order for a buy-out by the three directors of the petitioner's shares would override 3i's pre-emption rights, it was right that it should remain a respondent. He said ([1987] BCLC 593 at 598-599):

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i 'A petition under s 459 is not analogous to litigation in which the issues raised affect only those against whom allegations are made by the plaintiff. A closer analogy is an administration action, where all beneficiaries having an interest in the relief sought should be made parties or represented. The practice that has so far been followed in the Companies Court is to require that all members of the company whose interests would have been affected by the misconduct alleged or who would be affected by an order made by the court under the very wide powers conferred by s 461 are to be made respondents to a petition or served with it. In practice, this means that in the case of a small, private company every member ought to be joined.'

Then, a little later he said ([1987] BCLC 593 at 599):

[1994] 2 BCLC 420

'In my judgment, 3i is clearly affected by the relief sought in the petition which, amongst other things, would override its rights under the pre-emption provisions. 3i also has voting control over the company in general meeting, and would be directly concerned if any order were made regulating the future conduct of the company pending the acquisition of the petitioner's shares. In these circumstances I think that 3i was properly made a respondent and should not now be struck out.'

Mr Aldous is, of course, able to stress that there 3i was, firstly, a member of the company and, secondly, a person affected by the relief claimed. But the case does show that it is not a necessary condition of joinder that a respondent should have been involved in any way as a wrongdoer in the events complained of.

In *Re BSB Holdings Ltd* [1993] BCLC 246 a similar problem came again before Vinelott J. The petitioner complained that the business of 'Holdings', the company in which it held shares, had been hived down to B Sky B which was at first a wholly owned subsidiary of Holdings but which later then passed into the control and ownership of the respondents in a way which was alleged unfairly to prejudice the petitioner. The petitioner sought an order that the respondents, or some of them, should transfer their shares in B Sky B back to Holdings or direct to the petitioner. No relief was sought against B Sky B itself, which was not a member of Holdings, and it applied that the petition should be struck out as against it.

The 3i case was cited to Vinelott J who took the view that, despite B Sky B not being a member of Holdings, it was clearly affected by the relief sought in that the order sought was that there should be a transfer and registration of its shares. The body of its corporators would change (see [1993] BCLC 246 at 253). But the judge added that its joinder could be justified on another ground, namely that it was directly concerned in the transactions of which complaint was made (see [1993] BCLC 246 at 254). It was a party, and a necessary party, to one of the agreements which was complained of. Vinelott J held that B Sky B was properly joined because it was an actor and played a central role in the transactions of which complaint was made (see [1993] BCLC 246 at 255).

Finally on the authorities, in *Re Baltic Real Estate Ltd (No 1)* [1993] BCLC 498 Knox J had before him an application in relation to a s 459 petition of a majority (51%) shareholder in a company. The second and third respondents to the petition were the former directors of that company who, the petitioner alleged, had committed breaches of fiduciary duty as directors. The second and third respondents were also its former shareholders as to 49% but had held their shares only briefly before transferring them to the fourth and fifth respondents (persons out of the jurisdiction, not served by the time of the hearing before Knox J and in respect of whom leave to serve out was needed). There were allegations that the fourth and fifth respondents, the registered holders of the 49%, were either controlled by the second and third respondents or held the 49% of the shares in the company in trust for the second and third respondents. The petitioner sought as his principal relief an order that the second and third respondents, alternatively the fourth and fifth respondents, should be ordered to sell or procure the sale of the 49% of the shares in the

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company registered in the name of the fourth and fifth respondents to the petitioner at such price as the court should think fit.

- a It was argued on behalf of the second and third respondents that as they were not present members they were not proper respondents and, as they were not parties to the relief sought either, the petition should be struck out as against them as not disclosing any reasonable cause of action and as being an abuse of process. That argument succeeded not, as I see it, because the
- b second and third respondents were not members of the company, but because, as Knox J put it (at 502):

‘It seems to me that the proper parties to this relief are the shareholders in whom the shares in question are vested and with whom the court, in dealing with the rights of members, is primarily concerned.’

- c There is no discussion in the judgment of the jurisdiction under s 459. Knox J plainly took the view that the fact (as alleged) that the fourth and fifth respondents were but trustees for the second and third respondents or were controlled by the second and third respondents was not, on its own, enough to justify the second and third respondents, being necessary parties. But there
- d were some other arguments which Knox J indicated had failed to persuade him that the second and third respondents should continue to be respondents. Firstly, that they were the persons against whom the breach of duty was alleged and, secondly, that, under the rubric of ‘such other relief as the court should think fit’, the relief eventually granted by the court might be other than
- e the sale of shares to the petitioner, which was the principal relief sought, and might more involve the second and third respondents than would that sale.

- f That concludes a look at the authorities cited to me. Whilst I would be very willing to following a pattern that emerged from the earlier cases at first instance, I do not regard any clear pattern as having yet emerged, and I have certainly found nothing conclusive that suggests that the words of ss 459 and
- g 461 should not be given their full effect. From the existing authorities cited it can be seen that in an appropriate case relief can be sought against a non-member other than the company itself, or against a person not involved in the acts complained of (at least if that person would be affected by the relief sought) and that a person against whom no relief is in terms sought cannot necessarily escape being a respondent, whilst, on other facts, it can be right to strike out a petition, even as against those whose acts are complained of, so long as no relief is sought against such a person.

- h This summary suggests to me that in point of jurisdiction the wide language of ss 459 and 461 is not to be cut down. None the less, cases may arise where, notwithstanding that the claim cannot be clearly said to be outside that wide jurisdiction, the likelihood of the court’s discretion being exercised so as to lead to relief against, or relief having any material effect upon, a given respondent can be seen to be so remote that the case can fairly be described as ‘perfectly hopeless’, to use Hoffmann J’s phrase, and hence that it would be abusive to require that respondent to remain as such or to be added as such. Is this such a case?

- i It is best first to look at the likelihood or otherwise of OAG being ordered, with the other respondents, to buy the petitioner’s shares – the only substantive relief sought against OAG in the amended petition. Prima facie, when a

litigant's case against a person is within the relevant jurisdiction he should be permitted, if he so chooses, to pursue his case against that person. Thus I framed the question at the end of the last paragraph in the way that I did, rather than by reference to RSC Ord 15, r 6, because, on the facts of this case, where no blame can be laid at the petitioner's door for not including OAG from the outset or for delay in applying to amend, it seems appropriate to look at the petitioner's position more as it would be on an application for a strike out by OAG than where the petitioner comes cap in hand, as it were, asking for leave to amend. However, it is also to be borne in mind that it is plainly abusive to press a person into hopeless litigation, litigation which cannot succeed. Quite apart from other vexation inherent in litigation, even a party who recovers an order for his costs against a solvent party on an indemnity basis may well be left substantially out of pocket at the end of a s 459 petition, a type of proceeding known neither for its speed nor its economy.

At this point in the argument, Mr Aldous redeploys on the discretionary side of things many of the arguments used unsuccessfully (as I have held) on the jurisdiction. OAG is not and never has been a member of the company. OAG is not said to have controlled the company or its board or even to have had a nominee on the company's board. True it is that its wholly owned subsidiary, Newco, is a respondent but, as did Knox J in *Re Baltic Real Estate Ltd (No 1)*, I see it as no reason, sufficient in itself, for the joinder of a person as a further party that an existing respondent is owned by or controlled by that person. Newco can respond for itself and were there a principle that shareholders in or directors or controllers of a corporate respondent could, without more, be required to be parties in addition to that corporate respondent itself, then s 459 would indeed be oppressive.

I thus see neither OAG's ownership of Newco nor the potential effect of the petition on Newco as being reason for OAG's joinder. It is said that beyond the buy-out required of it, OAG is affected by the relief sought in that its wholly owned subsidiary Newco may find itself holding its assets on constructive trust for, and may be liable to account to, others, but, again, the simple answer is, as I see it, that Newco, already a party, is able fully to deal with that, and if it sufficed, without more, to require a company to be respondent that the assets of a company in which it held shares might be affected by the relief sought that would, again, be a needlessly oppressive burden on corporations.

Mr Aldous emphasises that no substantive relief is sought against OAG in the petition save that it is sought that with six others (other than the company itself, and on the basis that Star is added) it should be a joint purchaser of the petitioner's shares in the company. There is no suggestion in evidence that the addition of OAG is necessary if there is to be a purchaser able to pay the price required or that the other respondents are of straw. There is nothing to suggest that a buy-out without OAG as a joint or several buyer is impracticable or impossible or that such an order against the original respondents would be worthless or nugatory. As the original respondents include persons who are alleged to be the wrongdoers in relation to the acts complained of and who are said to have profited in substantial amounts from those acts, then if they, if ordered to do so, would be able to buy – and it is nowhere said they would not be so able – Mr Aldous urges that no court is likely to find it necessary to join with them as a co-purchaser a party, OAG,

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a against whom nothing wrong is urged. It is a strong course, he says, to require a party at what is likely to be considerable expense and against its will to become a shareholder in a company, a shell company, and to do so when the party is not said to have done anything wrong and where there are others who are wrongdoers and who are available as alternative purchasers. So to order, Mr Aldous urges, would be remarkable, unprecedented and unnecessary. He goes on to show that the petition contains no allegation of any wrong done by OAG to the company; it is nowhere said the company has a cause of action against OAG.

b Against this Mr Potts took me to the provisions of the amended petition. As early as December 1990, well before the sale of the company's assets to Newco, OAG and its solicitors were involved in discussions for the grant to OAG of an option to acquire the issued capital of Newco. Mr Potts says that c from the outset a number of related steps were planned to lead to the conclusion that was ultimately arrived at and of which the petitioner complains and that OAG was party to the planning from that outset. He says that OAG was involved in proposals as to a loan to the company which was made with the intent of being lent-on by the company to discharge an individual's debts and that OAG was concerned in carrying through such a d proposal. OAG, the amended petition alleges, was party to an option agreement of 21 December 1990 whereunder it would be able to acquire the capital of Newco for a price strangely expressed as –

e 'subject to a maximum sum of £8 million or as might otherwise be agreed between Star and OAG with a maximum of £10 million and an overall minimum of £1 million.'

f It was, says Mr Potts and as the amended petition alleges, the intention of OAG throughout in relation to the option agreement that the company would hive up its business and goodwill to Newco in return for an indemnity and for nothing else of any real worth and that only after that would the option be exercised by OAG. OAG knew and approved the price paid on the hive up to Newco and was conscious of at least the possibility of that transaction being at a substantial undervalue, as it demonstrated by way of its solicitors pressing for and obtaining an undertaking that no steps would be taken for g at least two years to put the company into voluntary winding up. The acquisition of Newco's shares by OAG was an acquisition improperly given financial assistance by the company in breach of s 151 of the 1985 Act, the company at the time being a subsidiary of Newco. In these ways, says Mr Potts, as para 107 of the amended petition states, OAG 'was directly concerned in transactions of which complaint is made herein'. It is in this h context that Mr Potts says that the petitioner's complaint is (and I use his words) that there is here a 'con' and that OAG is 'in it up to its neck'. However, I think I need to be a little more analytical than that. Mr Potts's strong language is surely that of, at worst, conspiracy or, at least, of OAG having knowledge – actual, imputed or constructive knowledge – that its activities or omissions were or might represent 'unfair prejudice to the petitioner or that OAG committed some other material wrongs. But i no such an allegation is anywhere to be found in the petition. Such wrongs, if there were any, under s 151 are not said to be wrongs by OAG. It is

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nowhere said that what OAG acquired was acquired for less than full market consideration, and the matters pleaded suggest, if anything, that it has paid or will pay a little over the odds for what it received. Mr Potts gave me a list of the paragraphs in the amended petition said to show OAG's involvement in the matters complained of, and para 107 of the amended petition gives a similar but not identical list. I hope I have not overlooked anything material in the 94 pages of the body of the petition but I have not found any reference to anything done or omitted by OAG being alleged to have been wrongful or unlawful or in breach of some duty or obligation upon OAG. Whilst it is undoubtedly the case that OAG was, in a sense, concerned in transactions of which complaint is made, I cannot in the circumstances alleged in the amended petition see that concern as amounting to anything material. Both Mr Aldous and Mr Snowden made the valid point that if a person against whom no wrong doing is alleged, whose involvement, such as it is, has been paid for at 100p in the pound, and who is not a member, can be required against his will to be a respondent who may be ordered to buy shares, then no trading company could feel safe that it would not be expensively drawn into the internal disputes of its customers and of others with whom it might deal.

Mr Aldous next argues that all the attacks made on the hive up agreement are attacks not on anything done or omitted by OAG but by the trio and that the company and the petitioner (by way of derivative action) have full causes of action in respect thereof. The specially adjusted price which the petitioner claims should be paid for the petitioner's shares is, in respect of any suggested adjustment, to be adjusted by reason of complaints against the trio, not against OAG. To require OAG to pay some special price for the petitioner's shares not only involves adjusting the price to be paid by OAG by reference to someone else's wrongs but, as OAG has paid full value already for what it had received, would involve it in paying more than once over for the very same assets, a step which, however possible against a wrongdoer, would be unprecedented against a party not said to be in breach of any duty or obligation whatsoever.

None of these points put by OAG and by the original respondents is devoid of weight. I do not need to ascribe to each a separate force, but I do say that together their weight is such that, in my judgment, it can fairly be said that if the proposed amendments were allowed the petitioner would be quite unable on the amended petition to obtain the only relief, the buy-out, which it seeks against OAG.

Although the court *could*, if it chose, make a buy-out order against OAG of the kind which the petitioner seeks, it is on the case put in the amended petition, even if wholly true, plain and obvious, in my judgment, that no court *would* make such an order. Had OAG been a respondent from the start it could, in my view, have successfully moved to have the buy-out provisions and its role as a respondent struck out. It not yet being a respondent, it would be an abuse of process were it to be required, against its will, to be a respondent obliged to resist relief which would in practice never be granted.

Once that has emerged, so far as concerns the buy-out relief, the rest of the matter is readily determinable by reference to RSC Ord 15, r 6, which is made to apply by r 2(2) of the 1986 Rules. So far as material, Ord 15, r 6 provides at para (2) that the court may:

a (b) order any of the following persons to be added as a party, namely  
 – (i) any person who ought to have been joined as a party or whose  
 presence before the Court is necessary to ensure that all matters in  
 dispute in the cause or matter may be effectually or completely determined  
 and adjudicated upon, or (ii) any person between whom and any party  
 to the cause or matter there may exist a question or issue arising out of  
 or relating to or connected with any relief or remedy claimed in the cause  
 b or matter which in the opinion of the Court it would be just and  
 convenient to determine as between him and that party as well as  
 between the parties to the cause or matter.’

c Once it is recognised that no buy-out relief will be ordered against it,  
 OAG’s presence is not necessary for the purpose specified in (i), nor is there  
 any question or issue between OAG and the petitioner such that it would be  
 just and convenient to hear that matter alongside the petition. Given, as I  
 have already indicated, that OAG’s ownership or control of Newco is, in my  
 view, no reason to require the joinder of OAG, I see no reason either why  
 OAG is a person who ‘ought to have been joined’ within (i). Once the  
 buy-out relief falls away as a possibility, Ord 15, r 6 requires, in my judgment,  
 d a conclusion that OAG should not be joined as a respondent at all, and I so  
 rule.

e However, the summons before me raises questions other than the one that  
 I have so far dealt with and concerns respondents other than OAG. Subject  
 to my first being addressed on the costs so far and any other questions  
 involving OAG, I shall, once OAG has withdrawn, go on to hear the  
 remaining issues on this summons and on the summons as to security for costs  
 later in the day.

[His Lordship then heard argument on costs]

f LINDSAY J. So far as concerns the costs of OAG, I am concerned only with  
 their costs of 28 March and of the longer later two day hearing. The costs  
 of OAG of and incidental to the summons in relation to those two hearings  
 should be paid by the petitioner, to be taxed and paid forthwith.

g So far as concerns the costs of the original respondents other than the  
 company which, as it transpires, has taken no part, it seems to me that their  
 costs of three occasions are in issue: those before Mr Registrar Buckley on  
 22 March, those before me on 28 March, and the later fuller hearing of two  
 days or so. The argument has, all along, even on the part of the original  
 respondents, principally concerned the original respondent’s wish that OAG  
 h should not be required to be a respondent and it seems to me that the original  
 respondents were entitled to take that view, just as much as OAG was entitled  
 to take that view and, moreover, the original respondents have in that respect  
 succeeded. Mr Potts argues that they would have been before the court in any  
 event, even if OAG’s addition had not been sought, but it seems to me that  
 the battle would have been then a very much simpler one and might indeed  
 i not have taken place.

I think the appropriate order for the costs of the original respondents other  
 than the company is that those costs should be taxed on a standard basis (not

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forthwith) and that they should be required to be paid in any event by the petitioners to the original respondents other than the company.

a

*Order that OAG should not be joined as a respondent.*

Jacqueline Metcalfe Barrister.

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000627

**EXHIBIT D**

## \*1619 Arnold v Britton and others



Positive/Neutral Judicial Consideration

### Court

Supreme Court

### Judgment Date

10 June 2015

### Report Citation

[2015] UKSC 36

[2015] A.C. 1619



Supreme Court

Lord Neuberger of Abbotsbury PSC , Lord Sumption , Lord Carnwath , Lord Hughes , Lord Hodge JJSC

2015 Jan 26; June 10

*Landlord and tenant—Covenant—Service charge—Long leases for holiday chalets—Clause in leases purporting to provide for payment of charge at fixed sum to be increased at compound rate of 10% per year—Clause inserted at time of high inflation—Inflation subsequently at consistently lower annual rates—Landlord levying service charge in accordance with specified sum—Tenants claiming commercial sense requiring clause to be construed as variable service charge based on actual expenditure with fixed sum as cap only—Whether clause providing for fixed sum payment—Whether open to court to depart from natural meaning of clause to prevent commercially absurd result*

From 1974 the then owners of an area of land granted a number of 99-year leases of plots on which holiday chalets were to be built, the preamble to each lease stating that it would be granted “upon terms similar in all respects” to the other leases, the introductory words of clause 3 providing that each lessee's covenants as to use and repair of chalets were, inter alia, for the benefit of other lessees, and clause 4(8) containing a covenant by the lessors that the covenants imposed on other lessees were to like effect. Clause 3 of the first group of leases included, in clause 3(2), a lessee's covenant “to pay ... a proportionate part of the expenses and outgoings incurred by the lessors in the repair, maintenance, renewal and the provision of services [as set out in the lease] in the yearly sum of £90”, increasing thereafter at a three-yearly compound rate of 10%. Subsequently, leases in respect of further chalets were granted in which clause 3(2) provided for an annual 10% compound increase. In 2011 the tenants of those chalets whose annual service charge had risen to over £2,700, as opposed to £282 for the chalets subject to the earlier leases, and who claimed that an interpretation of the clause which required a fixed sum payment resulted in such an absurdly high annual service charge that it could not be right, claimed that clause 3(2) should be read as requiring them to pay a variable sum, being a fair proportion of the cost of providing the services, with the specified sum being no more than a cap on the maximum sum payable. The landlord commenced [CPR Pt 8](#) proceedings in the county court seeking a declaration that clause 3(2) required the payment of the fixed sum and not any lesser variable amount. The judge accepted the construction contended for by the tenants and so dismissed the claim. Allowing an appeal by the landlord the High Court judge held that, on a natural reading of the clause, the object of the verb “to pay” was the fixed sum of £90 as escalated, whereas the construction contended for by the tenants would involve rewriting the bargain which the parties had made, which, given the high levels of inflation in the United Kingdom when those leases had been granted, could not be said at that time to have lacked commercial purpose. Dismissing the tenants' appeal, the Court of Appeal affirmed the High Court judge's reasoning and held, additionally, that the words “a proportionate part” were not inconsistent with a fixed service charge in circumstances where other lessees were contributing to the overall service charge, which in consequence was to be apportioned between them.

On the tenants' further appeal—

*Held*, dismissing the appeal (Lord Carnwath JSC dissenting), (1) that the interpretation of a contractual provision, including one as to service charges, involved identifying what the parties had meant through the eyes of a reasonable reader, and, save in a very unusual case, that meaning was most obviously to be \*1620 gleaned from the language of the provision; that, although the less clear the relevant words were, the more the court could properly depart from their natural meaning, it was not to embark on an exercise of searching for drafting infelicities in order to facilitate a departure from the natural meaning; that commercial common sense was relevant only to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date on which the contract had been made; and that, moreover, since the purpose of contractual interpretation was to identify what the parties had agreed, not what the court thought that they should have agreed, it was not the function of a court to relieve a party from the consequences of imprudence or poor advice (post, paras 15-20, 23, 66, 76-77).

Dicta of Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 14, HL(E) and of Lord Clarke of Stone-cum-Ebony JSC in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, para 21, SC(E) applied.

(2) That, applying those principles, the natural meaning of the words used in clause 3(2) was clear, namely that the first half of the clause stipulated that the lessee was to pay an annual service charge and the second half identified how that charge was to be calculated, namely by way of a fixed increase in the annual sum, which was explicable on the basis that the parties had assumed that the cost of providing the services would increase in line with the level of inflation then current and so accorded with commercial common sense at the date of the agreement; that the fact that it was now apparent that the sum payable could substantially exceed the parties' expectations at the time of the grant of the lease was not a reason for giving the clause a different meaning; that it followed that clause 3(2) of each lease fell to be applied as charging a fixed amount increasing annually at the compound rate stipulated therein; that such conclusion was unaffected by any building or letting scheme to be implied from the preamble to each lease read together with the introductory words to clause 3 and with clause 4(8), in that, even on an assumption that such a scheme of reciprocity and mutual enforceability of covenants could extend to a positive covenant to pay a service charge, it could not extend to the implication of a term preventing the lessor from recovering more by way of service charge than could be recovered under each of the earlier leases; and that, accordingly, the landlord was entitled to the declaration sought (post, paras 24-26, 35, 48-49, 51, 55-58, 60, 62, 66, 75, 77).

Decision of the Court of Appeal [2013] EWCA Civ 902; [2013] L & TR 371 affirmed.

The following cases are referred to in the judgments:

*Aberdeen City Council v Stewart Milne Group Ltd* [2011] UKSC 56; 2012 SC (UKSC) 240; 2012 SCLR 114, SC(Sc)  
*Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios)* [1985] AC 191; [1984] 3 WLR 592; [1984] 3 All ER 229; [1984] 2 Lloyd's Rep 235, HL(E)  
*Attorney General of Belize v Belize Telecom Ltd* [2009] UKPC 10; [2009] 1 WLR 1988; [2009] Bus LR 1316; [2009] 2 All ER 1127; [2009] 2 All ER (Comm) 1, PC  
*Bank of Credit and Commerce International SA v Ali* [2001] UKHL 8; [2002] 1 AC 251; [2001] 2 WLR 735; [2001] ICR 337; [2001] 1 All ER 961, HL(E)  
*Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38; [2009] AC 1101; [2009] 3 WLR 267; [2009] Bus LR 1200; [2009] 4 All ER 677; [2010] 1 All ER (Comm) 365, HL(E)  
*Co-operative Wholesale Society Ltd v National Westminster Bank plc* [1995] 1 EGLR 97, CA  
*Dolphin's Conveyance, In re* [1970] Ch 654; [1970] 3 WLR 31; [1970] 2 All ER 664  
*Homburg Houtimport BV v Agrosin Private Ltd (The Starsin)* [2003] UKHL 12; [2004] 1 AC 715; [2003] 2 WLR 711; [2003] 2 All ER 785; [2003] 1 All ER (Comm) 625; [2003] 1 Lloyd's Rep 571, HL(E)

*Hyams v Titan Properties Ltd* (1972) 24 P & CR 359 , CA \*1621  
*Johnson v Unisys Ltd* [2001] UKHL 13; [2003] 1 AC 518; [2001] 2 WLR 1076; [2001] ICR 480; [2001] 2 All ER 801 , HL(E)  
*KPMG LLP v Network Rail Infrastructure Ltd* [2007] EWCA Civ 363; [2007] Bus LR 1336 , CA  
*MRS Distribution Ltd v DS Smith (UK) Ltd* 2004 SLT 631  
*McHale v Earl Cadogan* [2010] EWCA Civ 14; [2010] HLR 412; [2010] 1 EGLR 51 , CA  
*Norwich Union Life Insurance Society v Low Profile Fashions Ltd* [1992] 1 EGLR 86; 64 P & CR 187 , CA  
*Pennant Hills Restaurants Pty Ltd v Barrell Insurances Pty Ltd* (1981) 145 CLR 625  
*Pink Floyd Music Ltd v EMI Records Ltd (Practice Note)* [2010] EWCA Civ 1429; [2011] 1 WLR 770 , CA  
*Prenn v Simmonds* [1971] 1 WLR 1381; [1971] 3 All ER 237 , HL(E)  
*Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; [2011] 1 WLR 2900; [2012] Bus LR 313; [2012] 1 All ER 1137; [2012] 1 All ER (Comm) 1; [2012] 1 Lloyd's Rep 34 , SC(E)  
*Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen)* [1976] 1 WLR 989; [1976] 3 All ER 570; [1976] 2 Lloyd's Rep 621 , HL(E)  
*Sigma Finance Corpn, In re* [2009] UKSC 2; [2010] 1 All ER 571 , SC(E)  
*Simon v Helmut* [2012] UKPC 5; 126 BMLR 73 , PC  
*Walker v Giles* (1848) 6 CB 662  
*Wickman Machine Tool Sales Ltd v L Schuler AG* [1974] AC 235; [1973] 2 WLR 683; [1973] 2 All ER 39; [1973] 2 Lloyd's Rep 53 , HL(E)

The following additional cases were cited in argument:

*Debenhams Retail plc v Sun Alliance and London Assurance Co Ltd* [2005] EWCA Civ 868; [2005] STC 1443 , CA  
*Napier Park European Credit Opportunities Fund Ltd v Harbourmaster Pro-Rata CLO 2 BV* [2014] EWCA Civ 984 , CA  
*Waites (H) Ltd v Hambledon Court Ltd* [2014] EWHC 651 (Ch); [2014] 1 EGLR 119

#### APPEAL from the Court of Appeal

By a claim form issued in the Swansea County Court dated 7 December 2011 the claimant landlord, Paddy Arnold, freehold owner of the Oxwich Leisure Park, Oxwich, Gower, Swansea, sought against the defendant tenants, Rodney Britton and 42 others, each being a lessee of a chalet on the land under a 99-year lease from 12 December 1974, a declaration that (i) clause 3(2) of the lease obliged the lessee to pay a fixed sum of £90 in the first year of the term and thereafter a fixed sum which rose by the rate of 10% per annum, and (ii) accordingly, the sum payable pursuant to clause 3(2) was not a “service charge” within section 18 of the Landlord and Tenant Act 1985 . On 1 June 2012 Judge Jarman QC, sitting in the Cardiff County Court, refused to grant the declaration sought and instead declared that (i) clause 3(2) required the lessee to pay a proportionate part of the expenses and outgoings incurred by the lessor in the repair, maintenance, renewal and provision of services set out in the respective lease, the charge being limited to a yearly sum of £90 for the first year of the term granted by each lease and to a yearly sum increasing by 10% per annum for every subsequent year of the respective lease, and (ii) such charge was a service charge within section 18 of the 1985 Act.

#### \*1622

The claimant appealed. On 3 December 2012 Morgan J, sitting in the *Cardiff District Registry* [2012] EWHC 3451 (Ch); [2013] L & TR 174 allowed the appeal and granted a declaration in the terms sought by her.

38 of the tenants appealed. On 22 July 2013 the Court of Appeal (Richards, Davis, Lloyd Jones LJJ) [2013] EWCA Civ 902; [2013] L & TR 371 dismissed the appeal.

On 11 February 2014 the Supreme Court (Lord Neuberger of Abbotsbury PSC, Lord Carnwath, Lord Toulson JJSC) granted those tenants permission to appeal, pursuant to which they appealed. The issue for the court, as stated in the parties' agreed statement of facts and issues, was whether as a matter of interpretation (including the possible implication of a term) the service charge clause in each of the leases provided for a fixed service charge with annual compounded increases at the rate of 10%, or for a variable service charge subject to a cap.

The facts are stated in the judgments of Lord Neuberger of Abbotsbury PSC and Lord Carnwath JSC.

*Timothy Morshead QC* and *Rawdon Crozier* (instructed by *Fursdon Knapper Solicitors, Plymouth* ) for the tenants.

The six principles applicable when ascertaining the meaning of a document which are applicable here are as follow. (i) In order to ascertain the meaning of a document the court must undertake an iterative process, checking each of the rival meanings against other provisions of the document and investigating its commercial consequences: see *In re Sigma Finance Corpn* [2010] 1 All ER 571 , para 12. (ii) Any test for ambiguity must be conducted after and in light of the iterative process, not before or apart from that process: see *Napier Park European Credit Opportunities Fund Ltd v Harbourmaster Pro-Rata CLO 2 BV* [2014] EWCA Civ 984 at [36]-[37]. As a matter of law it is wrong to foreshorten or downplay the iterative process merely because language viewed in isolation appears at first glance to be unambiguous. (iii) Generally speaking, the commercial purpose of the contract is more important than niceties of language. Even where neither of the rival meanings produces an outcome which can be characterised as flouting business common sense, it is appropriate to adopt the more, rather than the less, commercial construction where the clause is capable of both meanings: see *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 , paras 25-30. If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion which flouts business common sense, it must be made to yield to business common sense: see *Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios)* [1985] AC 191 , 201. (iv) The court should be wary of an interpretation which makes the structure and language of other parts of the document appear arbitrary and irrational when it is possible for the concepts employed by the parties to be combined in a rational way: see *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 , para 20. (v) The document must be construed as a whole, viewing the words used therein against the relevant background and having regard to context. The relevant background includes facts, forming part of the circumstances in which the parties contract, in which one or both may take no particular interest, their minds being addressed to or concentrated on other facts so that if asked they would assert that they did not have these facts in the forefront of their mind, but that will not prevent those facts from forming part of an objective setting in which the \*1623 contract is to be construed: see *Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen)* [1976] 1 WLR 989 , 996-997 and *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988 , para 25. Moreover, in the context of leases, service charge provisions should be construed restrictively. (vi) The court's interpretation must promote the purposes and values which are expressed or implicit in the wording: *Debenhams Retail plc v Sun Alliance and London Assurance Co Ltd* [2005] STC 1443 , para 27. This principle is not limited to cases where circumstances have changed since the date of the contract.

After the court has ascertained the meaning of a document, it must correct any mistake made by the parties in their choice of language and/or imply any term necessary to give effect to the ascertained meaning: see *Aberdeen City Council v Stewart Milne Group Ltd* 2012 SC (UKSC) 240 . In particular, the court will imply a term where the parties contracted on an assumption which has since been falsified by events: see *H Waites Ltd v Hambleton Court Ltd* [2014] 1 EGLR 119 , paras 65-67.

Here, the reasonable expectations of the parties must have been that, between them, the tenants on the estate would reimburse the landlord for the actual expenditure incurred from year to year, with the overall cost being spread fairly between them, and with the percentage operating merely as a maximum annual increase so as to control excessive expenditure whether driven by inflation or otherwise (in the place of an alternative control such as restricting recovery to “reasonable” expenditure). The drafting of the various versions of the clause in dispute—clause 3(2)—was predicated on an assumption, namely that the landlord's actual expenditure would rise by at least 10% per annum. Where, as has happened, circumstances have changed so that that assumption had become falsified, the correct response of the court, applying the above principles, is to recognise that the effect intended by the parties—having regard to the purpose and the values of the lease—is no longer being achieved, with the result that the implication of a term reflecting that purpose and those values is necessary.

*Crozier* followed.

*Michael Daiches* (instructed by *Morgan LaRoche Solicitors, Swansea* ) for the landlord.

The question whether a term should be implied only falls for consideration after the meaning of the contract has been ascertained from the express language (in context): see *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988 , para 17. Ordinary principles of contractual construction apply to leases: there is no special rule that service charge provisions are in general to be construed restrictively.

Here, the meaning of clause 3(2) is plain and unambiguous. The lessee was to pay an annual charge of £90 etc, as consideration for the provision by the lessor of the specified services. There is no basis for asserting that there is a linguistic mistake within the clause. In particular, there is nothing in the wording of the leases which shows an intention that the lessee was to pay a variable service charge subject to a cap.

A fixed annual service charge is intended to represent the annualised average expenses and outgoings estimated to be incurred by the lessor throughout the entire term of the lease. The essence of a fixed charge is that the annual payments do not fluctuate according to the actual expenses and \*1624 outgoings incurred by the landlord during any particular accounting period. The expression in clause 3(2) requiring payment of “a proportionate part” of the expenses and outgoings incurred by the lessors is not merely consistent with a fixed service charge; it is paradigm wording for a fixed service charge. If the parties had intended that the lessees should pay a variable service charge subject to a cap, they would undoubtedly have made express provision for the quantification, ascertainment and collection of the yearly variable charge: there is none. Nor is there any commercial purpose for a landlord agreeing to a variable service charge provision subject to a cap. Far from it being clear that the parties intended that the lessee should pay a variable service charge subject to a cap, it is abundantly clear that they did not.

Once the meaning of clause 3(2) has been ascertained by the process of construing the express terms, the iterative process is at an end and there is no need to consider the question of implied terms. In any event, a term cannot be implied which is inconsistent with the meaning derived from the express terms. Any reliance on *H Waites Ltd v Hambleton Court Ltd [2014] 1 EGLR 119* is misplaced. The parties did not assume that the landlord's actual expenditure would rise by at least 10% per annum: that would take no account of infrequently occurring major expenditure. In so far as the parties made any assumptions, the only relevant one was that the lessees would pay a fixed service charge, increasing at the rate of 10% per annum, regardless of actual inflation. Such assumption can never be “falsified” by actual inflation rates, no matter how far such rates might diverge from 10% per annum. The fact that the parties may have acted on the basis that the average inflation rate throughout the term would be 10% was not an assumption; it was a best guess made in the knowledge that the chances of average inflation actually turning out to be 10% throughout the term would be virtually nil. That best guess would never be falsified no matter what the actual inflation rates were.

A term cannot be implied into a lease to supply a meaning which is inconsistent with the express language of the contract. Nor can commercial considerations supply a meaning which is inconsistent with the express language of the contract. In any event, any such commerciality argument would be in substance an argument based on 34 years' hindsight, namely that actual inflation would be significantly below 10% per annum. The risk which the parties took in selecting an inflation adjustment rate as a fixed percentage was one which they were perfectly entitled to judge—and must be inferred to have judged—for themselves. It is not for the court to judge the wisdom of the parties' bargain or to second-guess their motives.

*Morshead QC* replied.

The court took time for consideration.

10 June 2015. The following judgments were handed down.

LORD NEUBERGER OF ABBOTSBURY PSC (with whom LORD SUMPTION and LORD HUGHES JJSC agreed)

1. This appeal concerns the interpretation of service charge contribution provisions in the leases of a number of chalets in a caravan park in south Wales.

\*1625

The facts

2. The facts may be summarised as follows (although they are more fully set out by Lord Carnwath JSC at paras 81-103).

3. Oxwich Leisure Park is on the Gower peninsular, and contains 91 chalets, each of which is let on very similar terms. The five leases which we have seen were granted between 1978 and 1991, either for a premium (of less than £20,000) or in return for the lessee constructing the chalet. Each of the 91 chalets was let on a lease which was for a term of 99 years from 25 December 1974 and reserved a rent of £10 per annum increasing by £5 for each subsequent period of 21 years. Paragraph (2) of the recital of each lease contains the statement that the chalets on the leisure park were intended to be subject to leases “upon terms similar in all respects to the present demise”.

4. Clause 3 of each lease contains various covenants by the lessee, and it is introduced by the words:

“The lessee hereby covenants with the lessor and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other plots on the estate so far as the obligations hereafter mentioned are capable of benefitting them ...”

The covenants that follow concern use, repair, alienation and the like. Crucially for present purposes, clause 3(2) is a covenant to pay an annual service charge. Each lease also contains covenants by the lessor. One such covenant is to provide services to the park, such as maintaining roads, paths, fences, a recreation ground and drains, mowing lawns, and removing refuse. The lessor also covenants in clause 4(8) that leases of other chalets “shall contain covenants on the part of the lessees thereof to observe the like obligations as are contained herein or obligations as similar thereto as the circumstances permit”.

5. 25 of the chalets are said by the respondent, the current owner of the leisure park and the landlord under the leases, to be subject to leases containing a service charge provision in clause 3(2), which requires the lessee to pay for the first year of the term a fixed sum of £90 per annum, and for each ensuing year a fixed sum representing a 10% increase on the previous year —ie an initial annual service charge of £90, which increases at a compound rate of 10% in each succeeding year. The issue on this appeal is whether the respondent's interpretation of clause 3(2) in those 25 leases is correct.

6. Of the 25 leases in question, 21 were granted between 1977 and 1991. Prior to the grant of most of those 21 leases, the other 70 chalets had been the subject of leases granted from the early 1970s. In each of those 70 leases, clause 3(2) was a covenant by the lessee:

“To pay to the lessors without any deduction in addition to the said rent a proportionate part of the expenses and outgoings incurred by the lessors in the repair maintenance renewal and the provision of services hereafter set out the yearly sum of £90 and VAT (if any) for the first three years of the term hereby granted increasing thereafter by ten pounds per hundred for every subsequent three year period or part thereof.”

**\*1626** The effect of this clause, at least on the face of it, is that the initial service charge of £90 per annum was to be increased on a compound basis by 10% every three years, which is roughly equivalent to a compound rate of 3% per annum.

7. The 21 leases referred to in para 6 have two slightly different versions of clause 3(2), but the clause can be set out in the following form (with the words shown in italics included in 14 of the 21 leases, but not in the other seven):

“To pay to the lessors without any deductions in addition to the said rent *as* a proportionate part of the expenses and outgoings incurred by the lessors in the repair maintenance renewal *and renewal of the facilities of the estate* and the provision of services hereafter set out the yearly sum of £90 and VAT (if any) for the first year of the term hereby granted increasing thereafter by ten pounds per hundred for every subsequent year *or part* thereof.”

8. To complicate matters a little further, the service charge clause in four of these 21 leases (being four of the seven which did not include the words in italics in the preceding quotation), had the word “for” before “the yearly sum of £90”. These four leases also included a proviso to the effect that, so long as “the term hereby created is vested in the [original lessees] or the survivor of them”, clause 3(2) would be treated as being in the form set out in para 6 above. This proviso has ceased to have effect as these four leases are no longer vested in the original lessees.

9. Finally, the service charge clause in four of the 70 leases referred to in para 6 above were varied pursuant to deeds of variation executed between October 1998 and August 2002 so as to be identical to that set out in para 7 above, including the words in italics.

The issues between the parties

10. As already explained, the respondent, the current landlord, contends that the service charge provisions in clause 3(2) of the 25 leases referred to in paras 6-9 above have the effect of providing for a fixed annual charge of £90 for the first year of the term, increasing each subsequent year by 10% on a compound basis. The appellants, the current tenants under 24 of the 25 leases, primarily contend that the respondent's construction results in such an increasingly absurdly high annual service charge

in the later years of each of the 25 leases that it cannot be right. They argue that, properly read, each service charge clause in the 25 leases requires the lessee to pay a fair proportion of the lessor's costs of providing the services, subject to a maximum, which is £90 in the first year of the term, and increases every year by 10% on a compound basis. In other words, the appellants argue that, in effect, the words “up to” should be read into the clause set out in para 7 above, between the words “the provision of services hereafter set out” and “the yearly sum of £90”. The appellants also have an alternative contention, based on the provisions of recital (2), the opening words of clause 3 and the provisions of clause 4(8) of their leases, namely that the lessor cannot recover more by way of service charge than could be recovered under each of the first 70 leases.

**\*1627**

The evidence

11. Apart from the documents themselves and the published Retail Price Index (“RPI”) for each of the years 1970-2010, there is no evidence as to the surrounding circumstances in which the 21 leases were executed, other than the fact that the four leases referred to in para 8 above were granted to individuals connected with the lessor. Following a request from the court, we were also told that three of the four deeds of variation referred to in para 9 above were entered into with the lessor's daughter as lessee.

12. I do not find it surprising that we have not been provided with any further evidence. So far as the wording of clause 3(2) is concerned, there may have been letters or notes of discussions in connection with the original drafting and granting (and, in the four cases referred to in para 9 above, the amending) of the leases. But, even if such notes or letters had survived, I very much doubt that they would have thrown any light on what was intended to be the effect of the drafting of the various forms of clause 3(2). Even if they had done, they would probably have been inadmissible as I strongly suspect that they would merely have shown what one party thought, or was advised, that the clause meant. If such documents had shown what both parties to the lease in question intended, they would probably only have been admissible if there had been a claim for rectification.

13. As to the possibility of other material, I am unconvinced that, even if it existed, evidence of the original level of services, the original cost of the services or any investigations made on behalf of a potential lessee in relation to the original services and their cost would have assisted on the issue of what clause 3(2) of any of the 25 leases meant. The provisions for increase at the end of clause 3(2) of each lease were plainly included to allow for inflation, and the only evidence which appears to me to be potentially relevant would be contemporary assessments of the actual and anticipated annual rate of inflation, and, as already mentioned, we have the RPI for each of the years in question.

Interpretation of contractual provisions

14. Over the past 45 years, the House of Lords and Supreme Court have discussed the correct approach to be adopted to the interpretation, or construction, of contracts in a number of cases starting with *Prenn v Simmonds* [1971] 1 WLR 1381 and culminating in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 .

15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 , para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding **\*1628** subjective evidence of any party's intentions. In this connection, see *Prenn* [1971] 1 WLR 1381 , 1384-1386; *Reardon Smith Line Ltd v Yngvar Hansen-Tangen (trading as HE Hansen-Tangen)* [1976] 1 WLR 989 , 995-997, per Lord Wilberforce; *Bank of Credit and Commerce International SA v Ali* [2002] 1 AC 251 , para 8, per Lord Bingham of Cornhill; and the survey of more recent authorities in *Rainy Sky* [2011] 1 WLR 2900 , paras 21-30, per Lord Clarke of Stone-cum-Ebony JSC.

16. For present purposes, I think it is important to emphasise seven factors.

17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in *Chartbrook* [2009] AC 1101 , paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a

reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18. Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. Judicial observations such as those of Lord Reid in *Wickman Machine Tools Sales Ltd v L Schuler AG* [1974] AC 235 , 251 and Lord Diplock in *Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios)* [1985] AC 191 , 201, quoted by Lord Carnwath JSC at para 110, have to be read and applied bearing that important point in mind.

20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even *\*1629* ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party.

21. The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties. Given that a contract is a bilateral, or synallagmatic, arrangement involving both parties, it cannot be right, when interpreting a contractual provision, to take into account a fact or circumstance known only to one of the parties.

22. Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is *Aberdeen City Council v Stewart Milne Group Ltd 2012 SC (UKSC) 240* , where the court concluded that “any ... approach” other than that which was adopted “would defeat the parties' clear objectives”, but the conclusion was based on what the parties “had in mind when they entered into” the contract: see paras 21 and 22.

23. Seventhly, reference was made in argument to service charge clauses being construed “restrictively”. I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation. Even if (which it is unnecessary to decide) a landlord may have simpler remedies than a tenant to enforce service charge provisions, that is not relevant to the issue of how one interprets the contractual machinery for assessing the tenant's contribution. The origin of the adverb was in a judgment of Rix LJ in *McHale v Earl Cadogan* [2010] HLR 412 , para 17. What he was saying, quite correctly, was that the court should not “bring within the general words of a service charge clause anything which does not clearly belong there”. However, that does not help resolve the sort of issue of interpretation raised in this case.

Discussion: interpretation of clause 3(2)

24. When one turns to clause 3(2) of each of the 91 leases of the chalets in Oxwich Park, the natural meaning of the words used, at least until one considers the commercial consequences, seems clear. The first half of the clause (up to and including the words “hereafter set out”) stipulates that the lessee is to pay an annual charge to reimburse the lessor for the costs of providing the services which he covenants to provide, and the second half of the clause identifies how that service charge is to be calculated.

25. The fact that the second half of the clause results in the service charge being a fixed sum, rather than a sum dependent on the costs to the lessor of providing the contractual services is readily explicable. As stated in *Wonnacott, The History of the Law of Landlord and Tenant in England and Wales* (2012), p 106, clauses which provide for charges which vary with the costs of providing services have resulted, at least since around 1960, in “more trouble between landlord and tenant than anything else”. Further, legislation which started to come into force in 1972 has rendered it progressively more difficult for an “amateur landlord” (to use Wonnacott’s \*1630 expression) to recover a disputed service charge calculated on such a basis. The fact that the second half of the clause goes on to provide for a fixed increase in the annual sum is also readily explicable: the parties assumed that the cost of providing the services in sterling terms would increase, or, to put the same point another way, they assumed that the value of money would fall.

26. Davis LJ concisely explained the thinking behind the clause in the course of his judgment in the Court of Appeal [2013] L & TR 371, para 52:

“Lack of correspondence between outlay and receipt is the almost inevitable consequence of such a clause if the parties have elected for a fixed charge formula. It has a similarity with a liquidated damages clause: it represents the parties’ estimate at the outset for the future with neither guarantee nor even expectation of entire coincidence with the eventual outcome. But the advantage is certainty. The parties know from the outset where they stand. Moreover, it is a surrounding circumstance legitimately to be taken into account here that the leases were made at a time of inflation—in some years, very significant inflation—which the parties, objectively and commercially speaking, could be expected to want to confront. They chose to do so by this particular formula of increase.”

27. In those seven leases where the word “as” is not included, I suppose that it might be said that this is not clear unless words such as “quantified in the sum of” were included in order to link the two halves of the clause, but that is, to my mind, a really pedantic argument. Although perfectionist drafting might suggest the inclusion of such words, it seems to me that the absence of such words cannot fairly be invoked to suggest ambiguity or a lack of clarity. The reasonable reader of the clause would see the first half of the clause as descriptive of the purpose of clause 3(2), namely to provide for an annual service charge, and the second half as a quantification of that service charge.

28. It is true that the first part of the clause refers to a lessee paying a “proportionate part” of the cost of the services, and that, unless inflation increases significantly in the next 50 years, it looks likely that the service charge payable under each of the 25 leases may exceed the cost of providing services to the whole of the leisure park. However, if, as I believe is clear, the purpose of the second part of the clause is to quantify the sum payable by way of service charge, then the fact that, in the future, its quantum may substantially exceed the parties’ expectations at the time of the grant of the lease is not a reason for giving the clause a different meaning. As already explained, the mere fact that a court may be pretty confident that the subsequent effect or consequences of a particular interpretation was not intended by the parties does not justify rejecting that interpretation.

29. However, given the way things have turned out, it is tempting to latch onto the absence of words such as “quantified in the sum of”, and to see the two halves of clause 3(2) as mutually inconsistent in their effect. This would be on the ground that the first half of the clause requires the lessee to pay a “proportionate part” of the cost to the lessor of providing services, whereas the latter half requires the lessee to pay a sum which could exceed the whole of that cost. On that basis, it might be said that the court can reject or modify one half to give effect to the real intention of the parties: see \*1631 eg *Walker v Giles (1848) 6 CB 662*. However, as explained in para 24 and 25 above, this argument would, in my view, involve the court inventing a lack of clarity in the clause as an excuse for departing from its natural meaning, in the light of subsequent developments.

30. Were it not for the percentage increases of 10% per annum specified in the 25 service charge clauses which are being considered on this appeal, coupled with the subsequent history of inflation in the United Kingdom, that would be the end of it. Thus, it seems to me that the original 70 leases (referred to in para 6 above), with a clause 3(2) which provided for increases of about 3% per annum (at a time when inflation was running at a significantly higher rate), should plainly be interpreted in the way in which the respondent contends. However, the consequences of the annual sum of £90 being increased annually by 10% on a compound basis are plainly unattractive, indeed alarming, to a lessee holding a chalet under one of the 25 leases. If one assumes a lease granted in 1980, the service charge would be over £2,500 this year, 2015, and over £550,000 by 2072. This appears to be an alarming outcome for the lessees, at least judging by how things look in 2015, because annual inflation in the last 15 years has hardly ever been above 4%, indeed has been under 3% for ten of those years, and has notoriously been falling recently almost to the point of turning negative, whereas the service charge over that period has increased, and will continue to increase, by 10% per annum.

31. The appellants argue that these figures illustrate the extreme unlikelihood of the parties to the 21 leases (or to the four subsequent deeds of variation), and in particular the lessees, having intended to agree that the original £90 service charge would be automatically increased by 10% annually on a compound basis. Accordingly, they contend, the latter half of clause 3(2) should be interpreted as imposing a maximum on the annual service charge recoverable by the lessor. In other words, the effect of the clause is said to be that the lessor is entitled to an appropriate percentage of the annual cost of providing the contracted services, subject to a maximum—which was initially £90, but which increases by 10% compound annually.

32. Despite the unattractive consequences, particularly for a lessee holding a chalet under one of the 25 leases, I am unconvinced by this argument. It involves departing from the natural meaning of clause 3(2) in each of those leases, and it involves inserting words which are not there.

33. Further, the appellants' argument involves attributing to the parties to the 25 leases an intention that there should be a varying service charge and that the lessor (or some other unspecified person) should assess the total costs of the services and determine the appropriate proportion of the cost of the contractual services to allocate to each chalet. Although I accept that it has an element of circularity, it appears to me that the average reader of clause 3(2) would have thought that those are exercises which the clause seems to have been designed to avoid.

34. Although there are one or two very small errors in the drafting, I do not consider that anything has gone significantly wrong with the wording of clause 3(2) of any of the 25 leases. As already explained, I would reject the notion that, on a natural reading, the two parts of the clause do not relate to each other, or appear to say different things, even in the seven cases where the word “as” is not included: as the Court of Appeal said, the first half \*1632 imposes a liability for an annual service charge and the second half explains how it is to be assessed. I do not think that the reference to part of a year in the closing words of the clause (para 7 above refers), or the inclusion of an unnecessary “for” (para 8 above refers), in some of the 25 leases can possibly justify departing from the natural meaning of clause 3(2). At best the reference to part of a year is meaningless. However, given that the 99-year term of each lease ran from Christmas 1974, all of them would have ended part way through a year, as they would also have been very likely to do if surrendered or forfeited. Furthermore, the fact that some clauses refer not merely to “repair maintenance and renewal”, but also to “renewal of facilities on the estate” seems to me to be irrelevant to the issue on this appeal.

35. Quite apart from the fact that the effect of clause 3(2) appears clear in each lease as a matter of language, I am far from convinced by the commercially-based argument that it is inconceivable that a lessee would have agreed a service charge provision which had the effect for which the respondent contends, at least in the 1970s and much of the 1980s. Although I would have expected most solicitors to have advised against it, and imprudent though it undoubtedly has turned out to be (at least so far), a lessee could have taken the view that a fixed rate of increase of 10% per annum on a fixed initial service charge, at a time when annual inflation had been running at a higher rate for a number of years (well over 10% per annum between 1974 and 1981, indeed over 15% per annum for six of those eight years; although it was less than 10% per annum after 1981), was attractive or at least acceptable.

36. If inflation is running at, say, 10% per annum, it is, of course, very risky for both the payer and the payee, under a contract which is to last around 90 years, to agree that a fixed annual sum would increase automatically by 10% a year. They are taking a gamble on inflation, but at least it is a bilateral gamble: if inflation is higher than 10% per annum, the lessee benefits; if it is lower, the lessor benefits. On the interpretation offered by the appellants, it is a one way gamble: the lessee cannot lose because, at worst, he will pay the cost of the services, but, if inflation runs at more than 10% per annum, the lessor loses out.

37. The fact that a court may regard it “unreasonable to suppose that any economist will be able to predict with accuracy the nature and extent of changes in the purchasing power of money” over many decades (to quote Gibbs J in *Pennant Hills Restaurants Pty Ltd v Barrell Insurances Pty Ltd* (1981) 145 CLR 625, 639) is nothing to the point. People enter into all sorts of contracts on the basis of hopes, expectations and assessments which no professional expert would consider prudent, let alone feel able to “predict with accuracy”. I have little doubt that many fortunes have been both made and lost (and sometimes both) by someone entering into such a contract.

38. In terms of commercial justification, the analysis in paras 34 and 35 above becomes more difficult to invoke the further one moves on from 1981, the last year when inflation was above 10% per annum, although in 1990 it almost hit that figure. Accordingly, while I think the analysis comfortably applies to the 21 leases referred to in paras 6-8 above, which were granted between 1977 and 1990, it is unconvincing in relation to the four leases whose service charge provisions were amended around 2000, as mentioned in para 9 above.

\*1633

39. It seems rather extraordinary that a lessee under a lease which provided for an increase in a fixed service charge at the rate of 10% over three years should have agreed to vary the lease so that the increase was to be at the rate of 10% per annum, at a time when inflation was running at around 3% per annum. However, I do not accept that this justifies reaching a different result in relation to any of the four leases which were varied in 2000. Three of them are relatively easily explicable, as the lessee who agreed the variation was closely connected with the lessor. The fact that they were subsequently assigned is, I accept, remarkable, but that later fact cannot affect the interpretation of the deeds. As to the fourth deed, it was, on any view, an improvident variation to have agreed, but, as already explained, that is not enough to justify the court rewriting the contract under the guise of interpreting it. Further, given that, at least in my view, there could be no ground for suggesting that the original clause 3(2) in the three leases (providing as it did for an annual increase of around 3%) had any effect other than that for which the respondent contends, it is particularly difficult to suggest that the substituted clause, which changed the annual increase to 10%, but was otherwise identically worded (save that it included the word “as” and was therefore even clearer), should have a different effect.

40. I note in this connection that, at a time when inflation was running at well over 10% per annum from 1974 to 1980 (possibly excepting 1984), the lessor was granting leases which provided, in effect, for increases in the £90 at the rate of about 3% per annum (para 6 above refers). Of course, that cannot be taken into account when interpreting any of the 25 leases, but it shows the lessor was prepared to take what appears to have been an unwise decision which was not entirely dissimilar from the unwise decision which, in my view, the lessees under the 25 leases took.

41. I do not think that this is a case where the approach adopted by this court in *Aberdeen City Council* 2012 SC (UKSC) 240 can assist the appellants. Unlike that case, this is not a case where one of the parties has done something which was not contemplated by the contract. It is clear that the 10% per annum increase in clause 3(2) was included to allow for a factor which was out of the control of either party, namely inflation. In my judgment, there is no principle of interpretation which entitles a court to re-write a contractual provision simply because the factor which the parties catered for does not seem to be developing in the way in which the parties may well have expected.

42. It also appears to me that there is a degree of inconsistency in the appellants' case. That case is, of course, ultimately based on the unlikelihood of a lessor and lessee of a single chalet agreeing that an initial annual service charge of £90 should be increased at a rate which could well lead to the annual charge being an absurdly high figure—possibly more than the cost of providing the services for the whole leisure park. But it is also rather unlikely (albeit less unlikely, I accept) that they will have agreed a ceiling on the annual service charge which would become so absurdly high that it would be meaningless. In other words, it can be said with some force that the appellants' solution to the problem which they identify does not actually address the problem: it merely changes its commercial consequences.

43. I should add that, subject to the point dealt with in the next section of this judgment, I am unconvinced that any assistance can be gained \*1634 from the differences between the various forms of clause 3(2). It seems to me positively unlikely that the lessees under the later 21 leases would have been aware of the terms of clause 3(2) of the earlier 70 leases. But, even if they had been so aware, it seems to me that it would assist the respondent's case, not that of the appellants. That is because, given that it appears clear that the second half of clause 3(2) in the earlier 70 leases operated to quantify the service charge, then it seems to me (as explained in the last sentence of para 39 above) that it is very unlikely that the parties can have intended the almost identically worded second half of clause 3(2) in the later 21 leases to have a very different effect from that in the earlier 70 leases.

44. In his judgment at para 116, Lord Carnwath JSC rightly points out that, even after he assigns the lease, the original lessee is bound for the duration (at least if it was granted before 1996). However, I do not see what that adds in this case: on any view, these leases involve long term commitments on both sides. I agree with his view in para 117 that a prospective lessee of a flat in a block or the like (as here) will normally be likely to have less negotiating freedom as to the terms than in relation to a “free standing” property. But so will the lessor, and either is free to walk away if he regards the terms as unsatisfactory.

45. I am also unconvinced that the remedies available (whether in common law or under statute) to the parties in the event of a breach in connection with services or service charge, as discussed in Lord Carnwath JSC's paras 121-123, assists on the issue we have to decide. We are concerned with what a service charge clause means, not how it is being operated.

46. Finally on this first point, Lord Carnwath JSC makes some remarks about service charge provisions in his para 119. There will, I suspect, be many cases where his observations are very much in point: indeed, they may well be normally in point. However, the lessor has no duty to be “fair” when negotiating the terms of a lease (any more than the lessee does), although it

may well be in his interest to be (or at least to appear to be) fair. But, whosever interpretation is correct, clause 3(2) was self-evidently not a “normal” service charge clause: on the respondent's case, the landlord might get more or less than the costs of providing the services; on the appellants' case, the landlord might get less than the costs of providing the services.

Discussion: the effect of clause 4(8) and the terms of the other leases

47. The appellants, at the invitation of the court, argued that clause 4(8), which as explained in para 4 above required leases of chalets to be granted subject to identical or similar obligations, substantially mitigated the effect of clause 3(2) of their leases. They contended that clause 4(8), when read together with the opening words of clause 3 and paragraph (2) of the recital to each lease, referred to in paras 3 and 4 above, enable them to limit the service charge which the landlord could otherwise recover under clause 3(2).

48. The appellants' argument in this connection proceeds in two steps. First, as a result of clause 4(8), the opening words of clause 3, and paragraph (2) of the recital in each of their leases, a term was implied into their leases to the effect that clause 3(2) was in the same terms as clause 3(2) of the leases of chalets which had already been granted—ie the 70 leases referred to in para 6 above. Secondly, in those circumstances the lessor is now precluded from recovering more by way of service charge than would \*1635 be recoverable under the terms of the service charge provisions in the 70 leases—ie £90 plus 10% compounded every three years. While this argument has obvious attraction, I would reject it.

49. The purpose of clause 4(8), the opening words of clause 3, and recital (2) was, I would accept, to create what is sometimes referred to as a “building scheme”, but, at least in the present context is more accurately described as a letting scheme. Such a scheme, which is recognised and given effect to by equity, has to be apparent from the terms of the relevant leases (or, very unusually, from a side agreement entered into by each lessee with the lessor). A letting scheme involves properties within a given area being let on identical or similar terms, normally by the same lessor, with the intention that the terms are to be enforceable not only by the lessor against any lessee, but as between the various lessees—even by an earlier lessee of one property against a later lessee of another property. There is plainly a strong case for saying the combination of paragraph (2) of the recital, the opening words of clause 3 and the provisions of clause 4(8) establishes that there is such a scheme in relation to the chalets in the leisure park. Accordingly, I am prepared to assume that there was envisaged that there would be a degree of reciprocity and mutual enforceability between the lessees of chalets when it came to the covenants they entered into.

50. However, in my view, the appellants' reliance on the scheme in order to limit the service charges recoverable under clause 3(2) of their leases faces a number of problems.

51. First, it seems to me to be unclear whether a provision such as clause 3(2) could be or was subject to the scheme. There is room for argument whether a letting scheme can only extend, like freehold schemes, to restrictive covenants, or whether it can also extend to positive covenants (on the basis that positive covenants between lessor and lessee are enforceable as between their respective successors, whereas only restrictive covenants are enforceable as against successors of covenantors in relation to freeholds). Even if a leasehold scheme can extend to positive covenants, it is also questionable whether a lessee's covenant to pay a service charge, or any other sum of money to the lessor, can be within the ambit of a scheme.

52. Secondly, in so far as they are dealing with the provisions of leases of other chalets, clause 4(8), and (arguably) the opening words of clause 3 and recital (2) appear to refer to future lettings, not to past lettings. It is quite a bold step to imply a term as to what has happened in the past from an express provision which is limited to the future. Having said that, there is considerable practical force in the contention that the scheme contemplated by the three provisions could only work if leases of all the chalets, past, present and future, were on the same terms.

53. Thirdly, even if the appellants' argument based on an implied term was otherwise correct, there would still be considerable force in the contention that it would not exonerate the appellants from complying with their obligations under clause 3(2). It seems clear that, where there is a letting scheme, a tenant can enjoin the landlord from letting a property within the scheme area on terms which are inconsistent with the scheme. However, as far as I am aware, there is no case where the landlord has been held liable to a tenant in damages (or otherwise) for having let a property within the scheme area on such terms, prior to the grant of the tenant's lease.

\*1636

54. Fourthly, even if these arguments are all rejected, the closing words of clause 4(8) clearly permit a degree of variation between the terms of the leases of different chalets. If the second part of clause 3(2) is intended to reflect the level of projected

inflation, then the parties may well have regarded it as almost inevitable that any annual or triennial adjustment would vary from time to time. On that basis, there may be no breach of any implied term anyway.

55. However, it is unnecessary to address the four points identified in paras 51-54 above, because, in my judgment, there is a fatal flaw in the appellants' argument based on an implied term. In effect, the appellants' case is that the implied term in each of the 21 leases is that the lessor was not asking anything of the lessee which had not been, or would not be, required of lessees of other chalets, whether their leases were in the past or the future. However, it seems to me that, assuming everything else in the appellants' favour, that would not be the correct term to imply. As I see it, if there is an implied term along the lines argued for, it is that the already existing 70 leases of chalets contain a clause 3(2) identical with that in the appellant's leases—ie that the 70 existing leases have service charges which increase at the compound rate of 10% per annum as in the 21 leases.

56. In so far as it relates to the 70 existing leases, the implied term suggested by the appellants is inconsistent with both (a) an express term of the appellants' leases, namely clause 3(2) itself, and (b) what is implied in relation to future leases. As to point (a), the appellants' suggested implied term means that clause 3(2) involves a 10% increase every three years, whereas there is an express term to the effect that the 10% increase is every year; and it is a fundamental principle that one cannot imply a term which is inconsistent with an express term. As to point (b), any reader of an appellant's lease who was asked what future leases of chalets would contain by way of a service charge provision would answer that it would be the same as that in the instant lease—ie £90 pa subject to an increase of 10% per annum compounded; and the implied term applicable to future leases should be the same as that applicable to past leases.

57. If the appellants are right in their contention that there is an implied term, the term which I would favour (as set out at the end of para 55 above) runs into neither of these difficulties. It amounts to saying that, as clause 3(2) of an appellant's lease means that the service charge is to be £90 pa increasing by 10% pa compounded, there is a term implied into the lease that that is what the existing leases provide and it is what future leases will provide.

58. If, as the appellants contend, there is an implied term, but that is its correct characterisation, it is difficult to see how it can help them. An appellant can say that the fact that the 70 existing leases contain a different clause 3(2) means that there is a breach of the implied term, but it is hard to see what damage or other injury has been suffered if the respondent now insists on enforcing clause 3(2) of their leases against the appellants. If an appellant could show that the value of his lease was reduced because the lessor had not granted the first 70 leases with the same clause 3(2) as was in the appellant's lease, the consequent reduction in the value of that lease could well be the appropriate measure of damages. But I cannot at the moment see on what basis the breach can assist an appellant in resisting the full financial consequences of the clause 3(2) he entered into.

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59. I should add that, if, contrary to my view expressed in para 43 above, the lessees under the later 21 leases would have been aware of the terms of clause 3(2) of the earlier 70 leases (as Lord Carnwath JSC suggests), it would negative any reliance which the lessees under the 21 leases could place on clause 4(8), as just discussed. This is because the later lessees would have known of, and accepted, the departure from the original clause 3(2).

## Conclusion

60. Accordingly, in agreement with the reasons given by Lord Hodge JSC in this court, Davis LJ in the Court of Appeal and Morgan J in the High Court, I would dismiss this appeal, and I do not consider that the appellants are assisted by the additional argument raised in this court. I should, however, make five final points.

61. First, the Court of Appeal suggested that the only way the lessees under the 25 leases could escape from their problems would be by surrendering or suffering forfeiture. In case this is misinterpreted, it is right to point out that surrender is consensual between lessee and lessor, and forfeiture involves unilateral action by a lessor, and so neither course can be forced on the lessor.

62. Secondly, I have considerable sympathy with Lord Carnwath JSC's conclusion that the appeal should be allowed (not least because it is a much more satisfactory outcome in common sense terms, particularly viewed as at today), and I acknowledge that his reasons are as powerful as his conclusion allows. However, for the reasons I have given, I cannot agree with him.

63. Thirdly, the fact that four leases were granted to associates of the lessor with the proviso described in para 8 above, and that three of the deeds of variation described in para 9 above were entered into with a lessee who was a close relation of the lessor, is worthy of comment. It suggests that the lessor or her advisers may have appreciated the potential disadvantages of the

clause now contained in the 25 leases. However, I do not see how it can assist the lessees on the issue in these proceedings, namely the interpretation of the clause in the 25 leases.

64. Fourthly, as Lord Carnwath JSC records in para 155 below, it appears that the respondent realistically recognises the unsatisfactory situation in which the lessees under the 25 leases find themselves, and is prepared to agree appropriate amendments to their leases. I hope that a fair and just amendment can be agreed.

65. Finally, as Lord Carnwath JSC also points out in paras 90-93 below, there are various statutory provisions which protect tenants against unreasonable service charges, but none of them applies here. The present case suggests that there may be a strong case for extending such provisions to cases such as the present, even though they involve a fixed sum payable by way of service charge. But that is a policy issue for Parliament, and there may be arguments either way.

LORD HODGE JSC (who agreed with LORD NEUBERGER OF ABBOTSBURY PSC)

66. I agree that the appeal must be dismissed for the reasons which Lord Neuberger of Abbotsbury PSC sets out. But it is a highly unsatisfactory outcome for the chalet tenants who are affected by the annual escalator of the service charge. It is not clear whether there are many long leases \*1638 containing fixed service charges with escalators which are beyond the reach of statutory regulation. If there are, there may be a case for Parliament to consider extending the provisions that protect tenants against unreasonable service charges.

67. Mr Morshead QC for the appellants submitted in his written case that what was important was “(a) that the risk [of inflation falling and remaining substantially below 10%] would have been obvious to the officious, reasonable bystander who must be imagined interrogating the actual parties and (b) that no reasonable person in the position of the parties, looking at the leases in their entirety and in context, would understand them to have intended that the tenants should assume that risk”. He envisaged that in a hypothetical dialogue the officious bystander would warn the parties of the risks of their proposed contract and they would make it clear that that was not their intention.

68. In the course of the debate we were referred directly or by reference to several cases concerning the remediation of a mistake by construction or the implication of a term. In my view they do not give the support that Mr Morshead needs.

69. In *Homburg Houtimport BV v Agrosin Private Ltd (The Starsin)* [2004] 1 AC 715 the mistaken omission of words in a clause was apparent because the bill of lading had been modelled on a standard clause. The person who had transposed the standard clause into the bill of lading had omitted a phrase in the standard clause in which the same word had appeared at the end of two consecutive phrases. The mistake was clear and it was apparent what correction was called for: paras 22 and 23 per Lord Bingham of Cornhill.

70. In *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101 a definition, which contained a grammatical ambiguity, made no commercial sense if interpreted in accordance with the ordinary rules of syntax. The background to the deal and the internal context of the contract showed that there was a linguistic mistake in the definition, which the court was able to remove by means of construction. In his speech Lord Hoffmann, at para 23, referred with approval to the judgment of Carnwath LJ in *KPMG LLP v Network Rail Infrastructure Ltd* [2007] Bus LR 1336. In that case, which concerned a rent review clause in a lease, it was clear from the terms of the clause that its wording did not make sense. The court was assisted by an earlier agreement which set out the then intended clause containing a parenthesis, of which only part had remained in the final lease. It was not clear whether the parties had mistakenly deleted words from the parenthesis, which they had intended to include, or had failed to delete the parenthesis in its entirety. But that uncertainty as to the nature of the mistake, unusually, did not matter as the outcome was the same on either basis.

71. In *Aberdeen City Council v Stewart Milne Group Ltd* 2012 SC (UKSC) 240 the internal context of the contract provided the answer. The sale contract provided for the payment to the vendor of a further sum on disposal of the land by the purchaser. Two of the methods of disposal required the parties to ascertain the market value of the property on disposal in calculating the additional payment and the other used the “gross sales proceeds” in calculating that payment. The purchaser sold the site at an under-value to an associated company, a circumstance which on the face of the contract the parties had not contemplated. The courts at each level \*1639 interpreted the provision, which used the gross sales proceeds in the calculation, as requiring a market valuation where there was a sale which was not at arm's length. They inferred the intention of the parties at the time of the agreement from the contract as a whole and in particular from the fact that the other two methods of disposal required such

a valuation. While this line of reasoning was criticised by Professor Martin Hogg “Fundamental Issues for Reform of the Law of Contractual Interpretation” (2011) 15 Edin LR 406 on the ground that it protected a party from its commercial fecklessness, it seems to me to be the correct approach in that case as the internal context of the contract pointed towards the commercially sensible interpretation.

72. The context, whether internal to the contract or otherwise, provides little assistance in this case. Beyond the words of the relevant clauses, there is the context of the other provisions of each of the 25 individual leases which are at issue. They are long leases, having a term of 99 years. The court in interpreting the leases can and should take into account the great difficulty in predicting economic circumstances in the distant future and ask itself whether the parties really intended to do so.

73. The court also can and should take into account the economic circumstances which prevailed at the time each lease was entered into. It is clear from the table which Lord Carnwath JSC has set out in para 100 of his judgment that between 1974 and 1988 the use of a 10% annual escalator achieved a result which was not far off the diminution of the value of money in the difficult economic circumstances that then prevailed. The future was and is unknown.

74. Little else is known and I do not think that it is appropriate to speculate about the extent to which lessees would have known the terms of earlier leases. In my view there is much to be said for the practice, which Lord Drummond Young and other judges have encouraged in Scotland, of requiring parties to give notice in their written pleadings both of the nature of the surrounding circumstances on which they rely and of their assertions as to the effect of those facts on the construction of the disputed words: *MRS Distribution Ltd v DS Smith (UK) Ltd 2004 SLT 631*, para 14. Such notice of relevant facts, which are either admitted or proved at trial, would avoid disputes on appeal such as whether the affected lessees were aware of the earlier leases.

75. While there are infelicities in the language of the relevant clauses in some of the leases and no clear explanation of minor changes in drafting, I am not persuaded that the meaning of the language is open to question when full weight is given to the very limited factual matrix with which the courts have been presented in this case. We are invited to construe that which reads on a first consideration as a fixed service charge with an escalator to deal with future inflation, as a variable service charge which is subject to a cap to which the escalator applies. I find that very difficult. In my view there is nothing in the relevant context to support the construction of the clause as creating a cap, other than the view, which events have fully justified, that it was unwise of the lessees to agree to a fixed service charge with an escalator based on an assumption that the value of money would diminish by 10% per year.

76. This conclusion is not a matter of reaching a clear view on the natural meaning of the words and then seeing if there are circumstances which displace that meaning. I accept Lord Clarke of Stone-cum-<sup>\*1640</sup> *Ebony* JSC's formulation of the unitary process of construction, in *Rainy Sky SA v Kookmin Bank [2011] 1 WLR 2900*, para 21:

“the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other.”

77. This unitary exercise involves an iterative process by which each of the rival meanings is checked against the provisions of the contract and its commercial consequences are investigated: *In re Sigma Finance Corpn [2010] 1 All ER 571*, para 12, per Lord Mance JSC. But there must be a basis in the words used and the factual matrix for identifying a rival meaning. The role of the construct, the reasonable person, is to ascertain objectively, and with the benefit of the relevant background knowledge, the meaning of the words which the parties used. The construct is not there to re-write the parties' agreement because it was unwise to gamble on future economic circumstances in a long term contract or because subsequent events have shown that the natural meaning of the words has produced a bad bargain for one side. The question for the court is not whether a reasonable and properly informed tenant would enter into such an undertaking. That would involve the possibility of re-writing the parties' bargain in the name of commercial good sense. In my view, Mr Morshead's formulation (para 67 above), on which his case depends, asks the court to re-write the parties' leases on this illegitimate basis.

78. Nor is this a case in which the courts can identify and remedy a mistake by construction. Even if, contrary to my view, one concluded that there was a clear mistake in the parties' use of language, it is not clear what correction ought to be made. The court

must be satisfied as to both the mistake and the nature of the correction: *Pink Floyd Music Ltd v EMI Records Ltd* [2010] EWCA Civ 1429 at [21], per Lord Neuberger of Abbotsbury MR. This is not an unusual case, such as *KPMG* [2007] Bus LR 1336 in which a mistake was obvious on the face of the contract and the precise nature of the correction had no effect on the outcome.

79. My conclusion that the court does not have power to remedy these long term contracts so as to preserve the essential nature of the service charge in changed economic circumstances does not mean that the lessees' predicament is acceptable. If the parties cannot agree an amendment of the leases on a fair basis, the lessees will have to seek parliamentary intervention.

LORD CARNWATH JSC (dissenting)

Preliminary comments

80. The contractual provisions in this case pose unusual interpretative challenges, which may call for unusual solutions. The leases with which we are concerned are of 25 chalets within Oxwich Leisure Park, in south Wales. \*1641 It is an estate of 91 such chalets first developed in 1974. It is in an attractive holiday location close to Oxwich Beach on the Gower peninsular. The challenges arise from a combination of factors. The intention, stated in the preamble to each lease, was that they should be “upon terms similar in all respects ...”. Yet we are faced with five forms of service charge provision, agreed over a period of some 20 years, the variations in which at first sight defy rational analysis. As interpreted by the Court of Appeal, they would lead over the course of the leases to supposedly “proportionate” service charges becoming wholly disproportionate to the costs of the relevant services, to extreme and arbitrary differences between the treatment of different groups of leases within the estate, and to the prospect in the foreseeable future of potentially catastrophic financial consequences for the lessees directly concerned.

81. It does not help that, remarkably, the case has come to us with minimal evidence to explain the circumstances, or “factual matrix”, in which these variations were agreed at different times, or even simply to add some context or colour to the bare legal and statistical analysis. That applies even to the most recent, and most surprising, of the transactions, effected as recently as 2000, and to which Mrs Arnold the present respondent was herself a party. Nor have we been told anything about how the clauses have been operated in practice at any time: for example how the estate has been managed and what costs incurred by the lessor, what service charge payments have been demanded of the various categories of lessee, and what has happened to any surplus.

82. It is to be borne in mind also that in the early 1970s (when this clause was first devised) variable service charge provisions were a relatively “new and modern” addition to the law, prompted in part by rapidly increasing prices: see Mark Wonnacott, *The History of the Law of Landlord and Tenant in England and Wales* (2012), p 105 and *Hyams v Titan Properties Ltd* (1972) 24 P & CR 359. Since then, it is said in the same history (p 106), service charges have caused “more trouble between landlord and tenant than anything else”, but they have in turn been regulated by statute to such an extent as to make it “all but impossible for an amateur landlord to recover [a service charge] in the event of a dispute”. Whether or not that extreme view is justifiable, the need for special measures to safeguard the interests of lessees has been acknowledged by the legislature, which has thus for the most part relieved the courts of responsibility for developing a common law response to the problems.

83. As I shall explain, these leases are a rare example of a category of residential lease which has slipped through the statutory net. That is of no direct relevance to the legal issues before us, save that it may help to explain why no ready solutions are to be found in the authorities. Furthermore, in so far as policy has a part to play in the development of the common law, it may be legitimate to seek guidance in the approaches adopted by the legislature in analogous contexts: see *Johnson v Unisys Ltd* [2003] 1 AC 518, para 37, per Lord Hoffmann.

The leases

84. The first lease was granted on 26 October 1974. Of the others most were granted during the 1970s, and are not directly involved in the present dispute. The 25 with which we are concerned were granted (or varied) in the \*1642 period from 1980 to 2000. Whenever granted, all the leases (with one immaterial exception) were expressed as being for terms of 99 years starting from 25 December 1974, and for a yearly rent of £10, increasing by £5 for every subsequent period of 21 years. Each lease began with a preamble which described the “lessor” as the owner of the land edged pink on the attached lay-out plan (“the estate”) and stated: “(2) It is intended to erect chalets on the estate and to grant leases on terms similar in all respects to the present demise.” The lessees' covenants (clause 3) limited the use to that of a “holiday residence of a single family” from March to October: clause 3(12).

85. It seems from the examples before us that the earliest leases were granted in return for lessees' covenants to construct chalets in accordance with plans approved by the lessors (eg chalet 40—lease dated 9 August 1977, clause 3(3)). Later chalets, presumably after erection of chalets by the lessor or others, were granted without such a covenant but for a premium (eg £13,000 for chalet 76—lease dated 22 September 1980; £16,500 for chalet 96—lease dated 1 July 1985). Otherwise no issue arises on the lessee's covenants other than clause 3(2) relating to service charges, to which I will come.

86. The lessors in turn covenanted to provide various common services. They included constructing and maintaining the roads and footways (unless or until becoming maintainable at public expense), mowing lawns, maintaining a recreation ground, keeping fences and drains in good repair, issuing regulations, and arranging refuse collection and a regular patrol to discourage vandalism during the unoccupied period: clause 4. By clause 4(8) the lessors covenanted:

“(viii) That the leases granted by the lessors of all other plots on or comprised in the estate shall contain covenants on the part of the lessees thereof to observe the like obligations as are contained herein or obligations as similar thereto as the circumstances permit.”

87. Five leases have been selected for the purpose of showing the different versions of clause 3(2) relevant to the dispute. The principal difference is between the original leases, granted between 1974 and 1980, in which an initial service charge figure of £90 is increased by 10% every three years (“the triennial formula”), and later leases in which it is increased by 10% every year (“the annual formula”). The five versions were applied as follows (the selected lease in each case is indicated in brackets): (i) *Version 1* (Chalet 40, dated 9 August 1977). This was the “original version”, applied to 70 leases granted mainly during the 1970s. The first was granted on 26 October 1974. The rest followed at a steady rate over the next six years at an average of just over 12 per year, until 1980 when seven were granted in this form, the last on 9 July 1980. Four of these leases (granted between August 1977 and July 1980) were varied in 2000 to incorporate the annual formula: see version 5 below. (ii) *Version 2* (Chalet 76, dated 22 September 1980). This version applied to 14 leases granted between August 1980 and February 1983, the first being dated 11 August 1980. (iii) *Version 3* (Chalet 96 dated 1 July 1985). This applied to three leases granted between July 1985 and January 1988. (iv) *Version 4* (Chalet 29 dated 22 March 1991). This applied to four leases granted between December 1988 and March 1991. (v) *Version 5* (Deed of variation dated 20 August 2000). This applied to four leases previously subject to version 1. The lessors for the first three \*1643 selected leases in this list were Mr A and Mr B Lewis; for version 4, Mrs J Short; and for version 5, Mrs Arnold, the present respondent. In the result the triennial formula now applies to 66 leases on the estate, the annual formula to 25.

88. I now set out the five clauses, emphasising the parts which are material to the dispute:

(i) Version 1 (triennial (1974-1980))

“To pay to the lessors without any deductions in addition to the said rent *a proportionate part* of the expenses and outgoings incurred by the lessors in the repair maintenance renewal and the provision of services hereafter set out the yearly sum of £90 and VAT (if any) *for the first three years* of the term hereby granted increasing thereafter *by ten pounds per hundred for every subsequent three year period or part thereof*.”

(ii) Version 2 (annual (1980-1983))

“To pay to the lessors without any deductions in addition to the said rent *as a proportionate part* of the expenses and outgoings incurred by the lessors in the repair maintenance and renewal *of the facilities of the estate and the provisions* of services hereafter set out the yearly sum of £90 and VAT (if any) *for the first year of the term* hereby granted increasing thereafter *by ten pounds per hundred for every subsequent year or part thereof*.”

Apart from the change from the triennial to the annual 10% rate, other differences are the lengthening of the expression “renewal and the provision of services” to “renewal of the facilities of the estate and the provisions (sic) of services”, and the inclusion of “as” before “a proportionate part”.

(iii) Version 3 (annual (1985-1988))

“To pay to the lessor without any deductions in addition to the said rent *a proportionate part* of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and the provision of services hereafter set out the yearly sum of £90 and VAT tax (if any) *for the first year of the term hereby granted increasing thereafter by ten pounds per hundred for every subsequent year thereof.*”

Changes from version 2 are: reversion to the expression “renewal and the provision of services”, the omission of “as” before “a proportionate part”, and the omission at the end of “or part (thereof)”.

(iv) Version 4 (annual subject to triennial proviso (1988-1991))

“To pay to the lessor without any deductions in addition to the said rent *a proportionate part* of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and the provision of services hereafter set out *for the yearly sum of £90 and VAT (if any) for the first year of the term hereby granted increasing thereafter by ten pounds per hundred for every subsequent year thereof.*”

This version was subject to a proviso:

“Provided always and it is hereby expressly agreed that *whilst the term hereby created is vested in the said William Richard Short and the said \*1644 Janice Short or the survivor of them* then maintenance shall be calculated as follows:

“To pay to the lessor without any deduction in addition to the said rent *a proportionate part* of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and the provision of services hereafter set out the yearly sum of £90 and value added tax (if any) *for the first three years of the term hereby granted increasing thereafter by ten pounds per hundred for every subsequent three year period or part thereof.*”

The main clause is identical to version 3 save for the insertion of “for” before “the yearly sum”. The proviso had the effect of substituting temporarily the triennial formula as in version 1, but that has ceased to be operative following the disposal of the lease by the Shorts.

(v) Version 5 (varied from triennial to annual (2000))

In four of the original 1970s version 1 leases (triennial), a deed of variation dated 20 August 2000, at the same time as revising the extent of land demised, substituted with effect from the beginning of the lease a new clause 3(2) in the form of version 2 (annual formula).

89. Although we have been invited to consider all five versions, the most important for the purposes of interpretation are the first (October 1974) and the second (August 1980), and the circumstances surrounding them. The first is not directly in issue but set the drafting pattern, and provided the background to what followed. The second saw the first incorporation of the controversial annual formula. The later versions are of more limited relevance, save in so far as they throw some light on how the clauses were interpreted in practice, or help to illustrate the relative merits of the rival interpretations.

The statutory provisions

90. By [sections 18 and 19 of the Landlord and Tenant Act 1985](#), a “service charge” (as defined) payable by a tenant of a “dwelling”, is limited to an amount which reflects the costs “reasonably incurred” in the provision of services. The controls originally applied only to “flats” but were extended by amendment in 1987 to include “dwellings” as defined: see [sections 41 and 60 of, and paragraph 1 of Schedule 2 to, the Landlord and Tenant Act 1987](#). It is not in dispute, in these proceedings at least, that the chalets are “dwellings” for this purpose. The issue is whether the charges are “service charges” as defined by [section 18\(1\)](#):

“‘service charge’ means an amount payable by the tenant of a dwelling as part of or in addition to the rent— (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs.”

91. The lessees submit that properly interpreted the clause imposes an obligation to pay a “proportionate part” of the costs incurred, subject only to an upper limit or cap determined by reference to the formula in the second part of the clause. On this footing it is an amount which “varies or may vary according to the relevant costs”: [section 18\(1\)\(b\)](#) . The respondent submits that charge is outside the statutory definition because the annual amount is fixed by that formula, without any reference to the costs actually incurred by *\*1645* the lessor. If the lessees are right, the amount of the charge is limited to the amounts reasonably incurred. If the lessor is right, there is no statutory limit or other control.

92. Other safeguards for lessees were introduced by the 1987 Act, but none covers the present situation. Thus it introduced a new right for any party to a long lease (not only the lessee) of a “flat” to apply to the court (now the First-tier Tribunal) for an order varying a lease on the grounds that it “fails to make satisfactory provision” in respect of various matters, one being the computation of service charges, but this did not apply to other forms of dwelling such as in this case. There is a more general provision, for application by “a majority of parties” for variation of a number of leases under a single lessor ( [section 37](#) ), but again it applies only to flats. On the other hand, [section 40](#) , which allows similar applications for variation of insurance provisions, applies to “dwellings” in general. It is difficult to detect any legislative purposes for these distinctions. The present case illustrates the potentially unfortunate consequences for parties to those rare forms of residential lease which for no apparent reason fall outside any of the protections given by the legislative scheme.

93. For completeness, I note also that no issue arises in the present proceedings as to the possible application of other more general protections relating to unfair contractual terms. [Sections 2 to 4 of the Unfair Contract Terms Act 1977](#) do not in any event apply to contracts relating to the creation or transfer of interests in land: [paragraph 1\(b\) of Schedule 1](#) . No such limitation appears in the [Unfair Terms in Consumer Contracts Regulations 1999](#) (SI 1999/2083), which give effect in this country to [Council Directive 93/13/EEC of 5 April 1993](#) on unfair terms in consumer contracts ( OJ 1993 L95 , p 29). The Directive was first transposed in the [Unfair Terms in Consumer Contracts Regulations 1994](#) (SI 1994/3159) which were later replaced by the 1999 Regulations. The 1994 Regulations came into effect on 1 July 1995, and therefore would not it seems apply to contracts concluded before that date: [regulation 1](#) ; *Chitty on Contracts* , 31st ed (2014), para 37-087. Accordingly, it could be relevant if at all only to version 5 (2000).

#### The proceedings

94. We know very little about the background to the present dispute. It first reached the courts in September 2011 in the form of an application by the appellant lessees to the county court for pre-action disclosure. The application was said to be in anticipation of a representative application to resolve an ambiguity in the service charge clause, which “appears to result in a variable service charge but on the other hand create a fixed service charge”. It also spoke of the lessees’ concerns that the sums collected by way of service charge were exceeding the amount of “legitimate” expenditure by “such a substantial amount as to produce a credit balance that should be held in a service charge trust account”; and also that the lessor had disposed of the former clubhouse for the park to provide accommodation for her daughter. They sought disclosure of information about the sums collected as service charge and the amounts expended since 2005.

95. An order for disclosure was made on 20 September 2011, but was quickly met by an application by the lessor for declaratory relief relating to the interpretation of the service charge clause, following which the *\*1646* disclosure order was stayed pending the determination of these proceedings. The application sought in particular a declaration that on the true interpretation of the service charge clause, the sum payable was not a “service charge” within the meaning of [section 18 of the Landlord and Tenant Act 1985](#) . In the county court, Judge Jarman QC determined the issue in favour of the lessees. But his decision was reversed on appeal to Morgan J [2013] L & TR 174, whose judgment was upheld by the Court of Appeal (Richards, Davis, Lloyd Jones LJ) [2013] L & TR 371. The lessees appeal to this court with permission granted by the court itself.

96. The issue between the parties has throughout been very narrow: that is, whether the figure of £90 as inflated is to be read as a fixed amount, or as an upper limit or cap. That in turn depends on whether it is permissible and appropriate to read in such words as “limited to” (Judge Jarman QC’s words) or “up to” before the reference to “£90”. As Mr Morshead submits in his printed case: “There is no need to undertake an elaborate drafting exercise. The necessary effect can be achieved by implying the words ‘up to’ before the words ‘£90’; and, in versions 2 and 5, deleting the word ‘as’.”

97. Giving the single judgment in the Court of Appeal, Davis LJ rejected that approach, holding in substantial agreement with Morgan J that the addition of these words “would involve subverting the proper process of construction of the language actually used and would in truth involve the court rewriting the bargain the parties have made”: para 45. He rejected the argument that this interpretation would consign the first part of the clause to “mere surplusage”. Its function was to identify “the character of the payment to be made”. The words “a proportionate part” were apt for a situation where “other lessees also are contributing to the overall service charge: which is in consequence to be apportioned between them”. Although he accepted that the word “incurred” was “the language of actual outlay”, it was “entirely explicable when one appreciates that this part of the sub-clause identifies the character of the payment being made”: paras 48-49. He also pointed to other difficulties in Mr Morshead's interpretation, in particular the problems of calculating a “proportionate” amount, and the lack of any protection for the lessor if the inflation regularly exceeded 10%: para 53.

**Inflation calculations**

98. The judge was shown without objection two sets of tables, one showing the annual Retail Price Index (“RPI”) from 1948 to 2012, taken from figures published by the Office of National Statistics (“the inflation table”); the other, the effect of the increases of service charge compounded over the period of the leases in accordance with respectively the annual and the triennial formula (“the compounding table”). As I understand it, the information in these tables is accepted as forming part of the factual matrix against which it is appropriate to judge the parties' contractual intentions at the relevant dates. There are some minor but apparently immaterial differences between the hard-copy and electronic versions of the compounding table; I have used the latter.

99. It is helpful to focus on the rates which would have been in immediate contemplation of the parties at dates when each of the five versions was first agreed: that is, 26 October 1974 (the date of the first lease on the estate incorporating version 1, rather than the 1977 lease which was \*1647 used as an example at the hearing); 11 August 1980 (the first version 2 lease); 1 July 1985 (version 3); 1 December 1988 (the first version 4 lease); 20 August 2000 (version 5). The table below includes also the rate in contemplation at the date of the county court hearing (June 2012), and in the last year of the lease (2072). The figures in the compounding table are given for 25 December 1974, the commencement of the lease period, and for the same date in each subsequent year. For illustrative purposes I have taken the rate for the year commencing after each of the identified dates (ie 25 December next following each such date), which would have been the rate applicable to the first complete year under each new lease.

100. The resulting figures (rounded) for annual service charges at each such years:

	Triennial	Annual	[Actual inflation]
1974	£90	£90	£90
1980	£109	£159	£219
1985	£132	£257	£310
1988	£145	£342	£350
2000	£212	£1,073	£557
2012	£311	£3,366	£794
2072	£1,900	£1,025,004	N/A

[The last column shows for purposes of comparison the equivalent figures implied by actual inflation, arrived at by increasing the initial £90 by the recorded price increases over the period from 1974 to each of the selected years. Though not in evidence before us, those figures have been taken from the “inflation calculator” on the Bank of England's website, and are used for illustration only.]

101. The rate of price increase during the 1970s can also be contrasted with the pattern in the previous and subsequent decades. Average annual inflation in the 1950s and 1960s was of the order of 3·5-4%. (It had averaged 2·5% in the 50 years from 1900 to 1950.) It then rose sharply to 6·4% in 1970 and 9·3% in 1973, followed by a much steeper rise to 16% in 1974 and an annual peak of 24·2% in 1975. It dropped to 8·3% in 1978 before rising again to 16% in 1980. The annual rate fell to 12% in 1981,

and then to around 5-6% in the period 1983-85 (immediately before version 3), 4-5% in 1986-88 (before version 4), and 3% in 2000 (version 5). It has remained at, or below, that low level ever since.

102. The compounding table enables comparisons to be drawn between the contributions made respectively by the 66 “triennial” and the 25 “annual” leases over different periods, if the lessor is correct. For example, on the 1988 figures, the triennial leases would have contributed a total of £8,712 ( $66 \times \text{£}132$ ), slightly more than the total contribution of the annual leases ( $\text{£}8,550 = 25 \times \text{£}342$ ). On the basis of the figures in the third column, the combined total ( $\text{£}17,262$ ) was still much lower than the figure required to keep pace with actual inflation since 1974 ( $91 \times \text{£}350 = \text{£}31,850$ ). The figures at or about the time of the hearing show a very different picture. On the 2012 figures the triennial leases would have been contributing a total of £18,612 ( $66 \times \text{£}282$ ) compared to £84,150 ( $25 \times \text{£}3,366$ ) contributed by the annual leases. The total amount ( $\text{£}102,762$ ) was now substantially more \*1648 than that required to keep pace with inflation ( $91 \times \text{£}794 = \text{£}72,254$ ). (These figures differ slightly from those in the submitted tables due to rounding.)

103. The table also shows the amounts that, on the lessor's interpretation, would be payable under each formula over the whole period from 24 December 2013 to the end of the term (2072). The total amount payable during that period under each “annual” lease would be £11,238,016, compared to £53,386 payable for the same period under each “triennial” lease.

#### Inflation and the factual matrix

104. There is no difficulty in principle in taking account of the calculations in the compounding table, which require no outside information, and could have been carried out by the parties (or a reasonable observer) at any of the relevant dates. On the Court of Appeal's interpretation, the figures show increases which appear extraordinary in themselves, in the light of modern conditions of low inflation. No less importantly, they result in dramatically increasing, and ultimately grotesque, differences between the amounts payable by the two different groups of lessees on the same estate. This consequence could and should have been anticipated at the time, certainly by the lessors who were parties to both groups of leases and responsible for maintaining reasonable equivalence between them.

105. The use to be made of the historic inflation figures raises rather different questions. By agreeing to their use, the parties impliedly ask us to assume that the figures up to and including those for each of the relevant years (or the then most recently published figures) would have been known to the parties at the time, and therefore must be taken as part of the relevant factual matrix. This is no doubt a reasonable working assumption to indicate the general trend as known to the public.

106. It is however highly artificial to be asked to take account of the bare statistics, without reference to the political and economic circumstances which surrounded them, so far as they were common knowledge at the time. We are not required to assume total ignorance of current events, in the parties or their reasonable observers. It would not have been difficult to obtain information about contemporary perceptions of the direction of inflation, whether from official reports of the time, or from reports in the south Wales press. Even without such evidence, we are entitled in my view to assume knowledge of some of the key events: for example, of the dramatic rise in oil prices at the end of 1973 and again in 1979, each followed by a sharp increase in inflation in the following year; and also of the election in 1979 of a new Conservative government committed to controlling inflation. We are not required to assume that predictions about future inflation were made in a vacuum.

107. We are also entitled, as part of the factual matrix, to take account of the nature and circumstances of the estate, as they would have been perceived by potential purchasers. It was planned as a holiday estate close to a popular beach. Potential buyers were likely to come from people already familiar with the area from previous visits with their families. It is fair to assume also that they would have regarded the acquisition of a holiday chalet, not simply as source of pleasure, but also as a long term investment \*1649 for them and their families. They would have been keen to avoid undue financial burden or risk. It would be strange if they had not taken the opportunity to talk to existing residents about their own experiences of the estate and its management, and of the associated costs. This will become relevant when considering what knowledge of previous terms should be attributed to the first version 2 lessees.

#### Approach to interpretation

108. In an unusual case such as this, little direct help is to be gained from authorities on other contracts in other contexts. As Tolstoy said of unhappy families, every ill-drafted contract is ill-drafted “in its own way”. However, the authorities provide guidance as to the interpretative tools available for the task. The general principles are now authoritatively drawn together in an

important passage in the judgment of Lord Clarke of Stone-cum-Ebony JSC in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, paras 14-30. As that passage shows, there is often a tension between, on the one hand, the principle that the parties' common intentions should be derived from the words they used, and on the other the need if possible to avoid a nonsensical result.

109. The former is evident, as Lord Clarke JSC emphasised, in the rule that “where the parties have used unambiguous language, the court must apply it”: para 23. However, in view of the importance attached by others to the so-called “natural meaning” of clause 3(2), it is important to note that Lord Clarke JSC (paras 20-23) specifically rejected Patten LJ's proposition that “unless the most natural meaning of the words produces a result so extreme as to suggest that it was unintended, the court must give effect to that meaning.” In Lord Clarke JSC's view it was only if the words used by the parties were “unambiguous” that the court had no choice in the matter.

110. He illustrated the other side of the coin by quotations from Lord Reid in *Wickman Machine Tools Sales Ltd v L Schuler AG* [1974] AC 235, 251:

“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result, the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.”

and Lord Diplock in *Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios)* [1985] AC 191, 201:

“if detailed and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must yield to business common sense.”

As a rider to the last quotation, Lord Clarke JSC cited the cautionary words of Hoffmann LJ ( *Co-operative Wholesale Society Ltd v National Westminster Bank plc* [1995] 1 EGLR 97, 99):

“This robust declaration does not, however, mean that one can rewrite the language which the parties have used in order to make the contract conform to business common sense. But language is a very flexible instrument and, if it is capable of more than one construction, one \*1650 chooses that which seems most likely to give effect to the commercial purpose of the agreement.”

111. I agree with Mr Morshead (questioning in this respect the approach of Davis LJ (para 35)) that it may be unnecessary and unhelpful to draw sharp distinctions between problems of ambiguity and of mistake, or between the different techniques available to resolve them. In *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, para 23, Lord Hoffmann cited with approval a passage of my own (in *KPMG LLP v Network Rail Infrastructure Ltd* [2007] Bus LR 1336, para 50) where I discussed the role of what is sometimes called “interpretation by construction”. I criticised the tendency to deal separately with “correction of mistakes” and “construing the paragraph ‘as it stands’”, as though they were distinct exercises, rather than as “aspects of the single task of interpreting the agreement in its context, in order to get as close as possible to the meaning which the parties intended”. Lord Hoffmann added, at para 25:

“What is clear from these cases is that there is not, so to speak, a limit to the amount of red ink or verbal rearrangement or correction which the court is allowed. All that is required is that it should be clear that something has gone wrong with the language and that it should be clear what a reasonable person would have understood the parties to have meant.”

112. Another permissible route to the same end is by the implication of terms “necessary to give business efficacy to the contract”. I refer again to Lord Hoffmann's words, this time in *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988, para 22, explaining the “two important points” underlined by that formulation:

“The first, conveyed by the use of the word ‘business’, is that in considering what the instrument would have meant to a reasonable person who had knowledge of the relevant background, one assumes the notional reader will take into account the practical consequences of deciding that it means one thing or the other. In the case of an instrument such as a commercial contract, he will consider whether a different construction would frustrate the apparent business purpose of

the parties ... The second, conveyed by the use of the word ‘necessary’, is that it is not enough for a court to consider that the implied term expresses what it would have been reasonable for the parties to agree to. It must be satisfied that it is what the contract actually means.”

113. *Aberdeen City Council v Stewart Milne Group Ltd 2012 SC (UKSC) 240* is a useful recent illustration in this court of how these various principles may be deployed, to enable the court to achieve a commercially sensible result in the face of apparently intractable language. A contract for the sale of development land gave the council the right to an uplift (described as “the profit share”) in certain defined circumstances, one being the sale of the property by the purchaser. The issue was the calculation of the profit share, which the contract defined as a specified percentage of the “estimated profit” (defined by reference to “open market value”) or “the gross sale proceeds”. The issue was how the definition should be applied in the case of a sale by the purchaser to an associated party at an undervalue. The court *\*1651* held in agreement with the lower courts that, in that event, notwithstanding the apparently unqualified reference to gross sale proceeds, the calculation should be based on open market value.

114. In a concurring judgment, with which all the members of the court agreed, Lord Clarke JSC, at para 28, referred to his own judgment in *Rainy Sky* as indicating the “ultimate aim”, that is:

“to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant; the relevant reasonable person being one who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.”

As he pointed out, “on the face of it” the reference in the contract to the gross sale proceeds was a reference to the “actual sale proceeds” received by the appellants. It was not easy to conclude “as a matter of language” that the parties meant, not the actual sale proceeds, but the amount the appellants would have received on an arm's length sale at market value of the property; nor was it easy to conclude that the parties “must have intended” the language to have that meaning. He referred, at para 31, to the comment of Baroness Hale of Richmond JSC in the course of the argument that:

“unlike *Rainy Sky* , this is not a case in where there are two alternative available constructions of the language used. It is rather a case in which, notwithstanding the language used, the parties must have intended that, in the event of an on sale, the appellants would pay the respondents the appropriate share of the proceeds of sale on the assumption that the on sale was at a market price.”

He thought the problem should be solved by implying a term to the effect that, in the event of a sale which was not at arm's length in the open market, an open market valuation should be used. As he explained, at para 33:

“If the officious bystander had been asked whether such a term should be implied, he or she would have said ‘of course’. Put another way, such a term is necessary to make the contract work or to give it business efficacy.”

He preferred the use of an implied term to “a process of interpretation”, although “the result is of course the same”: paras 30-33.

115. As Mr Morshead observes, the result in the *Aberdeen* case could probably have been explained equally as a case of correction by interpretation. In any event, this example provides support for his proposition that, where an ordinary reading of the contractual words produces commercial nonsense, the court will do its utmost to find a way to substitute a more likely alternative, using whichever interpretative technique is most appropriate to the particular task.

#### Residential leases

116. Long residential leases are an exceptional species of contract, and as such may pose their own interpretative problems. In no other context is a private individual expected to enter into a financial commitment extending for the rest of his or her life, and probably beyond. The original lessee may *\*1652* have been unaware that (at least under contracts before the *Landlord and Tenant (Covenants) Act 1995* ) he was taking on a personal legal commitment which could continue even after he had disposed of any interest in the property itself: *Norwich Union Life Insurance Society v Low Profile Fashions Ltd [1992] 1 EGLR 86* . So

far as it relates only to ground rent, the commitment is unlikely to be burdensome, and it may be readily accepted as a necessary incident of a valuable property interest. Service charges are a different matter, since the amounts may be substantial, and, apart from statute, the lessee is likely to have no direct control over the lessor's expenditure.

117. Where the lease is for one of a number of units in a managed building or estate, provision has to be made for expenditure by the lessor on common services and maintenance, and for the cost to be shared between the lessees. Substantial equivalence of rights and obligations under such leases is normally important for all parties, both for the good management of the building or estate, and for harmony among those living within it. Equivalence can only be achieved by the lessor, who alone is party to them all. After the first lease has been negotiated and granted, later incoming lessees will usually have little choice in practice but to accept the covenants in the form dictated by the lessor. Their reasonable expectation will be that all have been granted in like terms, both in terms of covenants and in terms of sharing financial responsibility for services, with a view to ensuring fair distribution of the overall cost. Often that expectation and the lessor's responsibility for achieving it, will be expressed in the terms of the lease (as here, in the preamble and clause 4(8)).

118. Mr Daiches submits, correctly in my view, that the effect of such words is to create “a letting scheme, or local law, of negative obligations mutually enforceable in equity between all occupiers of the properties on the estate”. He cites authorities such as *In re Dolphin's Conveyance* [1970] Ch 654, which related to an estate of freehold properties. Examples of the same principle as applied to leasehold developments are given in the textbooks: see *Megarry & Wade, The Law of Real Property*, 8th ed (2012), para 32-079. As I understand his argument, he asks us to infer that a clause such as 4(8) has to “look to the future not the past”, and that accordingly it is not to be construed as containing any implied representation as to previous leases. I cannot agree. In my view, the existence of such a scheme reinforces the view that each lessee has a legitimate interest in the form and content of all leases within the development, whenever granted. Even if, as in clause 4(8), the lessor's responsibility is expressed as an obligation in respect of future leases, it should in its context (including the preamble) be read also as containing an implied representation that leases previously granted are also in substantially the same form.

119. Provision for services is normally dealt with by reciprocal covenants, positive in form: by the lessor to arrange and pay for the carrying out of the necessary services, and by the lessees to pay their respective shares of the costs so incurred. There is no common format for such service charge covenants, and they can and do vary greatly between different buildings or estates. Unlike negative covenants, it seems that they are not mutually enforceable as such, but the expectation is that they will have been drafted to ensure that the lessees' financial obligations are shared fairly between them all. Again this is in the interests of good management \*1653 and harmony within the development for both lessor and lessees. Differences may be necessary to cater for differences in size of the individual units or other features, but otherwise they will normally be in a standard form in all the leases.

120. In the courts below there was some discussion of the “restrictive” approach said to be appropriate to service charge provisions: *McHale v Earl Cadogan* [2010] HLR 412, para 17, per Rix LJ. I agree, if by this it is meant that the court should lean towards an interpretation which limits such clauses to their intended purpose of securing fair distribution between the lessees of the reasonable cost of shared services.

121. Support for this approach is to be found also in the disparity in practice between the potential remedies available to each party for breach by the other. A lessor who fails to maintain services at the level thought appropriate by the lessees is in principle open to enforcement action in court. But the practical effect of such action for the lessees is uncertain in the absence of a precise definition of what he is required to provide. If there has been a complete breakdown of services, they may be able to obtain injunctive relief or appointment of their own manager. In less extreme circumstances the form of remedy or the extent of any damages may be difficult to define.

122. By contrast, the lessor's remedies for breach of the service charge clause are all too clear. In the Court of Appeal, Davis LJ was apparently content to assume that the charges might “in extremis, force some of these lessees into surrender or forfeiture”: para 57. However, if by this he intended to imply that either escape-route would be available to the lessees other than by agreement with the lessors, he would have been wrong. Apart from any special provision, the lessee's obligation, once the service charge has been determined, will have crystallised into a contractual obligation to pay a fixed amount. That is in principle enforceable by a simple action through the courts, and ultimately by forfeiture and bankruptcy. The legislature intervened long ago to provide some statutory relief against forfeiture: [section 146 of the Law of Property Act 1925](#). But that provides no protection against enforcement of the personal liability to pay the contractual amount.

123. As already explained, the scope for abuse has been recognised by the legislature in the special provision made for controlling “variable” charges as defined in the 1987 Act. Fixed service charges do not normally give rise to the same risk of abuse. The lessee is given the certainty of a fixed financial commitment, and the lessor has the advantage of simplified administration. Provision is needed to deal with price inflation. But if this is fixed by reference to an independent formula, such as an official inflation index, there is no significant risk to either party. The approach adopted in this case seems highly unusual, if not unique. Even where the legislature has not intervened, the courts have a responsibility in my view to ensure that such clauses are interpreted as far as possible not only to give effect to their intended purpose, but also to guard against unfair and unintended burdens being placed on the lessees.

#### Interpretation of clause 3(2)

124. Against that general background, I come to consider the construction of clause 3(2) in its various versions. At first sight, the main *\*1654* principles seem reasonably clear: (i) The intention was that all the leases should be on terms as “similar ... as the circumstances permit”, and that it was the lessors' responsibility to achieve such equivalence (necessarily, since only they would be party to all of them): preamble (2); clause 4(8). (ii) The commercial purpose of clause 3(2) was to enable the lessor to recover from the lessees the costs incurred by him in maintaining the estate on their behalf, the payment by each lessee being intended to represent a “proportionate” part of the expenses so incurred. (iii) Although there was a general description of the services which the lessor was contractually obliged to provide, the extent of those services was not precisely defined by the lessors' covenants (clause 4), which left to them a large measure of discretion as to the amounts to be spent in practice. In themselves, these features are typical and uncontroversial. It is at the next stage, in giving effect to those principles, that the clause becomes problematic.

125. It is clear to my mind that something has gone wrong with the drafting, at least in the original wording, as it appeared in the 1974 version, and (apart from the change of inflation formula) was repeated in 1985 and 1988. The clause imposes an obligation to pay, but contains two different descriptions of the payable amount: by reference, first, to a “proportionate part of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and the provision of services ...”, and secondly, to a “yearly sum” determined by reference to a fixed formula. There are two linguistic problems. First, there is no grammatical connection to show the relationship between the two descriptions. Secondly, they are mutually inconsistent. A figure can be determined as a proportionate part of some other variable amount, or it can be a yearly sum, fixed by a predetermined formula; but it cannot be both. There is an inherent ambiguity which needs to be resolved.

126. In the Court of Appeal Davis LJ thought that the first part of the clause was designed simply to identify “the character of the payment to be made”: para 48. I find that unconvincing. If the intention was to indicate no more than the purpose of the payment, one would have expected some such general words as “by way of contribution to the services”, not a detailed and specific formula. Conversely, if the character of the contributions was to be that of payments determined by reference to a fixed formula and nothing else, the description in the first part was neither accurate nor useful. Proportionality had no part to play in such a fixed calculation, nor any relation to reality after 1980 if the court's interpretation is correct. Nor is it easy to explain the purpose of the specific reference to “expenses and outgoings incurred” by the lessor on a defined range of services, unless it was intended to play some material part in the calculation.

127. At this point it is convenient to note the minor differences of wording in some later versions. A change such as the omission of the words “or part ...” in version 3 can readily be dismissed as a copying error. Others give more room for argument. It would be tempting to read more significance into the word “as”, which appears for the first time in the important 1980 version 2. Grammatically, it may be said (with Davis LJ, at para 54), the insertion of the word “as” implies that the operative text is in the second part of the clause, the first part being merely descriptive. There are two difficulties with that explanation. First, for the reasons I have given, neither the reference to proportionality nor the detail of the *\*1655* formula in the first part is compatible with that limited sense. Secondly, there are linguistic indications the other way. The word “as” did not survive into any of the later versions, except the 2000 deed of variation (version 5), which seems to have been copied directly from version 2. Version 2 itself also saw the introduction of a new reference to expenditure on “the renewal of the facilities of the estate”, which is hard to explain if the detail of the first part had no practical significance. Version 4 added to the mystery by adopting a different connecting word “for”, this time in front of the second description (“for the yearly sum of £90”). That is even more difficult to interpret, but if anything it seems to imply that it was the first part of the clause which was the primary description. In the end I conclude that no persuasive guidance, one way or the other, is to be derived from these minor changes.

128. There are only two realistic possibilities for the second part of the clause, which are those respectively adopted by Judge Jarman, on the one hand, and Morgan J and the Court of Appeal, on the other. Either it is a fixed amount which in effect supplants

any test of proportionality under the first part; or it is no more than an upper limit to the assessment of a proportionate amount. I reject the theoretical alternative that it was designed as a lower limit for the benefit of the lessors. That interpretation would have made no sense at all in relation to version 1, agreed at a time when the possibility of inflation falling *below* 3% would have occurred to no-one as a risk requiring special provision, particularly for the lessor who unlike the lessees was in control of the level of his own expenditure. There is thus no doubt that this part of the clause was originally designed for the benefit of the lessees, and I see no reason to think that its purpose had radically changed by the time of version 2.

129. Davis LJ was concerned as to the practicalities of determining the “proportionate” amount of the qualifying expenditure. Morgan J ([2013] L & TR 174, para 51) described it as “workable but not ideal”. I do not see any great difficulty. The relevant items are precisely defined. The lessor has simply to demonstrate (to the lessees and if necessary to the court) that the expenditure has been properly incurred on those items, and that it has been divided “proportionately” between the lessees.

130. I note that in *Hyams v Titan Properties* 24 P & CR 359 (see para 82 above), which was decided two years before the first of these leases, the court had to fix the terms of a new business lease under the [Landlord and Tenant Act 1954](#) taking account of rapid price inflation. Buckley LJ recorded, at p 362, that “the modern practice generally accepted ... was to make service charges payable on a proportional basis”. In that case (where there were nine units) the court approved a clause “requiring the tenant to pay one-ninth of the cost of providing the services under the covenant in addition to the rent payable under the lease”. There was no suggestion that this formulation was defective in the absence of specific machinery to settle the figure. The first half of clause 3(2) follows the same model, allowing for the fact that the precise number of units was probably not known at the outset, so that it was not possible to put in a specific fraction. The use of the same figure of £90 in all the leases (whatever its precise purpose) would have been a strong indication that equal shares were intended.

*\*1656*

131. I turn therefore to consider the two alternatives as applied to each of the five versions in its own context. In the words of the authorities, we must inquire “what a reasonable person would have understood the parties to have meant”, that person being one who had “all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”, and who would have also taken into account “the practical consequences of deciding that it means one thing or the other”. Where necessary the reasonable observer can be invited notionally to take on the more active role of “official bystander”, in order to interrogate the parties as to their common intentions.

The five versions in context

*Version 1 (October 1974-July 1980)*

132. It is impossible to do more than guess at the common intentions of the parties to the first lease in relation to this part of clause 3(2). It is hard at first sight to see any rational basis for selecting a rate of 10% every three years, at a time when annual inflation was running at around twice that rate. At little over 3% per year, it was a little low even by reference to the inflation of the two previous decades, although it was in line with the historic long term average.

133. In such inflationary conditions, there is no difficulty in understanding why it was acceptable to the lessees. It is the lessor's thinking which needs explaining. We know nothing of the first lessors (the Lewises). They may perhaps have been builders, themselves involved in the development of the estate, and so more able to absorb the initial costs of maintenance in their other expenditure. If so, to make the estate attractive to purchasers, they may have gambled on being able to bear the price increases during the early years, in the expectation of inflation falling to more reasonable levels in the near future. (Comparable optimism seems to have been reflected in their view of ground rent, which was to be increased by only 50% every 21 years.)

134. In any event, their apparent generosity would be more explicable if, as may have been the case, the figure of £90 was based not simply on an estimate of current costs, but gave a reasonable margin for anticipated inflation in the short term. That possibility is borne out to some extent by the fact that the triennial formula survived, apparently without question, for six years of high inflation. If so, it is certainly possible that, even during that period, it was treated as a cap, the contributions being based on a share of actual expenditure from year to year. (Unlike Morgan J [2013] L & TR 174, para 32, I see no basis, in the absence of evidence, for any positive inference that service charges were paid, then or later, “in accordance with the lessor's interpretation”.)

135. Since version 1 is not in issue, it is unnecessary to decide between the alternative interpretations at this stage. Version 1 does however provide the necessary background to the contentious versions which came later. It makes clear that the inclusion

of a specific figure for inflation was designed originally for the benefit of the lessees not the lessor. It may also enable one to discount any intention on the part of the Lewises at least to take unfair advantage of their lessees.

*\*1657*

*Version 2 (August 1980-February 1983)*

136. As I have said, the fact that it took the Lewises six years to react to the apparent disparity between the triennial formula and actual inflation suggests that, one way or another, they were able to maintain expenditure within the initial figure for some time. The change of heart may well have been triggered by the renewed jump in inflation in 1979, which reached its peak in summer 1980, although it is notable that the last version 1 lease was granted as late as July 1980. If the Court of Appeal is right, there was then in August 1980 a dramatic change in their thinking, from the exaggerated optimism which had prevailed over the last six years, to such abject pessimism about the future of the economy that they thought it reasonable to assume continuing 10% inflation for the remaining 93 years of the leases, and to expect their purchasers to share that assumption.

137. If that is the correct interpretation, they would have been contemplating an impossibility, even for economists. In *Pennant Hills Restaurants Pty Ltd v Barrell Insurances Pty Ltd* (1981) 145 CLR 625, 639 Gibbs J spoke of the reasons for making no allowance for inflation in awards for future loss:

“It is unreasonable to suppose that any economist will be able to predict with accuracy the nature and extent of changes in the purchasing power of money during a period extending for several decades ahead. Whether inflation increases or is brought under control depends upon political and economic events and decisions at home and abroad as to whose occurrence it is not possible to do more than conjecture. Predictions as to the economic future in 30 years time may perhaps be made by a soothsayer but expert evidence cannot rationally be given on such a subject.” (cited with approval by Lord Hope of Craighead DPSC in *Simon v Helmot* (2012) 126 BMLR 73, para 45)

If that is unreasonable for an economist, how much less likely is it as an explanation of the thinking of the lessors or lessees of these modest holiday chalets in August 1980?

138. The improbability becomes even more striking when one compares the figures for the new and old groups of lessees. It is true that, even as a cap, the annual formula would result in the new lessees paying more initially than the existing lessees (£159 in 1980, compared to £109 under version 1). But over the period of the lease the differences become grotesque. On the Court of Appeal's interpretation the parties were accepting, as a mathematical certainty, that by the end of the lease period each lessee's service charges would have totalled over £11m, more than 200 times the amounts payable by the existing lessees. Put the other way, if the assumed prediction were correct, the lessees of more than two-thirds of the chalets on the estate would by then have contributed 200 times less than the figure necessary for the lessors' expenditure to keep pace with inflation. Even from the lessors' point of view, that scenario implied commercial disaster.

139. Whatever the lessors' state of mind, it beggars belief that the new lessees would have been content to proceed on that basis. It is particularly improbable for a person of ordinary means investing perhaps limited savings in a holiday home. It is simply inconceivable that such a potential purchaser would have been willing to accept a prediction of continuing inflation at that level for over 90 years, and to take that as a basis for undertaking a *\*1658* contractual obligation lasting for the rest of his life and beyond without any escape route.

140. There has been some discussion before us as to whether the lessees would have known of the comparable clauses in the previous leases. Mr Daiches asks us (and through us the reasonable observer) to proceed on the basis that the new lessees in 1980 would have been unaware of the triennial formula used in the previous leases, and says that is the basis on which the case has been approached hitherto. I am unwilling to make that assumption, which I regard as wholly unrealistic. It is not on any view an assumption that can be made in respect of versions 4 and 5, where the change was apparent on the face of the documents: see below.

141. Even without direct information in the documents, a potential purchaser in 1980 could be expected to have wanted to satisfy himself about the existing arrangements within the estate, and would have had a legitimate interest in doing so. Absent bad faith, it is hard to see any reason why the lessor would have wished or felt able to hide information about the previous leases. In any event, it could readily have been discovered by talking to other lessees within the estate. In Lord Clarke of Stone-cum-Ebony JSC's words in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900, para 21 it would have been “background knowledge ... reasonably ... available to the parties” in the circumstances of the contract. I would accordingly approach the interpretation

of version 2 on the assumption that both parties (like their reasonable observer) would have been aware of the proposed change from the triennial formula, and that they are to be taken as having accepted the change for what they regarded as good reasons.

142. On the basis that it was intended as a cap, the lessees' thinking is understandable. They would have needed persuasion to take the leases on less generous terms than their predecessors. On the other hand, they would have understood that any assumptions made in 1974 about the prospects of an early fall in inflation had been falsified by events. They would have understood also that the lessor would find it difficult to support reasonable expenditure on services without some adjustment. We do not of course know what if anything may have been said about increasing future contributions from the existing lessees to ensure fair distribution. But from their own point of view, with current inflation at or around 20%, substitution of a limit of 10% might have been seen by them as an acceptable compromise for the immediate future, while allowing for a return to more normal levels in the medium term. That may not be a complete explanation, but it is at least plausible, unlike the alternative.

143. As in the *Aberdeen case 2012 SC (UKSC) 240*, we can imagine the responses of lessor and lessee to questioning by the officious bystander as to the purpose of the clause. Did they really intend to enter into a contract which had the extraordinary long term implications outlined in the previous paragraphs? I find it hard to conceive of any other response than “of course not; it is a cap not a fixed amount”. The alternative would have seemed absurd and unreasonable to both, as much to the lessor as to the lessees.

144. The Court of Appeal thought they were applying the “natural meaning” of the clause, and that it was not the task of the court to relieve the lessees of a “bad bargain” entered into in different circumstances, albeit possibly without having done their arithmetic. For the reasons I have given, *\*1659* I am not convinced that the “natural meaning” is that adopted by the Court of Appeal, at least once one discounts the inclusion of the word “as” in version 2, or that, even if it is, it relieves the court of the obligation to seek a sensible result. On the other side of the coin, I agree with Mr Morshead that “bad bargain” is a gross understatement of the implications of their interpretation, which as he says were from the outset “not only stark but disastrous”. Nor do I see any reason to assume that these contracting parties, treated (in Lord Hoffmann's words in *Attorney General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988*, para 22) as alive to the “practical consequences” of the alternative interpretations, should have been ignorant of the ordinary principles governing compound interest.

#### *Version 3 (1985)*

145. By this time inflation had fallen significantly to around 5-6%. Pessimistic thoughts about the future direction of inflation for the foreseeable future would have largely dissipated. If it was difficult in 1980, it would surely be impossible now, for the reasonable observer to imagine the parties committing themselves, even in the medium term, to a fixed inflation figure of almost double the current rate. As a cap, it would hardly have attracted attention.

#### *Version 4 (1988)*

146. By this time annual inflation had fallen to less than 5%. The annual formula produced a figure more than double that implied by the triennial formula, but one closely comparable to that resulting from actual inflation since 1974 (£342 compared to £350, in the table at para 100 above). If the then lessor, Mrs Short, was still charging her pre-1980 lessees by reference to the lower triennial rate, it raises a question of how she was covering her own expenditure on services, in circumstances where two-thirds of the leases were contributing at only half the rate implied by inflation since 1974. That may suggest either that she was able in practice to keep expenditure to a level significantly below that implied by inflation, or possibly that in order to maintain services at a reasonable level some of the pre-1980 lessees had been persuaded to pay more than their strict obligation.

147. The only novel feature of this version is that it was subject to a proviso in effect substituting the triennial formula during the tenure of the named lessees. It appears to have escaped notice in the courts below that the example used for this version was in a lease between the lessor, Mrs J Short, and herself and a Mr W R Short (her husband) as joint lessees. Since the hearing it has been confirmed that she had the same interest in the other three “proviso” leases granted between 1988 and 1991. They were clearly not arms-length transactions.

148. We know nothing about Mrs Short, or her thinking. It is difficult to understand how this special personal protection could have been reconciled with her obligation to the other post-1980 lessees (under clause 4(8)) to ensure that the covenants in these leases were as “similar ... as the circumstances permit”. It is even more difficult, at least on the Court of Appeal's interpretation, to understand how she would have explained the change to her future assignees, who were to lose that protection. The contrast

between the two versions could not have been drawn more clearly \*1660 to their attention. On the basis that the revised percentage figure was no more than a cap, they may plausibly have been content to accept an obligation to keep pace with inflation, in line with other post-1980 lessees. The alternative assumes that, at time when inflation rates were less than 5% and apparently falling, they knowingly accepted a continuing obligation to pay service charges increasing at twice that rate for the rest of the term. On any view that is absurd.

*Version 5 (2000)*

149. By this time inflation had fallen to about 3%. The clause 3(2) figure was by now more than five times greater under the annual formula than under the triennial formula. As Mr Daiches accepts, the parties to these transactions were fully aware of the differences between the two versions. In those circumstances, whatever the changes in the extent of their holdings, there is on the face of it no rational explanation for four lessees agreeing not only to the loss of the protection of version 1, but to the substitution of a permanent obligation to pay service charges increasing at a rate three times the then current rate of inflation.

150. Since these variations were agreed only 15 years ago, and since by this time the respondent, Mrs Arnold, was herself directly involved, it might have been thought that she at least would be able to throw some light on these extraordinary transactions. After the hearing, the parties were put on notice of the court's concern on this point, and invited to comment. It has emerged that three out of the four variations were agreed between Mrs Arnold and her daughter, Mrs Fraser (signed under a power of attorney by Mrs Arnold's son). The fourth was a Mrs Pace, of whom no information has been provided, save that she is apparently still the owner of the chalet, and she is named as one of the defendants in these proceedings.

151. If there was in Mrs Arnold's thinking a rational explanation for these particular variations, she has not taken the opportunity to disclose it. Instead of such direct evidence, Mr Daiches remarkably asks us to imagine a series of "inferences" drawn by the parties (including his client and her daughter) and the reasonable observer. They would have inferred, he says, that version 1 lessees were paying less than the rates required by inflation and that there were in consequence "historic shortfalls" in the lessor's service charge income; and that the multiplier was to be increased, not only to take account of actual inflation since 1974, and to reflect the fact that it might once again rise to levels above that implied by the triennial formula, but also to compensate the lessor both for past shortfalls, and for the risk that he or she might not be able to persuade other lessees to agree to similar increases in the future.

152. With respect to Mr Daiches I have to say that, even in this extraordinary case, I find these submissions quite astonishing. Given that his client and her daughter were the principal parties to these transactions, why on earth should the court be expected to draw "inferences" as to what was in their minds? Why should we speculate as to the extent of any "historic shortfalls", when she presumably has access to the actual accounts, and has resisted the lessees' requests for disclosure? What evidence is there that by 2000 anyone was seriously concerned about an imminent risk of return to double-digit inflation? Finally, what possible reason would these lessees \*1661 have had for wishing to "compensate" the lessor for the past or future financial consequences of imperfections in leases for which they were not responsible?

153. With regard to the only independent party, Mrs Pace, Mr Daiches asks us to note that her variation was agreed shortly after the sale of the lease to her by the respondent herself. It should not be difficult, he says, to "infer that the purchase price paid by her to the respondent reflected her agreement to increase the multiplier". Although she is apparently one of the appellants represented by Mr Morshead, he has not volunteered any specific explanation on her behalf. He merely points to the difficulty of imagining any price reduction or other inducement sufficient to compensate her for "the devastating implications" of the multiplier if it operates as Mrs Arnold contends.

154. In the absence of further evidence from either side, it is impossible to draw any clear conclusions about the purpose of these curious transactions. It is enough to observe that, viewed objectively, they are at least consistent with an interpretation which limits the lessees' future exposure to actual inflation, within a defined limit. On the lessors' interpretation, as with version 4, they make no sense at all.

Conclusion

155. The true explanation for these wretchedly conceived clauses may be lost in history, but the problems for the parties are all too present and deeply regrettable. No doubt in recognition of such considerations, Mr Daiches, on behalf of Mrs Arnold,

indicated that his client “fully understands the appellants' predicament and is sympathetic to it”, and that if the appeal fails there would have to be a re-negotiation of the leases “for pragmatic if not for legal reasons”. She wished it to be stated openly that:

“she is willing for the appellants' leases to be renegotiated on terms that would, among other things, involve the leases being varied by substituting an adjustment linked to the Consumer Price Inflation index instead of the current fixed adjustment of 10% per annum.”

156. Although on its face this indication seems helpful and realistic, it is not clear what it would mean in practical terms. It rightly acknowledges that the problems may well be incapable of truly satisfactory resolution by conventional legal analysis. The main obstacle may be that hinted at in Mr Daiches' post-hearing submission. That is the need to find some way of making good the shortfall resulting from the unrealistically low contributions required from more than two-thirds of the lessees under the pre-1980 leases. Even if the lessees' interpretation prevails, it will still leave an unhappy imbalance between these lessees, and the version 1 lessees, who will be left paying substantially less than their proportionate share.

157. Whatever the strict legal position, the other lessees may perhaps be persuaded that they have a common interest in the good management of the estate, and at least a moral obligation to contribute their fair share of its costs. A long-running dispute of this kind can hardly be conducive to the atmosphere appropriate to a holiday location, even for those not directly involved. It is to be hoped that some way can be found of bringing them into \*1662 the discussions. On any view, the case seems to cry out for expert mediation, if it has not been attempted before, preferably not confined to the present parties. If thought appropriate, one possibility might be an application by consent to the President of the First-Tier Tribunal (Property Chamber—Residential Property) to appoint as mediator a senior judge of that tribunal, with the benefit of that tribunal's experience of dealing with service charge issues under statute. However, that must be a matter for the parties not this court.

158. It is necessary therefore to return to the essential question: what in the view of a reasonable observer did clause 3(2) mean? It will be apparent from my detailed analysis that I regard the consequences of the lessor's interpretation as so commercially improbable that only the clearest words would justify the court in adopting it. I agree with Judge Jarman QC that the limited addition proposed by the lessees does not do such violence to the contractual language as to justify a result which is commercial nonsense.

159. For these reasons, in respectful disagreement with the majority, I would have allowed the appeal and restored the order of Judge Jarman QC.

*Appeal dismissed.*

*Colin Beresford, Barrister \*1663*

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**EXHIBIT E**

**Judgment 17/2013**

**T – In the matter of the C Trust  
and in the matter of Section 69  
of The Trusts (Guernsey) Law, 2007  
Royal Court  
21<sup>st</sup> March, 2013**

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**Application for relief pursuant to section 69(1)(a)(i) and (iv) and (2) (b) of the Trusts (Guernsey) Law, 2007, and/or the inherent jurisdiction of the Court.**

**Approved Text  
21.03.2013**

**IN THE ROYAL COURT OF GUERNSEY  
(CIVIL DIVISION)**

**T**

**Applicant**

**IN THE MATTER OF THE C TRUST AND  
IN THE MATTER OF  
SECTION 69 OF THE TRUSTS (GUERNSEY) LAW, 2007**

**Hearing date: 22<sup>nd</sup> February 2013**

**Judgment handed down: 21<sup>st</sup> March 2013**

**Before: Richard James McMahon, Esq., Deputy Bailiff**

**Advocate for the Applicant: Advocate N Kapp**

**Cases, Texts & legislation referred to:**

The Trusts (Guernsey) Law, 2007

*IFS Investments Limited v Manor Park (Guernsey) Limited* [2003-04] GLR 77

*In re Mr and Mrs W's 1966 Settlement* (1998) 25.GLJ.46

*Jersey Evening Post Limited v Al Thani* [2002] JLR 542

*In re The Colour Trusts* (unreported, 24 May 2012)

*In the matter of the Sanne Trust Company Limited* [2009] JRC 25B

The Royal Court Civil Rules, 2007

*In the matter of the Internine and the Intertraders Trusts* [2005] JLR 236

*In the matter of the Representation of BBB Limited* [2011] JRC 240

*Investors Compensation Scheme Ltd. v West Bromwich Building Society* [1998] 1 All ER 98

*British Airways Pension Trustee Ltd v British Airways plc* [2002] EWCA Civ 672

*W.T. Ramsay v IRC* [1982] AC 300  
*Arbuthnott v Fagan* [1995] CLC 1396  
*Gartside v Silkstone and Dodworth Coal and Iron Company* (1882) 21 Ch D 762  
Lewison, *The Interpretation of Contracts*, 5<sup>th</sup> ed.  
*Davis v Richards & Wallington Industries Ltd* [1990] 1 WLR 1511  
*Sugden on Powers*, 7<sup>th</sup> ed.  
*Commissioners of Inland Revenue v Botnar* [1999] STC 711

## Introduction

1. By an application dated 13 February 2013, T, as trustee of a settlement to which I will refer as “The C Trust” (hereafter referred to as “the Trustee”), has sought relief pursuant to section 69(1)(a)(i) and (iv) and (2)(b) of the Trusts (Guernsey) Law, 2007 and/or the inherent jurisdiction of the Court. The principal relief sought is declaratory in nature or, in the alternative, for rectification of a Declaration of Exclusion made on 21 October 1997.
2. At the first appointment on 15 February 2013, Advocate Kapp, on behalf of the Trustee, applied for the proceedings to be heard *in camera*. After considering the submissions set out in her Skeleton Argument dated 13 February 2013, as expanded upon at the hearing, as requested, I made that order, at least insofar as it attached to the first stage of the proceedings dealing with the construction point on which this judgment focuses. In doing so, I was mindful of the helpful general guidance about the presumption in favour of open justice set out in the judgment of Lieutenant-Bailiff Day in *IFS Investments Limited v Manor Park (Guernsey) Limited* [2003-04] GLR 77 and the position often adopted in trusts cases involving the private affairs of individuals, as exemplified by *In re Mr and Mrs W’s 1966 Settlement* (1998) 25.GLJ.46. I expressly reserved the position if the alternative basis of the Application needed to be pursued, recognising that the public interest in rectification proceedings might outweigh any private sensitivities that confidential information would be disclosed (see, e.g., *Jersey Evening Post Limited v Al Thani* [2002] JLR 542, as well as the approach adopted in *In re The Colour Trusts* (unreported, 24 May 2012) and *In the matter of the Sanne Trust Company Limited* [2009] JRC 25B).
3. The second issue considered at that first hearing was whether any other persons needed to be convened. In particular, two questions arose about the potential interests of unascertained beneficiaries and the position of the “Reserve Beneficiary”, a well-known international charity (hereafter referred to as “the Charity”). I took the view that the interests of the unascertained beneficiaries were already adequately protected because the Application had the support of a foundation (hereafter referred to as “The C Foundation”). I also took the view that the nature of the principal relief sought, being declarations to be made as a result of construing some documentation, meant that the arguments that might be advanced on behalf of the persons potentially affected would not provide any further assistance to the Court. The construction issues would, in my view, be capable of being canvassed adequately by considering the material put before the Court and through Advocate Kapp reviewing all the possible outcomes, in accordance with her duty as an officer of the Court. Moreover, whether or not the declarations sought are made, the Charity will continue to be the Reserve Beneficiary under the settlement. I also took into account that rule 35 of the Royal Court Civil Rules, 2007 provides that beneficiaries are bound by the outcome of proceedings, even if they have not been made parties, unless the Court directs otherwise. Accordingly, whilst reserving the position if the rectification aspect of the Application needed to be pursued, I decided that the construction arguments could be made without the need to convene any other party.
4. Finally, in terms of case management, I directed that the questions of law arising from the construction of the documentation should be heard by me sitting unaccompanied by Jurats and that the Court should then only convene with Jurats if the declaratory relief sought did not

resolve the matter in a manner acceptable to the Trustee. Although section 79 of the 2007 Law permits the Court to be properly constituted by a judge alone, in my view, in rectification cases (as indeed in other situations relating to trusts) it is desirable, unless it is impracticable to do so for whatever valid reason, for the Jurats to participate.

5. This judgment, therefore, deals with the declaratory relief sought at para. 4 of the Application, which is in the following terms:

*“on a proper construction of the Trust, Clause 4.9(d) of the Trust does not prohibit the Trustee from exercising a power or discretion in favour of a Beneficiary if an Excluded Person is intended to or might otherwise benefit indirectly therefrom; and*

*the declaration of exclusion made by the Trustee on 21 October 1997 (the “1997 Exclusion”) did not preclude the Trustee from exercising its powers under the Trust to add the [C] Foundation (the “Foundation”) as a beneficiary of the Trust in accordance with the deed of appointment made by the Trustee on 21 October 1997 even though the persons who were declared Excluded Persons under the 1997 Exclusion were intended or might otherwise benefit under the [C] Foundation, nor precludes the Trustee for exercising any dispositive powers in favour of the Foundation or any other beneficiary of the Trust if an Excluded Person is intended to or might otherwise benefit indirectly therefrom”.*

#### The Evidence

6. In support of the Application, four Affidavits have been filed. They are from A, a former director of the Trustee who was responsible for the C Trust at the relevant time, sworn on 25 January 2013, B, an executive manager of the C Foundation, also sworn on 25 January 2013, the Settlor, sworn on 7 February 2013, and D, a director of the Trustee, sworn on 12 February 2013. The material facts relevant for the purposes of the construction issues are taken from those Affidavits and the exhibits thereto.
7. The C Trust was declared by the Trustee on 3 February 1993. The Settlor is an extremely successful and driven businessman. The assets of the Trust have become, and are at present, very significant. The Settlor is divorced and has two sons and one adopted daughter. His daughter has three minor children. Sadly, the Settlor does not enjoy good health. In 2012, his health deteriorated further. He has realised that, rather than leaving it until after his death for his children to benefit from the fruits of his endeavours, he would derive pleasure from seeing them enjoy those fruits during his lifetime.
8. Shortly after the Trust was established, consideration was given to it being restructured. This was a consequence of plans for the Settlor to change where he lived. The Trustee dealt with F, the Settlor’s South African in-house legal adviser, in relation to this. It was suggested that it might be beneficial for the Settlor to be excluded as a beneficiary of the C Trust. The proposal was to make use of a new trust in Liechtenstein, although in due course this was modified so that it was a Liechtenstein foundation that was being thought about.
9. Progress in relation to these proposals was intermittent over the next few years. The Trustee took advice as to the legal status of a Liechtenstein foundation, receiving confirmation that it is “an asset holding body, ... a legal entity fully capable to obligate itself towards third parties and to be the holder of legal rights and titles”. The Trustee did not wish simply to exclude the Settlor’s linear descendants from a fairly substantial trust fund (although the assets then were many times smaller than they are now) unless satisfied it was in their best interests. F confirmed that the Settlor’s lawful linear descendants were fully eligible to benefit under the C Foundation, which had been established in Liechtenstein. F also commented on and revised the draft documentation prepared by the Trustee to give effect to

the proposal to appoint the C Foundation as a beneficiary and to exclude the Settlor and his linear descendants as beneficiaries.

10. The Trustee took the precaution of seeking confirmation from the Settlor, with one of his closest friends and colleagues acting as witness, that he supported the proposed changes to the C Trust. By signing the document on 13 May 1997, the Settlor confirmed his opinion that he considered it to be in the best interests of his lawful linear and adopted descendants “*who are beneficiaries of the [C] Foundation of Liechtenstein*” for the changes to be made.
11. Once the position had been checked once more with B, the Trustee convened a meeting of its directors on 21 October 1997. The minutes of that meeting recorded, under appropriate headings:

*“IT WAS NOTED that the Trustees had received a recommendation from [the Settlor] regarding the beneficiaries of the trust. The recommendation refers to the addition of the [C] Foundation of Liechtenstein as a beneficiary of the trust and the exclusion of the lawful linear and adopted descendants of [the Settlor] as beneficiaries of the trust. A copy of the recommendation is attached hereto and forms part of these minutes. IT WAS FURTHER NOTED that the aforementioned recommendation is dated 13 May 1997 and the Trustees wish to record the fact that the time span between that date and this has occurred because the Trustees have wished to consider all aspects of the recommendation which has involved consulting with [the Settlor] and his legal advisers.*

*IT WAS NOTED the administrators of the [C] Foundation, ... had confirmed in writing (copy attached) that the beneficiaries of the [C] Foundation include the lawful linear and adopted descendants of [the Settlor], including adopted children.*

*IT WAS RESOLVED that, in accordance with the terms of Clause 4.9(b) of the [C]Trust deed, the lawful linear and adopted descendants of [the Settlor] shall henceforth be Excluded Persons for all the intents and purposes of the Trust so that none of them shall be eligible to benefit from the Trust.*

*IT WAS RESOLVED that, in accordance with the terms of Clause 4.8(a) of the [C] Trust deed, The [C] Foundation of Vaduz be and is hereby irrevocably nominated to be a members of the Appointed Class for all the intents and purposes of the Trust.”*

A and the corporate company secretary were authorised to seal and sign the necessary documents, which they then did.

12. B has exhibited a copy of the Regulations and Supplementary Regulations of the C Foundation and confirmed that it was established for the benefit of the Settlor’s lawful linear descendants, including adopted children, and whether born or unborn. They have no vested right or interest in the Foundation but only a contingent interest in it.
13. The Trustee became aware of the Settlor’s desire to see various distributions made for the benefit of his family and some other associates in September 2012. The Trustee has been liaising since that time in relation to the most appropriate ways in which to achieve the Settlor’s desired outcomes. In doing so, the possibility that the terms of the Declaration of Exclusion executed in 1997 (hereafter referred to as “the Deed of Exclusion”) prevent the C Trust being used to benefit the Settlor’s linear descendants has arisen.
14. On behalf of the Trustee, Carey Olsen sought advice from English Counsel, Judith Bryant. Her Opinion dated 6 December 2012 is exhibited to A’s Affidavit. She has identified that the extremely wide wording used in the Deed of Exclusion would, in her view, be construed in

such a way as to exclude the Settlor's linear descendants "from all future benefit under the Trust". Nicholas Le Poidevin QC was also instructed to advise. His Opinion dated 28 January 2013 is exhibited to D's Affidavit. Whilst agreeing in principle with Ms Bryant's conclusion, he noted that her conclusion assumed "an intention to effect the sweeping exclusion" and that such an outcome "would plainly be incorrect" because the Deed of Exclusion "must have been intended to be consistent with" the Deed of Addition. It is fair to note that the advice sought from Nicholas Le Poidevin QC was specific to this issue, whereas Judith Bryant was apparently instructed to advise more generally about a proposal to establish a new trust to which part of the trust fund of the C Trust could be transferred and without the benefit of a full explanation of the background to events in 1997.

15. Because of the difference of Opinion between Counsel and the fact that confirmation one way or the other is certainly desirable for the Trustee before such a momentous decision as will be called for by the Trustee is taken the present Application has been made.

#### The Documents

16. The Deed of Exclusion provides:

*"Under the terms of Clause 4.9(b) of the Declaration of Trust whereby The [C] Trust ("the Trust") was brought into being we the Trustees do hereby declare that the undermentioned shall henceforth be Excluded Persons for all the intents and purposes of the Trust so that none of them shall be eligible to benefit in any way from the Trust, namely*

*The lawful linear descendants of [the Settlor] whether now alive or yet to be born (including persons lawfully adopted as his children or as the children of his lawful linear descendants as here defined)*

*This declaration is irrevocable and applies to the whole Trust Fund".*

The Deed of Addition executed the same day simply provides:

*"Under the terms of Clause 4.8(a) of the Declaration of Trust whereby The [C] Trust ("the Trust") was brought into being we the Trustees do hereby irrevocably nominate THE [C] FOUNDATION Vaduz to be a member of the Appointed Class for all the intents and purposes of the Trust".*

17. The Declaration of Trust of the C Trust provides that the settlement is irrevocable (clause 1.3) and established under the laws of Guernsey (clause 2.2(a)). The Trust Period was 100 years unless declared by the Trustee to end earlier (clause 2.1). It is a discretionary trust of income and capital (clause 3.1). In Schedule One, the expression "Beneficiaries" was originally defined as the Settlor (who was also declared to be the Primary Beneficiary by Schedule Two), "His lawful linear descendants whether now alive or yet to be born (including persons lawfully adopted as his children or as the children of his lawful linear descendants, as here defined)", "All persons who are for the time being members of the Appointed Class", any charity selected by the Trustee with the consent of the Primary Beneficiary, and the Reserve Beneficiary, the Charity.
18. Clause 4.9 of the Declaration of Trust on exclusion of persons as beneficiaries provides:

*"a) Notwithstanding anything herein contained any of the Beneficiaries (being of full age) shall have the power at any time or times during the Trust Period by instrument or instruments in writing to declare that he is no longer to be a Beneficiary (an Excluded Person).*

- b) *Notwithstanding anything herein contained and without prejudice to the power of any Beneficiary to declare that he shall be an Excluded Person the Trustees shall also have power at any time or times during the Trust Period to declare that any person is thenceforth to be an Excluded Person.*
- c) *Any such declaration made pursuant hereto may*
- i) *be either revocable or be made so that it shall not under any circumstances be revoked,*
  - ii) *be either in respect of the whole of the Trust Fund or any specified part or parts thereof, and*
  - iii) *be in respect of income alone or capital alone or both income and capital.*
- d) *As from the date hereof or of any such declaration as the case may be (and in the case of a revocable declaration until such time if at all at which it shall be revoked) the Trustees shall be absolutely prohibited from exercising in favour of the person who is or thereby becomes an Excluded Person (or as the case may be his personal representatives) any power or discretion conferred on appropriation or application of the income or capital of the Trust Fund or of the part or parts thereof to which such declaration may relate but the Trustee shall not be liable in respect of any such payment appropriation or application which may be made by them before receiving notice of such declaration.”*

By clause 1.1.8, the term “Excluded Persons” is defined as “*The persons (if any) declared to be Excluded Persons pursuant to the provisions of Part 4 hereof*”.

19. Clause 4.8 of the Declaration of Trust deals with the appointed class as follows:

- “a) *The Trustees may at any time and from time to time before the termination of the Trust Period by deed or deeds revocable or irrevocable nominate one or more individuals charities or corporations (none of whom is an Excluded Person) to be a member of the Appointed Class.*
- b) *If the Trustees shall revocably nominate a person to be a member of the Appointed Class the Trustees may revoke that nomination and upon such revocation the person nominated shall cease to be a member of the Appointed Class.*
- c) *The Trustees shall have the power to renominate (on any number of occasions) any person who has ceased to be a member of the Appointed Class by virtue of the revocation of a previous nomination.*
- d) *No beneficiary may prevent the nomination of new members of the Appointed Class.”*

By clause 1.1.3, the term “Appointed Class” is defined as “*Such persons (not being Excluded Persons) as are for the time being the subject of a nomination duly made according to the provisions of the section hereof entitled Trustees’ Powers of Appointment*”, that section being Part 4. “Corporation” is defined in clause 1.1.5 as “*Any corporate body (of whatsoever kind) incorporated or otherwise brought into existence in any part of the world*”.

20. Although not expressly referred to in the Deed of Exclusion, Judith Bryant’s Opinion refers to a number of other provisions in Part 4 that the Trustee may be taken to have exercised. Clause 4.1(a) (power of appointment) provides:

*“Notwithstanding the provisions of Part 3 the Trustees shall have power at any time and from time to time during the Trust Period to appoint that they shall hold the whole or any part or parts of the Trust Fund Upon Trust for all or such one or more exclusively of the other or others of the Beneficiaries at such age or time or respective ages or times if more than one in such shares and with such trusts for their respective advancement maintenance and education as they shall think fit”.*

Clause 4.4 (powers of revocation and declaration of new trusts) provides:

- “a) The Trustees shall have power at any time or times before the expiration of the Trust Period in their absolute discretion by deed or deeds revocable or irrevocable wholly or partially to revoke or otherwise vary all or any of the trusts hereinbefore declared and to declare such other trusts as they shall think fit for the benefit of such one or more of the Beneficiaries in such manner and in all respects as they shall think fit.*
- b) The Trustees shall have power to release either entirely or to such extent as they shall think fit the foregoing power and any such release shall be binding on their successors.*
- c) Any such revocable deed if not revoked before the date of expiry of the Trust Period shall become irrevocable on that date.”*

## The law

### *Interpretation guidance*

21. There is helpful guidance relating to the principles for the construction of a trust instrument set out by the Royal Court of Jersey in *In the matter of the Internine and the Intertraders Trusts* [2005] JLR 236, at para. 62 per Commissioner Page:

*“The correct approach to the task before the court is to a large extent the same as it is for any instrument the meaning of which is in contention:*

- (i) the aim is to establish the presumed intention of the maker(s) of the document from the words used ...;*
- (ii) words must, however, be construed against the background of the surrounding circumstances or “matrix” of facts existing at the time when the document was executed – a principle that has been a bedrock of English law since the judgment of Lord Wilberforce in *Prenn v Simmonds* [1971] 1 W.L.R. 1381 and appears now to have been accepted as also properly reflecting the approach that this court should adopt in relation to such matters;*
- (iii) the circumstances relevant and admissible for this purpose are those that must be taken to have been known to the maker at the time or, where there are more than one, known to the makers of or the parties to the document and include (to use the language of Lord Hoffmann in *Investors Compensation Scheme Ltd. v West Bromwich Bldg Socy* ([1998] 1 W.L.R. at 913), from whose speech only Lord Lloyd of Berwick dissented) – “... absolutely anything which would have*

*affected the way in which the language of the document would have been understood by a reasonable man”;*

- (iv) *evidence of subjective intention, drafts and negotiations and other matters extrinsic to the document in question is inadmissible, as is evidence of events subsequent to the making of the instrument (evidence of this kind being relevant where an estoppel is said to arise but not in this jurisdiction, unlike some others, as an aid to construing the original meaning of the document);*
- (v) *the critical provisions ..., as with all words and phrases, have to be read in the context of the document as a whole;*
- (vi) *words should as far as possible be given their ordinary meaning: “Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation”: per Lord Steyn in Society of Lloyd’s v Robinson ([1999] 1 W.L.R. at 763); and*
- (vii) *this last precept may, however, have to give way if consideration of the document as a whole, having regard to the principles set out above or common sense, points to a different conclusion: “common sense” in the context being best reflected by the passage from the speech of Lord Reid in Schuler (L.) A.G. v Wickman Machine Tool Sales Ltd. ([1974] A.C. at 251) in which he observed:*

*“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.”*

*(See also Lord Steyn, again in Society of Lloyd’s v Robinson ([1999] 1 W.L.R. at 763), and Lord Hoffmann’s observations in the Investors Compensation Scheme case concerning the need, on occasion, for a court to accept that the parties must have used the wrong words or syntax.)”*

The learned Commissioner continued in paragraph 63:

*“It is also elementary, first, that when attempting to discern the true meaning of a power conferred in a trust deed or other instrument the court must have regard to the nature of the deed and the purpose for which the power appears to have been granted – though this will depend to a large extent on the terms of the instrument itself; and secondly, that a power of amendment reserved in a trust must be exercised for the purpose for which it was granted and not for one beyond the contemplation of the makers of the original instrument (Lord Steyn (*ibid.*), citing Hole v Garnsey [1930] A.C. 472).”*

This guidance was adopted and applied in *In the matter of the Representation of BBB Limited* [2011] JRC 240 and I propose to adopt it in the present case as being equally useful under the laws of Guernsey.

- 22. In many respects, that guidance explains and elaborates on the summary of the principles given by Lord Hoffmann in his speech in *Investors Compensation Scheme Ltd. v West Bromwich Building Society* [1998] 1 All ER 98, at 114g, which has been accepted and applied by this Court previously:

- “(1) *Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.*
- (2) *The background was famously referred to by Lord Wilberforce [in Prenn v Simmonds] as the ‘matrix of fact’, but the phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*
- (3) *The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.*
- (4) *The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax (see Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] 3 All ER 352, [1997] 2 WLR 945).*
- (5) *The ‘rule’ that words should be given their ‘natural and ordinary meaning’ reflects the commonsense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had.”*

Further, in the context of construing a trust deed, in British Airways Pension Trustee Ltd v British Airways plc [2002] EWCA Civ 672 it was noted that “a provision of a trust deed must be interpreted in the light of the factual situation at the time it was created” (para. [30]).

23. In W.T. Ramsay v IRC [1982] AC 300, Lord Wilberforce also commented on the need to ascertain the true intention from the document, adding (at p. 323):

*“This is a cardinal principle but it must not be overstated or overextended. While obliging the court to accept documents or transactions found to be genuine, as such, it does not compel the court to look at a document or transaction in blinkers, isolated from any context to which it properly belongs. If it can be seen that a document or transaction was intended to have effect as part of a nexus or series of transactions, or as an ingredient of a wider transaction intended as a whole, there is nothing in the doctrine to prevent it being so regarded: to do so is not to prefer form to substance, or substance to form ...”.*

Further general guidance is found at the end of the judgment of Sir Thomas Bingham MR in Arbuthnott v Fagan [1995] CLC 1396:

*“Courts will never construe words in a vacuum. To a greater or lesser extent, depending on the subject matter, they will wish to be informed of what may variously be described as the context, the background, the factual matrix or the mischief. To seek to construe any instrument in ignorance or disregard of the circumstances which gave rise to it or the situation in which it is expected to take effect is in my view pedantic, sterile and productive of error. But that is not to say that an initial judgment of what an instrument was or should reasonably have been intended to achieve should be permitted to override the clear language of the instrument, since what an author says is usually the surest guide to what he means. To my mind construction is a composite exercise, neither uncompromisingly literal nor unswervingly purposive: the instrument must speak for itself, but it must do so in situ and not be transported to the laboratory for microscopic analysis.”*

#### *Contemporaneity*

24. The fact that the Deed of Exclusion and the Deed of Addition were so closely related is also relevant. In Gartside v Silkstone and Dodworth Coal and Iron Company (1882) 21 Ch D 762, Fry J (at p. 767) stated:

*“I think the law stands in this way, that when two deeds are executed on the same day, the Court must enquire which was in fact executed first, but that if there is anything in the deeds themselves to shew an intention, either that they shall take effect pari passu or even that the later deed shall take effect in priority to the earlier, in that case the Court will presume that the deeds were executed in such order as to give effect to the manifest intention of the parties.”*

The inference from the minutes of the meeting of the directors of the Trustee held on 21 October 1997 is that the business conducted first was to exclude the Settlor’s linear descendants and the business conducted second was to add the C Foundation as an Appointed Class. In any event, the two transactions are clearly so inter-related that the Deed of Addition is relevant background for the purposes of the proper construction of the Deed of Exclusion. Indeed, the precise order in which they were executed is probably irrelevant because they were being treated almost as if they were equal and opposite elements of a combined transaction. This approach is also consistent with general contractual principles: *“A document executed contemporaneously with, or shortly after, the primary document to be construed may be relied upon as an aid to construction, if it forms part of the same transaction as the primary document”* (Lewison, *The Interpretation of Contracts*, 5th ed., para. 3.03).

#### *Imputed exercise of power*

25. Under English law, the imputation to a trustee of an intention to exercise a power available to him to achieve the desired result unless it can be inferred that there was an intention not to exercise it, to which Judith Bryant referred, derives from Davis v Richards & Wallington Industries Ltd [1990] 1 WLR 1511. The analysis of Scott J (on p. 1530) begins by referring to Sugden on Powers, 7th ed. (1845), vol. 1, p. 356:

*“A donee of a power may execute it without referring to it, or taking the slightest notice of it, provided that the intention to execute it appears.”*

to which was added (at p. 421):

*“It is intention then that in these cases governs: therefore, where it can be inferred that the power was not meant to be exercised, the court cannot consider it as executed.”*

Scott J then states (at p. 1530F):

*“A disponent (A) purports to make a disposition of property. The disposition cannot be effective unless associated with the exercise of a power vested in A and that A could properly have exercised in order to make the disposition. The disposition makes no mention of the power and does not purport to be an exercise of it. The effect of the principle and the cases to which I have referred is that A’s intention to make the disposition justifies imputing to him an intention to exercise the power, provided always that not to exercise the power cannot be inferred. If the requisite intention [sic] can be imputed, the court will treat the disposition as an exercise of the power. In the present case, Industries purported, in conjunction with Mr. Davis and Mr. Wardle, to bring into effect valid rules for the pension scheme. It was objected that Mr. Parsons was a trustee whose concurrence was necessary. But Industries had power to remove Mr. Parsons as a trustee and could properly have exercised that power in order to bring the rules into effect. I can see no difference in principle between the position of A in my example and the position of Industries, nor any reason why the courts should be prepared to apply an ameliorating principle of equity only to disposition of property. In my judgment, the principle is applicable in the present case, unless an intention on Industries’ part not to exercise its power of removal can be inferred.”*

I have quoted the application of the principle in that case as well as the bare principle in order to explain that it was used to render effective what would otherwise have been an ineffective act. I also note that it is referred to as *“an ameliorating principle of equity”*, whereas the effect of applying it without more ado in the present case might arguably produce an outcome that is adverse to the interests of everyone concerned.

*Direct or indirect benefit*

26. The main case, however, to which reference has been made is *Commissioners of Inland Revenue v Botnar* [1999] STC 711, but also bearing the reference “1999 WL 477359”. It is a judgment of the English Court of Appeal dated 23 June 1999. Mr Botnar and his wife had been excluded as beneficiaries under the settlement in question, which contained the following provision at clause 23:

*“NO Excluded Person shall be capable of taking any benefit in accordance with the terms of this Settlement and in particular but without prejudice to the generality of the foregoing provisions of this Clause:-*

- (a) The Trust Fund shall henceforth be possessed and enjoyed to the entire exclusion of any such Excluded Person and of any benefit to him by contract or otherwise*
- (b) No part of the capital or income of the Trust Fund shall be paid or lent or applied for the benefit of any such Excluded Person”.*

The Settlement also contained a power (in clause 3(c)) for the trustees to pay or transfer the whole or any part of the capital to the trustees of another trust, the only restriction being that at least one of the Appointed Class must be interested in the transferee trust. The question was whether the possibility of Mr Botnar being a beneficiary of such a transferee trust meant that, in the words of section 478(1) of the Income and Corporation Taxes Act 1970, he had

“power to enjoy, whether forthwith or in the future, any income of” a company that was resident or domiciled out of the United Kingdom, that income being accumulated in the transferor trust. If the trust documentation had been construed so that Mr Botnar could never benefit from such a transferee trust, then such a “power to enjoy” could not be shown.

27. Mance LJ (as he then was) drew a distinction between a payment or transfer “between” trusts and a payment, application or appointment “under” the trust. In relation to clause 23, he highlighted the words “in accordance with the terms of this Settlement”. Accordingly, when read as a whole, the powers in the Settlement enabled the trustees to make a payment or transfer to a transferee trust from which Mr Botnar might benefit and there was nothing within the Settlement prohibiting the trustees from conferring such a benefit indirectly, meaning he had a “power to enjoy”, even though they could not confer a direct benefit on an Excluded Person such as Mr Botnar. That conclusion was shared by Aldous LJ:

“... clause 23 does not prevent the trustees settling capital under the terms of another settlement. Thus clause 23 does not prevent the trustees settling capital under clause 3(c) so long as the restrictions imposed by clause 3(c) are complied with. Mr Botnar, an excluded person under this settlement, can be a potential beneficiary under another settlement to which capital could be transferred under clause 3(c).”

Accordingly, a trustee decision to pay or transfer to another settlement from which Mr Botnar might benefit would not contravene the doctrine of fraud on the power, which “invalidates the exercise of a power which appears to be in conformity with its terms but is in fact made for some collateral purpose not within its proper scope”. Morritt LJ, however, took the view that it was not permissible to exercise the power if the purpose of doing so (as opposed to any incidental effect) was to benefit an excluded person.

## Discussion

28. With those principles in mind, I turn to consider what construction to give to the Deed of Exclusion, bearing in mind the powers in the Declaration of Trust. I take the view that the principles of English law to which I was referred (and on which Judith Bryant and Nicholas Le Poidevin QC relied when giving their respective Opinions) are equally applicable as a matter of Guernsey law. The principal exercise in this case is to construe the relevant documents and I am not aware of anything in Guernsey law that would lead to a different approach being required to that to which I have already referred set out in the English law authorities.
29. The power in clause 4.9(b) is “to declare that any person is thenceforth to be an Excluded Person”. The Deed of Exclusion does not name any person or persons but refers to a class of person. I consider that this is permissible under the terms of clause 4.9(b) because the wording used for the class in the Deed of Exclusion means the persons to be included were capable of being ascertained. It was also a means by which any future persons coming within the definition were covered. In effect, the Deed of Exclusion removed (a)(ii) from Schedule One to the Declaration of Trust as if it had been capable of being excised through amendment.
30. The first significant thing to note is the final sentence of the Deed of Exclusion (“This declaration is irrevocable and applies to the whole Trust Fund”). In my view, this wording accurately reflects the powers of the Trustee under clause 4.9(c). The Trustee chose to make the declaration irrevocable rather than revocable and applied it to the entirety of the Trust Fund rather than specifying a part only. By choosing not to refer to just income or just capital, the declaration must be taken to cover both income and capital. The effect of the exclusion of the Settlor’s linear descendants was, therefore, as complete as it could be under clause 4.9.

31. Because of the inclusion of those words, the issue for determination is what meaning to give to the words earlier in the Deed of Exclusion: “*for all the intents and purposes of the Trust so that none of them shall be eligible to benefit in any way from the Trust*”. Taking those words at face value, my immediate reaction to them is that declaring the class of the lawful linear descendants of the Settlor to be “*Excluded Persons for all intents and purposes of the Trust*” offers a similar focus to the words “*in accordance with the terms of this Settlement*” in clause 23 of the Settlement in the *Botnar* case. If the final sentence of the Deed of Exclusion had not been inserted, these words would have been indicative of the Trustee wishing to exercise the power to exclude the class of persons from the whole of the Trust Fund. To that extent, the words “*for all the intents and purposes of the Trust*” appear to do no more than duplicate, rather than add to, what the Trustee was permitted to do. However, the addition of the words “*so that none of them shall be eligible to benefit in any way from the Trust*” may be construed as meaning something over and above that or they may be yet another way of saying exactly the same thing. The latter construction is possible because of the benefit being confined to being a benefit “*from the Trust*”, but the words “*in any way*” might point to a broader meaning.
32. I note that in Judith Bryant’s Opinion she concludes that clause 4.4(a) of the Declaration of Trust “*is sufficiently widely drafted to have enabled the Trustee to vary the trusts of the Trust so as to exclude the Linear Descendants from all future benefit from under the Trust, such a variation being for the benefit of the Beneficiaries other than the Linear Descendants*” (para. 11) and that (at para. 12):

“... *there is nothing in the Declaration of Exclusion to suggest that the Trustee did not intend to exercise the power conferred on it by clause 4.4(a) to exclude the Linear Descendants from future benefit under the Trust. On that basis, there would appear to be nothing to prevent the Court from imputing to the Trustee an intention to exercise the power conferred on it by clause 4.4(a) to bring about the result intended in the Declaration of Exclusion, and on that basis, it seems most likely that the Court would decide that the Declaration of Exclusion was effective to exclude the Linear Descendants from being eligible to benefit from the Trust Fund in any way whatsoever*”.

Looking at the Deed of Exclusion, I accept that that is one possible construction of the document and, if looking solely at that document, the conclusion that can properly be reached.

33. As I have already indicated, though, it is not the only possible construction of the document. Further, it relies on imputing to the Trustee an intention to exercise the power conferred on it by clause 4.4(a) when to do so would be contrary to what appear to be the interests and intention of the Primary Beneficiary. As such, applying the principle of imputation would also potentially lead to an outcome not desired by the Trustee, which took care to ensure that the Deed of Exclusion and Deed of Addition produced an effect that was not automatically disadvantageous to that class of persons. Having regard to the steps taken by the Trustee, on a balance of probabilities, I consider that the evidence supports the inference that the Trustee did not intend to exercise any power under clause 4.4(a).
34. Moreover, unlike in *Davis v Richards & Wallington Industries Ltd* (*supra*), the imputation of an intention to exercise the power in clause 4.4(a) would not result in a transaction that might otherwise fail being saved, but rather might produce the opposite outcome. As it was put by Nicholas Le Poidevin QC (at para. 19 of his Opinion), “*Despite the wide words of the deed of exclusion, the inference that the descendants were meant to be excluded from benefit via the Foundation would be plainly incorrect: that deed must have been intended to be consistent with the deed of addition*”.
35. I am satisfied that this is the proper conclusion to reach as to the meaning of the words in the Deed of Exclusion. It is consistent with the approach of the English Court of Appeal in the

*Botnar* case to have regard to what it means for a Beneficiary to be declared to be an Excluded Person. This prohibits the Trustee from conferring a direct benefit on such a person under the Trust. It should not, and in my view does not, prohibit the Trustee from conferring a direct benefit on a person in the Appointed Class which may have the incidental effect of conferring a benefit on a person who has been declared to be an Excluded Person. If that were the consequence of the Deed of Exclusion, it would mean that the Deed of Addition was entered into in error and the precautions taken by the Trustee back in the run-up to 1997 would all have been for nothing.

36. In reaching this conclusion, I have paid particular attention to the minutes of the meeting of the directors of the Trustee on 21 October 1997 and the inter-connection between the Deed of Exclusion and the Deed of Appointment. In my view, they cannot be regarded as anything other than part of the overall transaction to be effected in these two documents. Looked at in the round, “*the surrounding circumstances or “matrix” of facts existing at the time*” were that those concerned in considering the re-structuring of the C Trust wanted to interpose the C Foundation above the Settlor’s descendants, thereby enabling them to benefit directly from that Foundation rather than directly from the C Trust. I note the need to be careful to distinguish here between the Trustee’s subjective intent and the surrounding background. None of the evidence indicates that it is a proper inference that the power in clause 4.4(a) was to be executed by the Trustee, but rather that it was not to be executed despite the wording contained in the Deed of Exclusion. As Mance LJ noted in the *Botnar* case, “*the court should eschew remote hypotheses of unlikely fact*”. I think that it would be a remote hypothesis of unlikely fact to suggest that it was the presumed intention of the Trustee, or of anyone corresponding with the Trustee in the 1990s, to exclude the Settlor’s linear descendants from any benefit, direct or indirect, and at the same time to add the C Foundation in the Appointed Class.
37. As regards the words “*for all the intents and purposes of the Trust*”, I further note that they were also included in the Deed of Addition. I consider that their use in both documents supports the conclusion that these words mean that the Trustee was doing no more than clarifying that the exclusion or addition, as the case may be, was to be effective in respect of the entirety of the Trust. I further consider that it is significant that the words that follow in the Deed of Exclusion commence with “*so that*”. Those two words, in my view, provide a clear link with the preceding words, demonstrating that the proper meaning of the following words (“*none of them shall be eligible to benefit in any way from the Trust*”) arises from the context of a further explanation of the generality of the exclusion. In giving the Deed of Exclusion this construction, I have sought to identify the presumed intention of its maker, namely the Trustee, from the words actually used, construing the document as a whole, and the background of the surrounding circumstances at the time in 1997 and for the years since 1993.
38. This interpretation is also consistent with the meaning of clause 4.9(d) of the Declaration of Trust. As was noted in both Opinions from Counsel, something has gone wrong with the wording of this paragraph. The final words refer to “*the Trustee [not being liable] in respect of any such payment appropriation or application which may be made by them before receiving notice of such declaration*”, whereas the preceding words refer to “*any power or discretion conferred on appropriation or application*” but without referring to “*payment*”. The omission of some words, “*on the Trustees to effect any payment*” possibly being needed immediately after “*conferred*”, does not make any difference for the purposes of determining this case. This is because the operative words are the absolute prohibition on the Trustee “*exercising in favour of the person who is or thereby becomes an Excluded Person ... any power or discretion conferred*” (emphasis added).
39. As in the *Botnar* case, the Trustee acts within the confines of the powers or discretions contained in the C Trust. In my judgment, use of “*in favour of*” indicates that the paragraph relates to direct benefits under the C Trust rather than indirect benefits obtained more broadly

as a result of it. If, contrary to the conclusion I have reached, the imputation of intention principle were applicable, it would mean that clause 4.9(d) would have to be modified to make it accord with the wider exclusion suggested in Judith Bryant's Opinion. Because the Deed of Exclusion is completely silent about such a modification and how it would operate, I regard this as a further reason why the Trustee should not be treated as purporting to exercise the power conferred by clause 4.4(a). In my view, it is simply asking too much to introduce into the Deed of Exclusion this much wider construction of the wording. I therefore agree with the Trustee's contention (at para. 44 of its Skeleton Argument) "*that the prohibition in Clause 4.9(d) simply prevents the Trustee exercising a power or discretion to make a payment, appropriation or application of the trust fund directly in favour of an Excluded Person but it would not prevent the Trustee exercising a power or discretion in favour of a beneficiary who was not an Excluded Person in circumstances where there was either the intention or a possibility that an Excluded Person or Excluded Persons could also benefit indirectly.*"

### Conclusion

40. For the reasons given, I will grant the relief sought by the Trustee at paragraph 4 of its Application. The interpretation I have given to the documentation leads to the result that the Deed of Addition has not been rendered invalid and confirms that the Trustee is free, as appears to have been the presumed intention of all those concerned, to treat the C Foundation as a Beneficiary, even if the consequences of doing so may be that one or more of the Settlor's linear descendants, who have been declared to be Excluded Persons, take an indirect benefit. As a result, the alternative relief pursued in para. 5 of the Application falls away and the hearing with Jurats provisionally scheduled can be vacated.
41. In accordance with paragraph 6 of the Application, I am also content to make the customary order that "*all the costs of the Application ... be paid from the funds of the Trust on an indemnity basis*". As a final note, I should also record my gratitude to Advocate Kapp for her helpful written and oral submissions.

**EXHIBIT F**

[2005 JLR 236]

IN THE MATTER OF THE INTERNINE AND THE INTERTRADERS TRUSTS

SHEIKH ABDULLAH ALI M. ALHAMRANI v. RUSSA MANAGEMENT and NINE OTHERS

ROYAL COURT (Page, Commr.): May 27th, 2005

*Trusts-trust protector-powers and duties-power to amend-to be exercised bona fide, for proper purpose and in interests of beneficiaries because protector's position is fiduciary, even if also beneficiary-radical amendments increasing protector's power require greater justification-amendment of administrative provisions not beyond contemplation of maker if no increase in financial burdens or reduction of beneficial entitlements*

The representor sought a declaration that his amendments to two trust deeds were valid.

The representor and the third to tenth respondents were siblings and the beneficiaries of two Jersey trusts. The trust deeds provided that the representor and the third respondent, the eldest brothers, were to be the first protectors of the trusts and they therefore supervised the management of the extensive trust assets on behalf of themselves and the other beneficiaries.

After serious disagreements arose between the representor and the third respondent, however, the representor purported unilaterally to amend the trust deeds so as *inter alia* to appoint himself the sole first protector from then on and to entrench himself in that position by deleting the provision providing for his removal by the beneficiaries. He claimed to have the

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power to make those amendments under cll. 2(b) and 6(f) of the trust deeds and also to have had good reasons for so doing. Clause 2(b) of the deeds originally read: “[T]he first protectors shall have the right ... to revoke ... or otherwise amend ... this instrument” and clause 6(f) provided that “the first protectors may exercise their powers individually and the exercise by one of the first protectors of any of their powers under cll. 2(b) ... shall bind the other first protector.”

The representor initially claimed that his power to amend the trust deeds was not subject to any limitations but he subsequently agreed that it was in fact a fiduciary power. He submitted that, when construing the original deeds to determine the validity of his amendments, account should not be taken of any later events nor of any potential future exercise by him of the power to amend.

The third to tenth respondents challenged the validity of the representor's purported amendments. They were also concerned as to what further amendments to the deeds the representor might make and therefore sought to adduce at trial evidence of certain events alleged to have occurred after the amendments were made as being illustrative of his intentions.

**Held**, ruling as follows:

(1) As one of the first trust protectors, the representor had the power, under cll. 2(b) and 6(f) of the trusts, unilaterally to make the amendments-so as *inter alia* to make himself the sole

first protector and to remove the beneficiaries' power to displace him from that position-and also thereby to bind the third respondent, previously the joint first protector. The clauses amended were not so fundamental that the original maker(s) of the deeds would not have envisaged their amendment, as they merely concerned the administration of the trusts, and the amendments did not therefore impose additional financial burdens nor deny substantive beneficial entitlements. Nor was there a term in the deeds by which the amended clauses were expressed to be entrenched and thus incapable of amendment. In addition, the protectors' power to amend was a fiduciary one and the representor's exercise of it was therefore subject to the restraints necessarily inherent in the exercise of such a power, namely, that it was exercised *bona fide*, for a proper purpose and in the interests of the beneficiaries as a whole, even though he was also a beneficiary. Consequently, the more radical the departure from the original deed effected by an amendment, the greater the need for justification. Since the result of certain of the amendments in the present case was a substantial accretion of additional power to the representor and the elimination of means by which he could be removed by the beneficiaries, there was a heavy burden on him to explain the necessity for such measures and to justify them as being for a proper purpose and in the *bona fide* exercise of his power for the benefit of the beneficiaries as a whole ([paras. 73–76](#); [para. 79](#); [para. 81](#)).

(2) Evidence of events which occurred after the amendments were made or of actions which the representor might take in the future would

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be inadmissible in the present proceedings concerning the validity of the amendments. When construing cl. 2(b) and 6(f) of the trust deeds, so as to determine whether the representor had the power to make the amendments in question, the presumed intention of the maker(s) of the deeds had to be established from the words used, construed against the background circumstances or “matrix of facts.” The only relevant circumstances would be those which must have been known to the maker at the time the deeds were made. Evidence of subsequent events and extrinsic evidence of subjective intentions, negotiations, *etc.* would not be admissible. Furthermore, cl. 2(b) and 6(f) should be read in the context of the trust deeds as a whole and the words used should be given their ordinary meaning. When construing the true meaning of the power conferred on the first protectors in those clauses, regard should be had to the nature of the deeds and the purpose for which it appears the power was granted. The first protectors' power of amendment should only be exercised for that purpose and not for one beyond the contemplation of the maker(s) of the deeds ([para. 60](#); [paras. 62–63](#)).

**Cases cited:**

- (1) *Hole v. Garnsey*, [1930] A.C. 472; [1930] All E.R. Rep. 568, distinguished.
- (2) *Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy.*, [1998] 1 W.L.R. 896; [1998] 1 All E.R. 98, considered.
- (3) *Prenn v. Simmonds*, [1971] 1 W.L.R. 1381; [1971] 3 All E.R. 237; (1971), 115 Sol. Jo. 654, referred to.
- (4) *Schuler (L.) A.G. v. Wickman Machine Tool Sales Ltd.*, [1974] A.C. 235; [1973] 2 All E.R. 39; (1973), 117 Sol. Jo. 340, *dicta* of Lord Reid considered.
- (5) *Society of Lloyd's v. Robinson*, [1999] 1 W.L.R. 756; [1999] 1 All E.R. (Comm.) 545; [1999] C.L.C. 987, considered.

(6) *Z Trust, In re*, 1997 CILR 248, referred to.

**Text cited:**

*Lewin on Trusts*, 17th ed., para. 30–02, at 771–772 (2000).

*P.D. James* for the representor;

*D.F. Le Quesne* for the first respondent;

*A.R. Binnington* for the second respondent;

*M.H.D. Taylor* for the third to eighth respondents;

*S.J. Young* for the ninth and tenth respondents.

**1 PAGE, COMM.R.:**

**Background to the litigation**

The Alhamranis are a well-known Saudi Arabian family with widespread commercial interests and investments both inside and outside the Kingdom. In June 1976 (I shall be forgiven, I hope, if I use the western

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calendar for the purposes of this judgment), Sheikh Ali Mohamed Alhamrani, then head of the family, died leaving seven sons and two daughters. According to Sharia law, the Sheikh's estate was to be distributed as to one share to each son and as to one half-share to each daughter.

2 The inherited assets within Saudi Arabia have, for the most part, been held by the Alhamrani group of companies. On the other hand, the inherited foreign-based wealth of the family was at one time held through certain Liechtenstein foundations and Cayman Islands trusts, but in 1998 was transferred for the most part into three new Jersey-based trusts: the Intertraders Trust, the Internine Trust and the Manastar Trust. Manastar was later wound up and its assets transferred into Internine. Each of the nine brothers and sisters is a beneficiary of each trust.

3 The trustee of Intertraders is Russa Management Ltd., represented by Advocate Le Quesne of Viberts, and the trustee of Internine is J.P. Morgan Trust Company (Jersey) Ltd., formerly known as Chase Bank & Trust Company (C.I.) Ltd., represented by Advocate Binnington of Mourant du Feu & Jeune. J.P. Morgan was also the trustee of the Manastar Trust until it was dissolved.

4 The current litigation arises out of a number of disputes between different factions among the siblings, the precise composition of those factions having changed as alliances and perceived interests have shifted. The most recent groupings, each separately represented, are: Sheikh Abdullah Ali Alhamrani ("Sheikh Abdullah"), represented by Advocate James of Crill Canavan; Sheikhs Mohamed, Siraj, Khalid, Abdulaziz and Ahmed Ali Alhamrani (often referred to, collectively, as "the first party" for reasons that will become apparent later in this judgment), together with Sheikh Fahad Ali Alhamrani ("Sheikh Fahad"), represented by Advocate Taylor of Bedell Cristin; and Ladies Noura and Adawiya Ali Alhamrani ("the Ladies"), represented by Advocate Young of Bois Bois. So far as concerns the issues with which this present judgment deals, Sheikh Abdullah is in a minority of one, opposed, as he is, by all the others.

5 Procedurally, the matters discussed in this judgment originated in three representations: the first by Russa, dated March 28th, 2003, the second by Sheikh Abdullah, dated May 12th, 2003, and the third by the members of the first party, dated September 26th, 2003. The disputes encompassed in

the litigation, taken as a whole, are numerous and in some cases complex. In very broad terms, they arise in one way or another out of the following circumstances.

6 Originally, and at all times up until mid-April 2000, there were two first protectors of each trust, Sheikh Mohamed and Sheikh Abdullah.

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Between them they managed the family wealth on behalf of themselves and their brothers and sisters. By 2000, however, serious disagreements had arisen between them. In April that year, Sheikh Abdullah executed two deeds by which he claimed to exercise powers under cll. 2(b) and 6(f) of the trust instruments, as then constituted, to vary them so as to appoint himself sole first protector from then on, and thus remove his brother Sheikh Mohamed as a co-first protector. There were, he says, good reasons for doing this. Sheikh Mohamed and the other members of the first party subsequently wrote to each of the trustees, challenging Sheikh Abdullah's conduct and terminating-or at least claiming to terminate-his authority to act on their behalf (the effect of these letters being a matter for another day). The validity or otherwise of these amendments is the central issue with which this judgment is concerned.

7 Peace appeared to have been secured when, on September 16th, 2000, an instrument known as the "disengagement" or "separation" agreement was signed in the expectation that this would put an end to hostilities. The parties to that agreement were Sheikh Mohamed and the other members of the first party (this being the origin of that expression) and Sheikh Abdullah, Sheikh Fahad and the Ladies, who were referred to as "the second party." The purpose of that agreement, which was governed by the law of Saudi Arabia, was to effect a fair division of the family assets in accordance with the inheritance provisions of Sharia law, the intention being-broadly speaking-that the Saudi Arabian interests would go to the first party and the foreign assets, represented by the two Jersey trusts, to the second party. But, before this could be done, a complicated and protracted exercise of valuing the family's extensive interests and assets was to be undertaken by a valuation committee, composed of KPMG (representing the first party), PricewaterhouseCoopers (representing the second party), and Arthur Anderson (as arbitrator).

8 Much of the next two and a half years was devoted to a variety of steps and events designed to carry out that valuation and to put the disengagement agreement into effect, the detail of which is of no relevance for present purposes. But the process ran into serious difficulties, not least because of differences of view between the two parties as to the extent to which the members of the first party were entitled to be provided with information about distributions, investments and certain pledges of assets held in the Jersey trusts. This latter issue came to a head in February 2003, when Sheikh Abdullah made it clear that he objected to the provision of any further information by either of the trustees on the ground that, as a result of the disengagement agreement and subsequent events, the members of the first party had disclaimed all interest in the Jersey trusts and no longer had any standing as beneficiaries to demand such information-a state of affairs vigorously contested by the first party. Shortly afterwards, J.P. Morgan, the Internine

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trustee, wrote to say that it proposed to cease making distributions from the trust until the issue of entitlement had been clarified. Russa adopted a similar, though slightly more flexible, position.

9 This impasse led, on March 28th, 2003, to Russa issuing a short representation in the Royal Court, reciting the dispute that had arisen and Russa's inability to determine the rights and wrongs of it, and seeking determination of the question whether or not there had been any such disclaimer.

10 That was followed, on May 12th, 2003, by the issue of a representation in the Royal Court by Sheikh Abdullah, seeking positive declarations to the effect that the members of the first party had disclaimed all interest in Internine and Intertraders, that they were, accordingly, not entitled to any further information about them from the respective trustees and that the trustees were entitled to make distributions to those persons who remained beneficiaries of those trusts: in other words, the members of the second party. At around the same time, Sheikh Abdullah also started proceedings before the Grievance Board in the Kingdom of Saudi Arabia, seeking orders to compel the members of the first party to abide by the terms of the disengagement agreement.

11 By that stage, Sheikh Fahad and Ladies Noura and Adawiya had parted company with Sheikh Abdullah and had revoked the power of attorney previously held by him to represent them in connection with the disengagement agreement. They too started proceedings before the Grievance Board, in their case seeking to have that agreement declared void and the process of division of assets stopped.

12 On September 26th, 2003, the third of three representations in the Royal Court was issued, this time by the members of the first party. It sought a variety of orders challenging Sheikh Abdullah's purported amendments to the two trust deeds by which he had claimed to appoint himself sole first protector in April 2000; requiring the trustees to provide certain information; and seeking to hold both sets of trustees to account for alleged breaches of duty. It sought no specific declaration about the disengagement agreement, presumably because this was already the subject of Sheikh Abdullah's representation.

13 Shortly afterwards, Sheikh Fahad joined forces with the members of the first party, authorizing Sheikh Mohamed to act for him. From this point onwards, the alignment and representation of the parties in the Royal Court litigation has been as described in para. 4 above.

14 On October 2nd, 2003, Mourants, on behalf of J.P. Morgan, wrote to the other parties listing what they saw as the 12 principal issues raised by the three representations in so far as they concerned Internine (though, for the most part, the same issues also arose in relation to Intertraders). They were grouped under four headings:

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(i) the validity of the April 17th, 2000 instrument, by which Sheikh Abdullah had purported to appoint himself sole first protector (Issues 1–5);

(ii) the effect of the disengagement agreement and related documents (the question of “disclaimer”: Issue 6);

(iii) issues concerning the provision by the trustee of information and the making of distributions from the trust fund (Issues 7–9); and

(iv) matters concerning the conduct of the Internine trustee, including allegations of breach of duty (Issues 10–12).

This breakdown of issues, with certain modifications, has been the effective working basis for the management of the litigation.

15 On November 7th, 2003, the Bailiff, giving directions in effect in all three sets of proceedings, ordered the trial of Issues 1–5 and Issue 6 before all other issues. At the same time, he ordered that, until further order, the Internine trustee should discharge present and future obligations under certain specified loans without prejudice to the right of the beneficiaries to contend subsequently that these were not properly obligations of Internine; and that both the Internine trustee and the Intertraders trustee should “pay and discharge their operational expenses on an ongoing basis,” again without prejudice to subsequent argument as to the propriety of such payments being made from trust funds. Finally, he directed that, pending further argument, neither trustee should disclose any further information or documents concerning either trust to any member of the first party or to Sheikh Fahad, a restriction that was subsequently modified on January 14th, 2004 to permit disclosure of pre-September 2000 information.

16 At a further hearing before the Bailiff, on December 4th, 2003, orders were made temporarily suspending, without prejudice to any later decision by the court, all powers of the “protectors or purported protectors” of Internine and Intertraders (though leaving all previous directions in force) and conferring, in the meantime, an unfettered discretion on the two trustees as regards the investment of trust funds. In addition, any further loans or distributions out of the trust funds to or at the behest of any beneficiary or purported beneficiary were banned without the approval of the court.

17 The “interim regime” established by these two sets of directions remains, for the moment, largely in force, one consequence of which has been that both trustees have felt obliged to seek directions from the court in relation to the exercise of their discretion on a number of issues where the beneficiaries-or potential beneficiaries-have been at loggerheads as to the appropriate course.

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18 For much of 2004, as well as 2003, Issue 6 dominated the litigation in three respects. First, because until it was resolved the question of the identity of the beneficiaries of the two Jersey trusts remained uncertain; secondly, because if Sheikh Abdullah were to succeed on this particular issue much of the remaining dispute would be likely to fall away; and thirdly, because it was being litigated in both Jersey and Saudi Arabia without any certainty as to where a definitive, final ruling would first be obtained. The matter continued, in particular, to dog the question of whether or not the trustees should be authorized to release further, post-September 2000 information to the members of the first party, Sheikh Abdullah maintaining that this would be wrong until such time as Issue 6 had been finally decided and all possibilities of appeal exhausted.

19 In the event, the issue was finally determined in the courts of Saudi Arabia before it ever came to trial in the Royal Court when, in or about July 2004, the Saudi Court of Appeal upheld an earlier ruling of the Grievance Board in January that year that the disengagement agreement was null and void. For a brief period thereafter, Sheikh Abdullah continued to contend that there were still avenues of further appeal open to him and to resist the provision of post-September 2000 information to members of the first party (and the Ladies). But following an adverse ruling by the Jersey Court of Appeal on September 10th, 2004, rejecting Sheikh Abdullah’s plea that it was still premature for such information to be released, and the refusal of the Privy Council to grant leave

to appeal, he eventually conceded defeat and, on November 3rd, 2004, formally sought, and was granted, leave to abandon Issue 6.

20 From then on, Issue 6 ceased to be of immediate relevance and the parties were effectively back to the pre-September 2000 position: no split of assets had been agreed and all nine brothers and sisters remained, and remain today, beneficiaries of each of the trusts.

21 Of the remaining five issues directed by the Bailiff's order of November 7th, 2003 to be tried first, Issues 1–3 were the main ones. Issues 4 and 5, which concern the circumstances, validity and effect of two trust "instruments" exhibited by Sheikh Abdullah to his first affidavit of May 24th, 2003, are probably subsidiary aspects of Issue 3.

22 The terms of Issues 1 and 2 are as follows:

(i) What is the true construction of cl. 6(c) and (f), and cl. 2(b) of the Internine Trust deed, dated June 22nd, 1998, and the Intertraders Trust deed, dated January 23rd, 1998?

(ii) Whether a first protector had, and whether Sheikh Abdullah has, the right freely to modify the terms of the Internine Trust deed, likewise the Intertraders Trust deed, pursuant to such provisions.

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23 Issue 3 originally read:

"Whether Sheikh Abdullah's (a) purported amendments to the Intertraders Trust by an instrument dated October 14th, 1998 are invalid and whether, as a result, all distributions from the Intertraders Trust required the consent of both protectors at all times; and (b) unilateral amendments, by two instruments dated April 17th, 2000 are invalid and whether, as a result, Sheikh Mohamed remains as first protector of the Internine Trust and the Intertraders Trust."

But, as a result of further orders made on February 9th and 13th, 2004, and confirmed at a directions hearing before the Bailiff on March 18th, 2004, its terms were amended by the addition of the following words:

"Without prejudice to the generality of the foregoing-

(1) whether the representor's [*i.e.* Sheikh Abdullah's] amendments or any of them are invalid by reason of breach of fiduciary duty and/or improper motivation and/or made in fraud of his power (if any) to make them and/or for any other reason; and/or

(2) notwithstanding the answers to (1) above, whether the first party is precluded from challenging the amendments or any of them for any reason advanced before February 20th, 2004 or that may be advanced with leave of the court after the date hereof."

24 Later, following certain amendments by the first party to its pleaded case, it became evident that the scope of the factual inquiry for the purposes of Issue 3, expanded in this way, might well overlap significantly with that required for the purpose of dealing with the later Issues 10–12, concerning alleged breaches of duty by trustees. Deliberations between the parties and the court led, accordingly, to a decision in September 2004 to confine the stage 1 trial-which was set for January 2005-to Issues 1, 2 and 6. On the subsequent abandonment by Sheikh Abdullah of Issue 6 in November 2004, the scope of the January hearing was further reduced to Issues 1 and 2.

25 It is against the background described above that these issues came to trial. Because the issues were largely ones of law, the parties agreed and the court concurred and duly certified that it would be appropriate for me to sit alone without Jurats.

26 Before I go further, I wish to express my very considerable gratitude to all counsel involved in this matter for the assistance that they have given the court in this difficult case, particularly Advocates James, Taylor and Binnington, who bore the brunt of the debate (Advocates Young and Le Quesne, for budgetary reasons, having taken a more limited part in the proceedings); and also my gratitude to the parties and their respective

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advocates and advisers for their forbearance while awaiting delivery of this overdue judgment.

27 It is convenient at this point to mention the stance taken by the two sets of trustees in relation to Issues 1 and 2. Both were given leave to participate in the trial of Issues 1 and 2, without prejudice to the question of how the costs of such involvement ought properly to be dealt with (a matter that was reserved until after the trial). In the event, J.P. Morgan, via Mr. Binnington, chose to make fairly extensive submissions, while Russa, via Mr. Le Quesne, took a less active part. Both understandably insisted that their role was entirely neutral as regards these particular issues, neither of which directly involved any consideration of the trustees' conduct (those issues being reserved for trial at a later stage). At the same time, both clearly had and have an interest in the outcome of these issues, given that they were the trustees at the time when the relevant amendments were made by Sheikh Abdullah and that both are criticized by the first party for permitting these amendments to be made—a factor that it has been necessary to keep in mind when weighing those of the trustees' submissions that were supportive of Sheikh Abdullah's case.

### **The original declarations of trust and letters of direction**

28 The structure and terms of the Intertraders and Internine Trust deeds are substantially the same, though their antecedents are slightly different. In the case of Intertraders, the original instrument took the form of a declaration of trust made by Russa on January 23rd, 1998, at the request and on the authority of Sheikh Abdullah, as set out in a two-page letter from him addressed to and countersigned by Russa, dated January 15th, 1998. That letter made reference to a declaration of trust “the terms of which have previously been agreed between us,” summarized some of the more important provisions and requested Russa's signature as confirmation that this accurately reflected what had been agreed.

29 Some five months later, the Internine deed was executed. This also took the form of a declaration of trust, this time by Chase Bank & Trust Company (C.I.) Ltd. (“Chase,” now J.P. Morgan), dated June 22nd, 1998, but differed in some respects from the Intertraders deed. The request and authority for the establishment of this trust was contained, in this case, in a more formal, four-page Chase “Declaration of trust letter of direction,” which was signed by Sheikh Abdullah on June 19th, 1998 and “agreed and accepted” by Chase. Among other things, this required Chase to incorporate and manage, as part of the trust property, a BVI private investment company by the name of Wingara Enterprises Inc.: this was and is the principal corporate vehicle through which the Internine Trust assets are held.

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30 The establishment of Manastar was contemporaneous with that of Internine and followed the same pattern, though in this case the investment company was to be Sidara Ventures Ltd., another BVI corporation.

31 There are several points about these instruments, particularly the letters of direction, that are of note.

32 The Internine and Manastar letters open by emphasizing that they are not intended to amount to an additional trust or to override any discretionary power vested in the trustee. It is plain, therefore, that if and to the extent that there is any disparity between the two, the executed declarations of trust were to prevail.

33 Secondly, under the heading, “Declaration of trust and transfer of assets,” both these letters declare:

“I am/we are transferring to you the property listed below with the intention that you should declare a trust substantially in the terms of the draft which you have supplied to me/us a copy of which is attached to this letter \*\* reference [B or A]. The property which is being transferred is my/our own absolutely and I am/we are entitled to dispose of it by way of gift.”

This was, to say the least, an inexactitude: Sheikh Abdullah, the sole author-signatory of these letters, was clearly not the absolute owner of the property in question. To describe him as the “settlor” of these trusts, as was suggested from time to time, is therefore incorrect.

34 Thirdly, the Internine and Manastar letters give minimal information about the assets to be taken into the trust: in the former case, it merely says “(a) Chase accounts: Global Custody, \$\*\* . . . New York, \*\* As per attached ‘map reports’”[copies of which were not included in the versions in evidence]. There is no sub-para. (b). In the case of Manastar, sub-para. (a) is in identical terms, but a sub-para. (b) reads: “The entire issued share capital of Delapluma N.V., a Netherlands Antilles company.” The less formal Intertraders letter says nothing at all about the identity of the relevant assets. None of the three declarations of trust does any more than define “the trust fund” as the sum of US\$100 and any other property that might thereafter be paid or transferred to the trustee by any of the beneficiaries and accepted by the trustee.

35 Fourthly, each of the three letters includes the following passages:

“Sheikh Mohamed Ali M. Alhamrani and Sheikh Abdullah Ali M. Alhamrani have been appointed first protectors under the terms of the trust and as such will represent the beneficiaries to the extent set forth in the trust instrument.”

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And a little later:

“The trust instrument sets out the powers, and provides for succession, of the protectors . . . The protectors have the right and power to amend the terms of the trust, subject to certain restrictions being placed on the exercise of the powers of amendment by the successor protectors . . .”

36 Fifthly, each of the letters refers to the fact that the trust instrument listed the beneficiaries and also describes the manner in which capital and/or income is to be distributed from the trusts as follows:

“It should be noted that all distributions of income or capital from the trust should be paid to the following bank account, unless otherwise directed in writing by the protectors: National Commercial Bank, Khalidiah Branch, Jeddah, For credit to account: Sons of Sheikh Ali M. Alhamrani, US\$ Account No. 101 272 700 101 06 ...”

37 Sixthly, the only member of the Alhamrani family to sign the three letters was Sheikh Abdullah: in the case of Intertraders, without any description of the capacity in which he did this, but in the case of the other two letters under the rubric: “Client (Protector).” Neither letter gives any indication as to the source of the relevant funds, or how and on whose authority they were to be transferred into these new trusts.

38 There seems little doubt that the reality is that the funds in question were, for the most part at least, the family’s inherited “foreign assets,” previously held in two Liechtenstein foundations (Clubnine and Manaskaf) and in nine Cayman Islands trusts. And the necessary transfers, however formally effected (of which this court knows little), were almost certainly authorized by Sheikh Abdullah, acting under a wide-ranging authority granted to him and to Sheikh Mohamed jointly and severally some six years earlier. On March 5th, 1992, the brothers and sisters had made a formal declaration before a notary public in Saudi Arabia, the effect of which was to create what, for the purposes of this litigation, has been called a “power of attorney.” By this declaration, each of them appointed Sheikh Mohamed and Sheikh Abdullah (as recorded in the English translation of the original Arabic notarial Act)-

“individually and jointly, to represent us, the inheritors of Ali Alhamrani according to the inheritance deed issued by the Baljuashi court under 224 on 1/6/1396H, in everything that concerns us in the inheritance from our father ...”

with wide powers and no territorial limit. It concluded with the following passage:

“This is a general proxy for both of them authorizing them

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individually and jointly ... The two representatives [that is, Sheikh Mohamed and Sheikh Abdullah] ... in their capacity as inheritors to their father as mentioned above, agree that each of them has appointed the other as his legal representative.”

### **The October 14th, 1998 Intertraders amendment**

39 On October 14th, 1998, a further instrument, amending the January 23rd, 1998 Intertraders declaration of trust, was made and executed by Sheikh Abdullah and Russa in order to bring the terms of Intertraders into line with those of Internine and Manastar: that was, at least, the purpose according to Sheikh Abdullah and was undoubtedly the effect. In executing this deed, Sheikh Abdullah claimed to act in his capacity as one of the two first protectors of Intertraders and to exercise his power to amend the trust deed pursuant to cll. 2(b) and 6(f). For present purposes, the principal change of significance was to reduce the trustees’ former obligation to obtain the written *consent* of the protectors to make distributions of income or capital to one of *consultation* with the protectors (cl. 3(a)). Changes were also made to cll. 2(b) and 6(f).

40 From then onwards, the terms of these cll. 2(b) and 6(f)-which lie at the heart of Issues 1, 2 and 3-were identical in all three trust deeds. I shall refer to them hereafter as “the original” provisions.

41 These October 1998 amendments to the Intertraders Trust are also challenged by the first party and the Ladies, as well as the later April 2000 amendments to all three Jersey trusts.

### **The critical provisions**

42 The expression “first protectors” was originally defined by cl. 1(b) as meaning “the persons appointed as the first protectors pursuant to cl. 6(b)” (in other words, Sheikh Abdullah and Sheikh Mohamed); and the meaning of the terms “the protectors” and “the successor protectors” were likewise defined by reference to persons appointed pursuant to cl. 6.

43 By cl. 3, the trustees declared themselves possessed of the trust fund on terms, among others, that, upon expiration of the trust period, both capital and income should be held upon trust absolutely for the nine siblings (who were defined as the beneficiaries) as to one share each for the brothers and one half-share each for the Ladies.

44 Clause 6 provided as follows:

“(a) The protectors shall at all times comprise two persons.

(b) The first protectors shall be Sheikh Mohamed Ali M. Alhamrani and Sheikh Abdullah Ali M. Alhamrani

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(c) A person shall cease to be a protector:

(i) If he dies.

(ii) If he shall be found to be lunatic or of unsound mind, as confirmed by any court order.

(iii) If he informs the trustee and the other protector of his desire to resign.

(iv) If he shall be removed by notice in writing served on him by the trustee and the other protector signed by beneficiaries who would be entitled to at least 75% of the trust fund as if the trust period had expired on the date of such notice pursuant to the provisions of cl. 3(c).

(d) In the event of a person ceasing to be one of the protectors, the next person in the order listed below shall automatically and immediately become a protector in his place and the trustee shall cause a memorandum to this effect to be endorsed on or annexed to this trust, namely [there then followed a list of the seven siblings other than Sheikh Mohamed and Sheikh Abdullah, starting with Sheikh Siraj].

...

(f) The first protectors may exercise their powers individually and the exercise by one of the first protectors of any of their powers under cll. 2(b), 5(b), 6(h) or 9 hereof and any consent given by one of the first protectors under the provisions of this trust shall

bind the other first protector or successor protector (as the case may be) and shall be binding on the trustee who shall act in accordance with the action or consent of such first protector. Successor protectors shall exercise their powers jointly and the consent of a successor protector shall not bind the other protector.

- (g) In the event that the successor protectors shall be unable to agree as to the manner in which they should exercise any of their powers, then in such event if either of the successor protectors obtains the written consent of beneficiaries who including himself or herself would be entitled to at least 75% of the trust fund pursuant to the provision of cl. 3(c) to a specified course of action this shall be notified in writing to the other protector and to the trustee and will be binding on them.

...

- (j) The protectors may exercise any power conferred on the

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protectors under this trust notwithstanding that any protector may be a beneficiary hereof.”

45 The first of the four provisions mentioned in cl. 6(f), that is, cl. 2(b), provided:

“The first protectors shall have the right at any time and from time to time to revoke (as to the whole or any part or parts of the trust fund) or otherwise amend (both as to its beneficial and administrative provisions) this instrument by written instrument delivered to the trustee provided (first) that no such amendment shall diminish the compensation or the provisions for exoneration to which the trustee is entitled or increase its obligations hereunder without its consent in writing and (secondly) that no such amendment shall have retrospective effect or otherwise invalidate or prejudice any previous exercise by the trustee of its powers hereunder.”

46 The second, cl. 5(b), provided that the protectors should have wide powers to give directions to the trustee as regards investment. The third, cl. 6(h), empowered the protectors to remove any requirement for their consent otherwise contained in the trust deed. And the fourth, cl. 9, gave the protectors the power to require a trustee to resign and to appoint a replacement.

### **The April 17th, 2000 amendments**

47 On April 17th, 2000, Sheikh Abdullah, acting alone under powers conferred on him by a combination of cll. 2(b) and 6(f) (as he claimed at the time and claims today), executed three instruments in substantially identical form and terms, one for each trust. According to the provisions of these deeds, far-reaching amendments to the pre-existing trusts were introduced and, in effect, were made irrevocable without the consent, alone, of Sheikh Abdullah himself.

48 In the first place, cl. 1(b) was revoked and replaced by the words: “‘the first protector’ or ‘the first protectors’ means the person [note the singular] appointed as first protector pursuant to cl. 6(a) hereof.” Corresponding amendments were made to the terms “protectors” and “successor protectors.”

49 In the second place, the original text of cl. 6 was revoked and replaced, so far as material to the present issues, by the following:

- “(a) The first protector shall be Sheikh Abdullah Ali M. Alhamrani. [The original cl. 6(a) to the effect there should at all times be two first protectors was removed.]
- (b) The first protector shall cease to be the protector:

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- (i) If he dies.
- (ii) If he shall be found to be lunatic or of unsound mind as confirmed by any court order.
- (iii) If he informs the trustee and the other protector of his desire to resign. [The previous cl. 6(c)(iv), providing for removal by a 75% vote of the beneficiaries did not appear.]
- (c) In the event of the first protector ceasing to be the protector the protector shall at all times thereafter comprise two persons who shall be appointed in accordance with the provisions of sub-cll. (e) or (f) of this clause.
- (d) A successor protector shall cease to be the protector if [there was then enumerated the same set of circumstances as those applicable to the first protector, but retaining, in the case of successor protectors, the power of beneficiaries representing 75% of the trust fund to remove him or her].
- (e) [This, together with (f) listed the potential successor protectors and made provision for their succession, substantially as before.]
- ...
- (g) Successor protectors shall exercise their powers jointly and the consent of a successor protector shall not bind the other protector. [This represented the residue of the previous cl. 6(f) after the removal of the original provision for first protectors to act individually, which was now redundant.]”

It is unnecessary to set out the terms of the remaining sub-clauses.

50 Shortly after this development, on June 12th, 2000, the entirety of the Manastar Trust fund, consisting of the shares in Sidara, was transferred into Internine by the trustee, exercising powers conferred on it by the original Manastar deed of June 1998, as amended by Sheikh Abdullah’s April 17th, 2000 instrument and a further supplemental instrument, dated June 8th, 2000, executed by Sheikh Abdullah in (purported) exercise of his power as sole “present protector” (as he was described there).

51 The effect of these amendments, if valid, was and is radical. Not only have they established Sheikh Abdullah in the position of sole first protector, to the exclusion of Sheikh Mohamed, but they have also done so in a way that entrenches him in it irreversibly until such time as he dies, becomes of unsound mind or chooses to resign. As there is no longer another first protector, there is no one with power to displace Sheikh

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Abdullah in the same way that he claims to have been able lawfully to remove Sheikh Mohamed from office in order (allegedly) to protect the trust and the interests of the beneficiaries. The ability of beneficiaries representing 75% of the trust fund to remove him, as provided in the old cl. 6(c)(iv), has also been eliminated (though retained, as just noted, in the case of successor protectors).

### **The scope of the trial**

52 Two matters that had a significant bearing on the course and scope of the trial can be conveniently mentioned at this point. First, Sheikh Abdullah's contentions as to whether the power to amend conferred by cl. 2(b) was subject to any constraint of a fiduciary nature and whether that question was within the scope of Issues 1 and 2. Secondly, the rival contentions of Sheikh Abdullah and Sheikh Mohamed in particular as to the extent to which, if at all, Issue 2 required and entitled the court to concern itself with the future as well as the past, and the extent to which the court should admit in evidence and have regard to post-April 17th, 2000 documents and events.

53 As to the first of these, Sheikh Abdullah's pleaded case denied that the cl. 2(b) power of amendment *was subject to any limitation, whether as a matter of construction or otherwise*, and later again *denied that the exercise by a first protector of any of the said powers is subject to the overriding common law fiduciary duty alleged, or any like duty or other limitation, other than as expressly provided for by the terms of the trust deed*. And, as late as December 8th, 2004, when he swore his 15th affidavit, Sheikh Abdullah appeared still to be maintaining this stance, though perhaps with less confidence than before:

“It was always my understanding that my powers to amend the trust deed, both before and after the October 14th, 1998 instrument of amendment, were unconstrained. It is alleged (and as I understand that this issue is not to be determined at the January 2005 trial, which relates only to questions of construction) that there were some external constraints on my ability to amend arising from the existence of some fiduciary obligations on my part. I make no comment on the existence or otherwise of any such obligations. Suffice to say that as far as I am concerned, and it was always my intention that this should be the case, there is nothing in the wording of the deeds that restricts the powers of first protectors to amend the terms of the trust deed.”

54 It will be apparent from the words in parenthesis in para. 53 that Sheikh Abdullah and his advisers had hoped to dissuade the court from addressing the question of any fiduciary element attaching to the exercise of the power of amendment conferred by cl. 2(b) in the course of the

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January trial. But, as was made clear by the court at a directions hearing on December 20th, 2004, such an approach was neither justified by the formulation of Issues 1 and 2 nor realistic, given the nature of the questions posed for determination. Whether or not the power to amend was a fiduciary one was inextricably bound up with the questions of construction.

55 This stance of Sheikh Abdullah resulted in a considerable portion of the subsequently-delivered skeleton arguments of the other parties being devoted to an analysis of the nature of the cl. 2(b) power and its correct characterization (as beneficial (or personal); restricted; qualified fiduciary; or wholly fiduciary). But, by the time Sheikh Abdullah's own skeleton argument came to be

delivered, his position had moved on to the point where he no longer sought to contest the proposition that that power, properly construed, was subject to certain constraints of a fiduciary nature. He conceded and indeed argued, instead, that its proper classification was that of a “restricted personal” or “qualified fiduciary” power (in terms of his preferred four-fold classification, derived from *Lewin on Trusts*, 17th ed., para. 30–02, at 771–772 (2000)), there being, it was suggested, little difference between these two in the present case, and that the power was one which by its nature must be exercised for a proper purpose and (it may well be) with due consideration to the interests of the trusts (including all beneficiaries) as a whole. This concession, it must be said, was properly and necessarily made: Sheikh Abdullah’s previous position was untenable. An attempt to reconcile this new position with Sheikh Abdullah’s earlier stance was no more than wishful thinking.

56 This development left all the parties more or less agreed that the power was and is a fiduciary one: not “beneficial or personal,” nor at the other end of the scale “fully or wholly fiduciary” as both first protectors were themselves designated beneficiaries and were expressly authorized by cl. 6(j) to exercise their powers notwithstanding this fact; but in the middle territory, covered by what can most conveniently be termed a “qualified fiduciary” power. To the extent that the discussion of classification of powers reduced the ambit of the dispute between the parties, it served a useful purpose. But, important as it is, this conclusion alone is not necessarily sufficient to arrive at the correct answers to the questions posed by Issues 1 and 2. Such categorization is no more than a convenient, rough shorthand for various “baskets” of ideas: the full range and nuances of powers is as varied as the circumstances of the settlements under which they are given: see Smellie, J. in *In re Z Trust* (6) (1997 CILR at 265) (a decision of the Grand Court of the Cayman Islands). The terms of the particular document(s) in question still have to be construed.

57 The second area of difference between the parties concerning the scope of the trial was whether and to what extent the court should be

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concerning itself with what might or might not happen in the future as regards any further exercise- or purported exercise-of the power to amend the trust deeds.

58 Mr. Taylor, on behalf of the first party, made no secret of his clients’ concerns as to what Sheikh Abdullah might attempt (illegitimately, in their view) to do next in exercise of his claimed powers as sole first protector and was anxious to try to ensure that the court was cognizant of certain events that had happened (as he contended) subsequent to the April 17th, 2000 amendments. These were said to be indicative of Sheikh Abdullah’s mischievous intentions, or at least illustrative of what could happen. From this he sought to argue that it was “essential that the court should decide not only on the powers and the nature of the powers that a first protector *had* but on the powers and the nature of the powers that the first protector *has*.” For a while it also seemed that he was seeking to use post-April 17th, 2000 materials as an aid to construction of the trust deeds, though this was later disavowed.

59 At the other end of the spectrum, Mr. James, on behalf of Sheikh Abdullah, was insistent that it was no part of the function of the court on the trial of Issues 1 and 2 to concern itself with the validity of any particular amendment, actual or hypothetical, other than those that were effected by the instruments of October 14th, 1998 and April 17th, 2000, his concern evidently being that to go down that road might allow the first party to “obtain the collateral advantage of fettering [Sheikh

Abdullah] in the exercise of his powers as first protector for the future.” He accepted, however, that it would be perfectly legitimate for the court to take account of “the scope of amendments which would be permitted on a particular construction of the trust deeds.”

60 I can well understand the nervous concern of Mr. Taylor’s clients as to what Sheikh Abdullah might consider it appropriate and legitimate to do next in the exercise of powers which-until shortly before the trial-he was repeatedly asserting were not subject to any limitation of any kind whatever, fiduciary or otherwise. But it would be wrong and unnecessary, for the purpose of determining Issues 1 and 2, for me to take account of the sort of matters that Mr. Taylor invites me to look at. Mr. James rightly submits-as does Mr. Binnington for the Internine trustee-that what is at issue in the present trial is the construction of the relevant provisions of the trust deeds with a view to determining the validity or otherwise of the amendments made by the instruments executed by Sheikh Abdullah on October 14th, 1998 and April 17th, 2000 and that no other specific amendments are currently in issue. In the course of that exercise of construction it was, of course, inevitable that the possible ramifications of competing submissions as to the true meaning and intent of the relevant provisions might be explored and that this might involve considering

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what the position would be in a variety of hypothetical circumstances as indicators for or against a particular construction. But this was something that could be done perfectly well as a matter of submission and debate, and required no evidence of anything. I would, moreover, have been in no position in the present trial to make any finding of fact on any contested issue. Nor would evidence of post-amendment events have been admissible as an aid to construction.

61 For the record, however, I note that the trustee gives an assurance, in response to the first party’s skeleton argument, that there is no “other secret amendment” planned.

### **Construing cl. 2(b) and 6(c) and (f): the principles**

62 The correct approach to the task before the court is to a large extent the same as it is for any instrument the meaning of which is in contention:

(i) the aim is to establish the presumed intention of the maker(s) of the document from the words used: in the present case, there being no settlor-signatory, the maker must be taken in each case to be the trustee-or possibly the trustee and Sheikh Abdullah as the parties to the letters of instruction which conferred authority on the trustees to execute the declarations of trust (it makes little difference which in the present case);

(ii) words must, however, be construed against the background of the surrounding circumstances or “matrix” of facts existing at the time when the document was executed-a principle that has been a bedrock of English law since the judgment of Lord Wilberforce in *Prenn v. Simmonds* (3) and appears now to have been accepted as also properly reflecting the approach that this court should adopt in relation to such matters;

(iii) the circumstances relevant and admissible for this purpose are those that must be taken to have been known to the maker at the time or, where there are more than one, known to the makers of or the parties to the document, and include (to use the language of Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy.* (2) ([1998] 1 W.L.R. at 913), from whose speech only Lord Lloyd of Berwick dissented)-“ . . . absolutely anything which would have

affected the way in which the language of the document would have been understood by a reasonable man”;

(iv) evidence of subjective intention, drafts and negotiations and other matters extrinsic to the document in question is inadmissible, as is evidence of events subsequent to the making of the instrument (evidence of this kind being relevant where an estoppel is said to arise but not in this jurisdiction, unlike some others, as an aid to construing the original meaning of the document);

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(v) the critical provisions, cll. 2(b), 6(c) and 6(f), as with all words and phrases, have to be read in the context of the document as a whole;

(vi) words should as far as possible be given their ordinary meaning: “Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation”: *per* Lord Steyn in *Society of Lloyd’s v. Robinson* (5) ([1999] 1 W.L.R. at 763); and

(vii) this last precept may, however, have to give way if consideration of the document as a whole, having regard to the principles set out above or common sense, points to a different conclusion: “common sense” in this context being best reflected by the passage from the speech of Lord Reid in *Schuler (L.) A.G. v. Wickman Machine Tool Sales Ltd.* (4) ([1974] A.C. at 251) in which he observed:

“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.”

(See also Lord Steyn, again in *Society of Lloyd’s v. Robinson* ([1999] 1 W.L.R. at 763), and Lord Hoffmann’s observations in the *Investors Compensation Scheme* case (2) concerning the need, on occasion, for a court to accept that the parties must have used the wrong words or syntax.)

63 It is also elementary, first, that when attempting to discern the true meaning of a power conferred in a trust deed or other instrument the court must have regard to the nature of the deed and the purpose for which the power appears to have been granted-though this will depend to a large extent on the terms of the instrument itself; and secondly, that a power of amendment reserved in a trust must be exercised for the purpose for which it was granted and not for one beyond the contemplation of the makers of the original instrument (Lord Steyn (*ibid.*), citing *Hole v. Garnsey* (1)).

64 In the present case, the party most concerned to appeal to extrinsic evidence as part of the relevant surrounding circumstances or factual matrix was the first party. Mr. Taylor’s submissions originally envisaged an examination of a substantial body of material, running to several lever-arch files, as necessary for this purpose. But by the start of the trial this had been reduced to fewer than 20 documents and a limited number of affidavits, and it was whittled down further in the course of the hearing to a few very limited passages of affidavit evidence and a handful of documents, most of which were either uncontroversial, inadmissible or of no particular help. The matters of which these materials were said to

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contain relevant evidence were, essentially, these-tracing them back in chronological sequence from the execution of the two trust deeds:

(i) The three letters of instruction: all parties were agreed that these letters, and the fact that the resulting declarations of trust were executed in pursuance of them, were admissible and relevant circumstances.

(ii) The fact that, of the siblings, Sheikh Abdullah alone was involved in negotiations surrounding the creation of the trusts, although all nine siblings were entitled to share in the intended creation of the intended trust assets: this again was common ground.

(iii) The fact that the immediate source of the settled funds was the Liechtenstein foundations and the Cayman trusts: this was common ground between all parties as regards Internine and Manastar but, in the case of Intertraders, was not accepted by Mr. Le Quesne as having been known to Russa and thus a legitimate part of the factual matrix. Beyond this there was, however, no agreement. Mr. Taylor suggested that the court should look at the terms of foundation documents with a view to making submissions as to similarities between them and the Jersey trusts. Sheikh Abdullah had acknowledged in his fourth affidavit that the form of the Intertraders deed was “loosely based on that previously entered into between me and ABN AMRO in Geneva.” But it was plain that this would be an exercise of uncertain value, not least because there was no evidence before the court of the relevant laws of these other jurisdictions to help with a proper understanding of them; and, in the case of the Clubnine by-laws and statutes, the power to amend was not, in any event, vested in the protectors but in another body, the so-called “Foundation Board.” Nor do I think that any useful or legitimate assistance can be gained from a letter, dated May 7th, 1997, in which Mr. Allan Johnson, then managing director of Russa, wrote to Le Gallais & Luce, Russa’s then lawyers, reporting his client’s request that the trust that was to be established should “follow the lines of a Liechtenstein Foundation which the family has”: other considerations apart, this would be getting into the forbidden and unreliable area of pre-deed “negotiations” and subjective intention.

(iv) The power of attorney conferred on Sheikh Mohamed and Sheikh Abdullah by the other brothers and sisters on May 3rd, 1992: again it was accepted by all concerned with Internine and Manastar that Sheikh Abdullah held such a power of attorney authorizing him (acting individually) to represent his eight siblings in respect of (at least) those assets which became assets of those two trusts and that the trustee was aware of this. Russa, however, did not accept that it knew of this at the relevant time, though I find it difficult to believe that this can really have been the case.

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(v) The fact that the settled funds were substantial and derived originally from those constituting the inheritance of the children of Sheikh Ali Alhamrani, that they were, in short, “family assets”: here too there was no dispute that this was known to all concerned at the time when the declarations of trusts were made.

65 But, when all is said and done, with one important exception, none of these matters helps very much to answer the disputed issue of construction with which the court is faced. It may, in particular, have been the practice of the members of the family to confer authority on the two eldest

brothers, Sheikhs Mohamed and Abdullah, to act in one capacity or another on behalf of the others, as in the case of the March 1992 power of attorney, or (perhaps) as protectors under the Liechtenstein foundations or the Cayman trusts, but that of itself does nothing to further the present inquiry as to the meaning and effect of the provisions of the two later Jersey trusts with which we are now concerned.

66 What these contextual facts and matters do, however, is to put beyond any doubt whatever the fiduciary nature of the role of the protectors (whether first or successor) and of the powers conferred on them *and* the need for that role to be performed, and those powers to be exercised, for the benefit of the beneficiaries as a whole.

67 Turning to the terms of the declarations of trust themselves, a striking feature of them is that, although the possibility of dissent between successor protectors was expressly recognized, and provision was made for resolving it by allowing the beneficiaries, on a 75% vote, to hold the balance of power (cl. 6(g)), no attempt was made by the draftsman to cater for the equivalent situation arising between the first protectors. Nor is it obvious what the draftsman had in mind as regards the combined operation of cl. 6(f) and cl. 5(b)(iii) in the event of a breakdown in relations between the two first protectors. The latter clause provides: “Directions [by protectors under cl. 5(b)(i)] shall be in writing and shall be effective when received by the trustee.” But what would the position be in the event of sequential conflicting directions being given by each of the first protectors in relation to a matter that was not irreversible, such as the buying or selling of a particular investment? On the face of things, there was, in theory, nothing to stop a direction to the trustee from first protector *A* on Monday, to sell *X* bonds and buy *Y* shares, being followed by a direction from *B* a week later to the opposite effect, and so on indefinitely. Clause 6(f) makes the exercise of any cl. 5(b) power, and thus the giving of any investment direction, by one first protector binding on the other; but it is difficult to see that *A*’s direction in the example given could have been intended to require the trustee not only to make the specified investment in the first place but to continue to hold it without limit in time so as to preclude *B* from ever giving a direction of his own. No counsel

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was able to offer a satisfactory solution to this conundrum other than to suggest that, in practice, sooner or later the beneficiaries would intervene or the directions of the court would be sought.

68 What then was the thinking behind this? How were differences between first protectors “concerning the manner in which they should exercise any of their powers” (to borrow the language of cl. 6(g)) expected to be resolved? It is difficult to see that the omission to make the beneficiaries the arbiters of any dispute, in the same way as that established by cl. 6(g) in the case of successor protectors, was anything other than deliberate. And while one can speculate that it may have been thought, at the time, that any conflict was unlikely to arise as Sheikh Abdullah and Sheikh Mohamed would probably each be content to leave the other to get on with looking after matters in his traditional sphere of influence—the foreign assets in the case of the former and the Saudi Arabian assets in the latter case—there could be no guarantee that differences might not arise one day. Logically, the only solution would appear to be the extreme remedy of removal altogether of one or other first protector by the beneficiaries under cl. 6(c)(iv)—or, if Sheikh Abdullah is right in his submission, by one of the first protectors amending the trust so as to remove the other or

restrict his powers. Either way, this seems a heavy-handed solution for each and every contentious situation.

69 Another striking feature is that, while there were only two exceptions to the first protectors' power to revoke or amend (designed to protect the trustee and to rule out any retrospective effect or the undoing of any previous exercise by the trustee of its powers), in the case of successor protectors there was a third limitation expressed in the following terms:

“[P]rovided ... that any such amendment *increasing the powers* of the successor protectors shall only be exercised with the prior or simultaneous written consent of the beneficiaries who would be entitled to at least 75% of the trust fund pursuant to the provisions of cl.6 (c).”  
[Emphasis supplied.]

It is plain, therefore, that there was deliberately intended to be no restriction on first protectors amending the trust deed so as to increase *their* powers without reference to the beneficiaries.

70 The main thrust of the attack by Mr. Taylor and Mr. Young on Sheikh Abdullah's April 17th, 2000 amendments (and those of October 14th, 1998) was fairly simple and direct (though none the worse for that) and can be summarized as follows:

(i) Clause 6(a) provides in terms that the protectors “shall at all times comprise two persons,” a stipulation that broadly reflects the position in

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the case of the 1992 power of attorney and the earlier foundations and trusts, and the intention of the other members of the family to entrust their affairs, as represented by their shares in the trust funds in question, to the joint care of the two eldest brothers.

(ii) Clause 6(d) ensures that in the event of a protector vacancy occurring, it is automatically filled by the next senior sibling.

(iii) Clause 6(c) contains a comprehensive code of the circumstances in which a first protector ceases to hold office, to which it is not legitimate to add by use of the power to amend contained in cl. 2(b); or, to put it another way, cl. 2(b) has to be read in such a way as to exclude, by necessary implication, any amendment that would be inconsistent with cl. 6(c).

(iv) To do otherwise would be “outside the contemplation of the parties” at the time when the power of amendment was conferred by cl. 2(b) and would make a nonsense “at a stroke” (as Mr. Young put it) of those provisions of the trust deeds that contemplate the existence of two protectors-provisions that are intended to create a necessary system of “checks and balances” against the abuse of power and should be regarded as fundamental and unalterable.

(v) To accede to Sheikh Abdullah's arguments would amount to a licence for him to use his power as a first protector in breach of fiduciary duty and/or for improper motivation and/or in fraud on his power.

71 The case so advanced undoubtedly has an immediate and superficial appeal, reflecting as it does the lapidary observation of Lord Acton that “power corrupts and absolute power corrupts absolutely,” and thus (it is implied) ought not, in the latter form, to be tolerated wherever it can be avoided. It could also be said to draw support from the *dictum* of Lord Reid in *Wickman* (4) mentioned earlier. The idea that, from Day 1-and, as others have observed in the past, it always

salutary to test these things by reference to a time when “the ink is still wet on the paper”-either first protector should have had the capacity to pre-empt action by the other by cutting down his power or removing him completely from office, is not something that immediately strikes one as obviously reasonable. And these would be powerful submissions indeed were the terms of cl. 2(b) such as to confer no more than a wide-ranging power on each of the first protectors to do, say, “all things necessary for the protection of the trust fund and the interests of the beneficiaries,” without reference to any power to amend the very instrument under which they hold office. But that is not the case here. Once the capacity to amend the *source* of the power, the “constitution,” is granted, the whole premise of arguments such as those advanced on behalf of the first party and the Ladies goes out of the window-the premise being that the original deed is the sole,

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exclusive and definitive determinant of what can and cannot be done. The argument then becomes remorselessly circular.

72 This, in short, is the problem that Sheikh Abdullah’s opponents face. And it is not as if the power to amend is one that is only there by inference: it is clearly and unequivocally stated, is not expressed to be limited in any way, and is said in terms (by cl. 6(f), with its express reference to cl. 2(b)) to be exercisable by either first protector individually and to be binding on the other. Advocate Young suggested that cl. 6(f) was unworkable and should be disregarded, alternatively, that it should be construed as limited to the right of each first protector to communicate the result of any jointly-reached decision, but I cannot say that I find either submission persuasive.

73 The only way out of this labyrinth is to have recourse to the constitutional device of the “entrenched” or “fundamental” provision. But, for this to be justifiable, there either has to be an express term or there have to be circumstances so compelling as to leave no doubt that, as a matter of implication, amendments of a certain nature are off-limit. *Hole v. Garnsey* (1), to which reference has previously been made, was just such a case of this second kind, the Appellate Committee being unwilling to accept that the amendment to the society’s rules in question could ever have been within the contemplation of its members. But the “fundamental” nature of the relevant provision there stemmed from the fact that the effect of the amendment would have been to impose additional financial obligations (to subscribe capital) not only on those members who assented to the proposed amendment but also on those who voted against it. It therefore went beyond purely administrative matters: see, in particular, the speech of Lord Atkin ([1930] A.C. at 496), in which he expressed the view that full effect could be given to the rule “. . . by limiting its operation as against dissentients to matters which are within the scope of the administration of the venture as originally framed . . . an increase in capital contribution is something quite different,” being a matter to which no man can be bound against his will.

74 In the present case, there is no express entrenching provision and there are, as I see it, no considerations equivalent to those in *Hole v. Garnsey* that bear on the true meaning and effect of the provisions under consideration here and compel one, as a matter of principle, common sense or logic, to conclude that they are so fundamental as to have been beyond the contemplation of the maker(s) of the original deeds as falling within the scope of cll. 2(b) and 6(f).

75 In the first place, the amendments in issue concern the administration of the trusts; they neither impose any additional financial obligations on anyone nor destroy any substantive beneficial entitlement.

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76 In the second place, once the fiduciary nature of the power to amend or revoke is recognized, there is nothing in the terms of the deeds themselves or in the circumstances or factual matrix in which these trusts came into existence that *necessarily* requires this conclusion: the potential vice, and potentially unreasonable result, otherwise inherent in a concentration of power in one person is restrained and controlled at every point by the effect of this fiduciary overlay. Mr. Taylor's suggestion, in relation to Issue 2, that the case put forward by Sheikh Abdullah would, if right, give him a licence to use his power in breach of his fiduciary duty, was a fair response to Sheikh Abdullah's original case, but it ceases to apply once the true nature of the power to amend is acknowledged (the opportunity to act in breach of fiduciary duty may of course be there, but not the "licence" in the sense of legitimation).

77 In the third place, the main problem with the concept of entrenchment in the present case is the difficulty of discerning with confidence which provisions would enjoy this specially protected status and which would not. On any view, there must be many that would *not* fall within this category, otherwise the power of amendment by either one of the protectors becomes meaningless. On the other hand, it is by no means clear why the two-first-protector provision should be the *only* entrenched one, important as it plainly is. On what sure basis could one draw a logical distinction between the two-first-protector provision and what one might reasonably regard as the highly important safeguard enabling the beneficiaries to get rid of one or both first protectors on a 75% vote? Or, to take another example, what about the identities of successor protectors: would it be open to a first protector, acting alone, to change this so as to bring in someone from outside the family circle altogether? Would not such far-reaching possibilities also have to be ruled out on the ground that the relevant provisions were beyond the contemplation of the maker(s) of the original declarations of trust and must be accorded special-status protection? And if so, what is the touchstone by reference to which these difficult questions fall to be decided? The answers are elusive.

78 Further conundrums arise if one asks what difference it would make, in relation to some of these provisions, if the two first protectors were to act in concert. Would that factor be of relevance if and when it came to considering whether or not it was within their power of amendment to free themselves of any risk of removal by vote of the beneficiaries? What logical basis would there be for concluding that such a move was permissible if done by agreement of the two first protectors but impermissible if done unilaterally? Either way, the other members of the family would be disenfranchised as regards any specific right to exercise ultimate control over the first protectors.

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## **Conclusion**

79 The conclusion to which I find that I am compelled in the end is that the true meaning and intent was that each of the two first protectors was to be entrusted with far-reaching powers to act individually within the scope expressly assigned to them in the trust deeds; that that scope included (as an inescapable conclusion from the matters discussed above) the power unilaterally to amend, or even revoke, the administrative provisions of the trusts, including those concerning the number,

identity, appointment and removal of protectors, whether first or successor, so as to bind the other first protector; that this power, exercised *bona fide*, constituted-among other things-the effective and only check on the potential abuse of power by an errant first protector; and that there was, accordingly, nothing to stop Sheikh Abdullah executing the amending deeds of October 14th, 1998 and April 17th, 2000 other than the constraints necessarily inherent in the exercise of fiduciary powers of the kind involved here. I say nothing, for the moment, as to whether the same conclusion would necessarily apply to amendments purporting to affect the identity or entitlement of the beneficiaries.

80 The matter could, of course, have been better expressed in the original declarations of trust. And how exactly a duality of individually plenipotentiary, equal-ranking commanding officers-every military man's nightmare-was expected to work in the event of conflict between them, other than by the extreme measure of one exercising his power of amendment to remove the other, remains unsolved. With the benefit of hindsight it is, of course, easy to see that it was always a potential recipe for serious contention. And whether it was a case of the consequences never having been rigorously thought through, or of a deliberate decision based on the view that the risk of such problems was a price worth paying for the advantages of having two people with extensive powers to "protect" the trusts in any and every eventuality, it is impossible to be wholly certain. But I can well understand that the latter might have been the case, given the substantial nature and potential geographical spread of the trusts' foreign investments. Seen in this way, far from being wholly unreasonable or repugnant to common sense, it could have been thought highly desirable that *in extremis* each first protector should have been able to curtail the power of the other, or even remove him from office altogether, if that were necessary in order to protect the trust and could in all other respects be justified in terms of fiduciary considerations.

81 The importance of the fiduciary element in all this cannot be overstated. The more radical the departure from the original instrument, particularly where, as here, the result is the substantial accretion of additional power to the remaining first protector and the elimination of all means of removing him from office against his will, the greater the need

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for explanation and justification. Amending the original January 1998 Intertraders declaration of trust to bring it in line with the later Internine declaration might be one thing (if that were indeed the sole motive, a matter for inquiry on another occasion). But the April 17th, 2000 amendments are plainly of an altogether different order and put a heavy burden on Sheikh Abdullah to explain the necessity for these draconian measures and otherwise to justify them as being for a proper purpose and in the *bona fide* exercise, for the benefit of the beneficiaries as a whole, of the powers conferred on him. Sheikh Abdullah has sworn a number of affidavits giving what he says is his explanation for what he did, but the actual circumstances and motivations are matters for the trial of Issue 3.

82 It may also be-though I put the matter no higher than this, as the point was not debated at the trial of Issues 1 and 2-that there is another point that will also have to be addressed: that is whether, irrespective of the justification or otherwise of the April 17th, 2000 amendments, the indefinite perpetuation of the new state of affairs introduced by those amendments can also be justified in the face of the sustained, united opposition of all the other beneficiaries, the passage of time and

(possibly) changing circumstances, or whether, like wartime or emergency legislation, there comes a point when the force of the original justification (if there were one) is spent.

83 In conclusion, it should be clearly understood that nothing in this judgment is to be construed as qualifying or varying any extant order of this court and that, unless and until otherwise expressly ordered, the interim regime imposed in late 2003 remains in force.

*Order accordingly.*

**EXHIBIT G**

# The Federal Republic of Nigeria v JP Morgan Chase Bank, N.A.



Positive/Neutral Judicial Consideration

## Court

Queen's Bench Division (Commercial Court)

## Judgment Date

21 February 2019

Case No: CL-2017-000730

High Court of Justice Business and Property Courts of England and Wales Commercial Court (QBD)

[2019] EWHC 347 (Comm), 2019 WL 00826591

Before: Andrew Burrows QC (Sitting as a Judge of the High court)

Date: 21 February 2019

Hearing dates: 4-5 February 2019

## Representation

Mr Roger Masefield QC and Mr Richard Blakeley (instructed by Reynolds Porter Chamberlain ) for the Claimant/ Respondent.

Ms Rosalind Phelps QC and Mr David Murray (instructed by Freshfields Bruckhaus Deringer LLP ) for the Defendant/ Applicant.

## Judgment

Andrew Burrows QC:

### 1 Introduction

#### (1) General

1. This judgment deals with an application by the defendant, JP Morgan Chase Bank NA, for reverse summary judgment against the claimant, the Federal Republic of Nigeria, under [CPR 24.2](#); and/or for the claimant's statement of case to be struck out under [CPR 3.4\(2\)](#). The defendant submits that, under [CPR 24.2](#), the claimant has no real prospect of succeeding and that there is no other compelling reason for a trial; and that, under [CPR 3.4\(2\)](#), the Re-amended Particulars of Claim disclose no reasonable grounds for bringing the claim. The claim is one by a sovereign state against an international bank. Even by the standards of this court, it is a very large claim amounting to some US\$875,740,000. The claimant alleges that the defendant bank made three transfers (\$401,540,000, \$400,000,000, and \$74,200,000.03) from an account that the claimant held with it, which the defendant bank would not have made had it been exercising reasonable care. More specifically, it is alleged that the defendant bank was in breach of what is commonly referred to as the '[Quincecare](#) duty of care', named after the case of [Barclays Bank plc v Quincecare Ltd \[1992\] 4 All ER 363](#) in which Steyn J first set out this duty of care. What is being alleged, therefore, is that, although the bank had reasonable grounds for believing that the payments out of its customer's account were defrauding the customer, the bank went ahead, in breach of its duty of care to its customer, and made those payments.

2. The claim was commenced on 29 November 2017. Amended Particulars of Claim were served on 4 July 2018 and an Amended Defence was served on 24 July 2018. This application for summary judgment/striking out was commenced on 31 July 2018. Since then, the claimant has put forward (draft) Re-amended Particulars of Claim. They significantly differ from the Amended Particulars of Claim. In particular, a number of claims have been abandoned (such as breach of fiduciary duty,

breach of the Nigerian constitution, breach of anti-money laundering legislation, knowing receipt and breach of mandate). Instead it has been made clear that the claim in contract and tort rests solely on the breach of the *Quincecare* duty of care; and brief particulars of the alleged fraud are also pleaded. Rosalind Phelps QC, for the defendant bank, indicated at the start of the hearing (see transcript day 1, p 9, lines 13-20) that there would be no objection to those re-amendments if this application fails. The important point — and there is no dispute about this between the parties — is that the court is required to deal with this application on the basis of the Re-amended Particulars of Claim.

(2) *the relevant facts*

3. It is alleged by the claimant that the full background to this case is a complex web of facts that reveal a fraudulent and corrupt scheme whereby the claimant (and hence ultimately the people of Nigeria) has been defrauded of large sums of money. Plainly the court on a summary judgment application cannot possibly attempt to get to the bottom of such allegations and no-one is suggesting that it should. What this application is therefore concerned with is narrow and, as is explained in paragraph 6(iii) below, the court must assume that the claimant will be able to prove the facts it is alleging unless it is clear that those allegations have no real substance.

4. For the purposes of this application, the relevant and undisputed facts can be stated in a few sentences. In this respect, I was assisted by Ms Phelps, who guided me through the first parts of a helpful agreed chronology of events. The claim centres on a depository account that was opened pursuant to a depository agreement dated May 20, 2011 between the Federal Government of Nigeria and the defendant bank. Under that agreement, the defendant bank was the 'depository' and the Federal Government of Nigeria was the 'depositor'. The background to that depository agreement was a long-running dispute about an offshore Nigerian oilfield known as OPL 245. In 1998, the rights to exploit OPL 245 had been originally awarded by the Federal Government of Nigeria to Malabu Oil and Gas Nigeria Ltd ('Malabu'), owned by the then Minister of Petroleum, Chief Daniel Etete (who in 2007 was convicted in France of money-laundering arising out of bribery offences committed in Nigeria). That dispute was settled and, as part of its obligations under the resolution/settlement agreements (dated 29 April 2011), the Federal Government of Nigeria was required to set up an escrow account and, subsequently, set up the depository account with the defendant bank for the purpose of money being paid to those entitled under the settlement. On 23 August 2011, the defendant bank, on instructions by authorised signatories of the Federal Government of Nigeria, made two transfers, of \$401,540,000 and \$400,000,000 respectively, from the depository account to two separate accounts in the name of Malabu at First Bank of Nigeria plc and Keystone Bank Ltd. On 29 August 2013, the defendant bank, on instructions by authorised signatories of the Federal Government of Nigeria, made a further transfer of the remaining funds in the depository account, \$74,200,000.03, to an account in the name of Malabu at Keystone Bank Ltd.

5. Under the Re-amended Particulars of Claim, it is alleged (see paras 20-21D of the Re-amended Particulars of Claim) that, in breach of its contractual and tortious *Quincecare* duty of care, the defendant, having been put on inquiry that the claimant was being defrauded, paid out irrevocably (to the accounts in the name of Malabu) sums of \$801,540,000 and \$74,200,000.03 from the depository account. It is alleged that that money was used to pay off corrupt former and contemporary Nigerian government officials and/or their proxies. It is alleged that some of the money was also intended to be used (and some was used) to make payments to senior executives at Royal Dutch Shell and Eni Corporation (those companies having formed an alliance for the purposes of acquiring the rights to develop the OPL 245 oilfield from Malabu).

(3) *the law on summary judgment and the grounds for this application*

6. The correct approach for a court to take on an application for summary judgment under CPR 24.2 has been clarified in several cases. These include *Swain v Hillman* [2001] 2 All ER 91, *ED & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, at [10], *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], and *Daniels v Lloyds Bank plc* [2018] EWHC 660 (Comm), [2018] IRLR 813, at [48]. As regards applications by defendants for reverse summary judgment, the central points to be derived from those cases are as follows:

- i. The burden of proof is on the defendant.
- ii. The court must consider whether the claimant has a 'realistic', as opposed to a 'fanciful', prospect of success.
- iii. The court should not conduct a mini-trial. Where there is a dispute on the facts, the court should assume that the claimant will be able to prove the facts it is alleging unless it is clear that there is no real substance to those allegations, as where they are contradicted by the documentary evidence.
- iv. If there is a short point of law, or construction, and the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, the court should grasp the nettle and decide it.

7. The defendant bank's application rests on three grounds. The first is that there was no *Quincecare* duty of care applicable on these facts because such a duty was inconsistent with, or was excluded by, the express terms of the depository agreement. We can refer to this as the 'no *Quincecare* duty of care' issue. The second ground is that, even if such a duty was owed, there is no realistic prospect of the claimant establishing causation of loss: the same outcome would have eventuated even if the defendant had not been in breach of its duty. This is the 'causation of loss' issue. The third ground is that, even if the claimant could establish the breach of a *Quincecare* duty of care causing the alleged loss, the defendant bank would have a complete defence to the claim because of an indemnity clause in the depository agreement: as the defendant bank would be entitled under that clause to be indemnified by the claimant, the claim would fail for circularity. This is the 'circularity' issue.

8. It is important to clarify that an 'incorrect party' ground is not now being put forward by the defendant bank. The claim is being brought by the Federal Republic of Nigeria although the depository agreement was made by the Federal Government of Nigeria. The defendant bank previously contended that that was a reason why summary judgment should be given and/or the claim should be struck out. But in the light of expert evidence put forward on behalf of the claimant — to the effect that, as a matter of Nigerian law, the Federal Government of Nigeria and the Federal Republic of Nigeria are not different legal entities - that line of argument has been abandoned by the defendant bank for the purposes of this application. More generally, it is not in dispute that for the purposes of this application the Federal Republic of Nigeria and the Federal Government of Nigeria should be treated as one and the same.

9. It was common ground between the parties that, leaving aside the 'causation of loss' issue, the court should grasp the nettle and decide the 'no *Quincecare* duty of care' and 'circularity' issues on this application. This is because they are concerned with questions of law as to the contractual interpretation of the depository agreement and the nature of the *Quincecare* duty of care. In other words, in respect of those issues, there has been full legal argument before me and nothing will be changed by having further evidence at trial. I accept that that is the correct approach. So I will be deciding those two issues one way or the other (rather than asking whether the claimant has a realistic prospect of success on the particular point of law). In contrast, the 'causation of loss' issue is primarily a factual issue, although also raising some legal issues, and should be approached by directly asking whether the claimant has a realistic prospect of success.

## 2 Outline of the Main Submissions of the Parties

10. Although I will be referring at various stages later to further details of the parties' submissions, it will be helpful now to give an outline of their main submissions.

### *(1) Outline of the Defendant Bank's Main Submissions*

#### (i) the 'no *Quincecare* duty of care' issue

11. This issue took most time at the hearing. In general terms, Ms Phelps submitted that the nature and purpose of the depository account, as set out in the terms of the depository agreement, left no room for a *Quincecare* duty of care. In contrast to an ordinary current account, the depository account was essentially a single-purpose account, analogous to an escrow account, and was set up to enable the claimant to fulfil its specific payment obligations under the resolution/settlement agreements. The depository agreement contained, for example, detailed and narrow depository release conditions. These required written instructions in the form of a 'release notice' (a draft of which was scheduled to the agreement), signed by an authorised officer and confirmed by a telephone call-back. The contract was a detailed code setting out expressly the conditions which had to be satisfied before the 'depository amount' could be released. The contract was designed to preclude any additional duty of care to go behind instructions which were in compliance with the contract. The defendant bank could not be liable, outside the express terms of the contract, for following compliant instructions. The role of the defendant bank was intended to be largely automatic or mechanical.

12. More specifically, Ms Phelps submitted that a *Quincecare* duty of care, whether seen as arising by reason of an implied term or in the tort of negligence, was in conflict with particular express terms of the depository agreement. She categorised the conflicting terms into three broad types. First, there was clause 5.1 which excluded a *Quincecare* duty of care because it confined the defendant bank's obligations to those under the express terms of the contract. Secondly, there were clauses (clauses 5.8, 7.2, 7.4 and 11.5) which had a content which was inconsistent with a *Quincecare* duty of care. Thirdly, even if a *Quincecare* duty of care did apply, clauses 8.2(d) and 10.1(a) were exemption clauses which excluded the defendant bank from the consequences of complying with the mandate given. In interpreting some clauses of the contract it was relevant to

recognise that, in her submission, the cases show that the *Quincecare* duty of care embodies a duty to enquire/investigate: it is not merely a negative duty to refrain from paying in certain circumstances.

13. It is helpful at this point to set out the specific terms of the depository agreement relied on by Ms Phelps:

'5.1 The duties and obligations of the Depository in respect of the Depository Cash shall be determined solely by the express terms of this Agreement. The Depository has no knowledge of the terms and provisions of any separate agreement or any agreement relating to the Depositor's Obligations, and shall have no responsibility for compliance by the Depositor with terms of any other agreement, or for ensuring that the terms of any such agreement are reflected in this Agreement and shall have no duties to anyone other than the Depositor.'

'5.8 The Depositor hereby authorises the Depository to act hereunder notwithstanding that: ... (ii) the Depository or any of its divisions, branches or affiliates may be in possession of information tending to show that the instructions received may not be in the best interests of the Depositor and the Depositor agrees that the Depository is not under any duty to disclose any such information.'

'7.2 The Depository shall be under no duty to enquire into or investigate the validity, accuracy or content of any instruction or other communication.'

'7.4 The Depository need not act upon instructions which it reasonably believes to be contrary to law, regulation or market practice but is under no duty to investigate whether any instructions comply with any applicable law, regulation or market practice.'

'8.2 (d) [The Depository shall not be liable to the Depositor for any loss suffered by the Depositor by] the Depository acting on what it in good faith believes to be instructions or in relation to notices, requests, waivers, consents, receipts, or other documents which the Depository in good faith believes to be genuine and to have been given or signed by the appropriate parties.'

'10.1 The Depositor hereby irrevocably and unconditionally agrees on demand to indemnify, and to keep fully and effectively indemnified ... the Depository, and its directors, officers, agents and employees (the "indemnitees") against all costs, claims, losses, liabilities, damages, expenses, fines, penalties, Tax and other matters ("Losses") which may be imposed on, incurred by or asserted against the indemnitees or any of them directly or indirectly in respect of:

(a) the following of any instruction of other directions upon which the indemnitees is authorised to act or rely pursuant to the terms of this Agreement, or arising as a result of entering into this Agreement or their status as holder of the Depository Cash;'

'11 The Depositor hereby represents and warrants to the Depository on a continuing basis that:

11.5 ...the transactions to be effected under this Agreement will not violate any law, regulation, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected and it is not restricted under the terms of its constitution or in any other manner from performing its obligations hereunder.'

(ii) the 'causation of loss' issue

14. Ms Phelps submitted that, even if a *Quincecare* duty of care was imposed on the defendant bank in this case, there is no realistic prospect of the claimant successfully showing causation of loss: the same outcome would have eventuated even if the defendant had not been in breach of its duty. In other words, there is no realistic prospect of the claimant showing that the payments out would have been avoided had that duty been complied with. This was because reasonable enquiries would not have uncovered the alleged fraud. Indeed, the defendant bank sought and obtained a letter from the Attorney-General of Nigeria to the effect that the payment instructions were legitimate. Moreover, the investigation into the alleged fraudulent scheme has taken years of work by, for example, the Italian and Nigerian law-enforcement authorities so that the idea that the defendant bank, faced with payment instructions that on the face of it complied with the mandate — and with the express assurances of the Attorney-General of Nigeria — would, or should, reasonably have taken on this task, in order to decide whether to make the payments, is wholly unrealistic. Put another way, if, as alleged, the fraudulent scheme went to the highest

level of the Nigerian government — including the then President Goodluck Jonathan — reasonable checks with the highest of officials would merely have served to satisfy the defendant bank that the money should be paid. So, in short, the essential submission here is that because of the nature and extent of the alleged fraudulent scheme there is no realistic prospect of the claimant establishing that it would have avoided paying the money away, even if a *Quincecare* duty of care was imposed on it.

(iii) the 'circularity' issue

15. Ms Phelps submitted that, even if the claimant could establish that the defendant bank owed the claimant a *Quincecare* duty of care and had a realistic prospect of establishing breach causing loss, the defendant bank has a complete defence to the claim by reason of the indemnity clause, clause 10.1(a), in the depository agreement (set out in paragraph 13 above). As the defendant bank would be entitled to be indemnified against the claim by the claimant, the claim fails for circularity.

(2) *Outline of the Claimant's Main Submissions*

(i) the 'no *Quincecare* duty of care' issue

16. Roger Masefield QC for the claimant initially stressed — and Ms Phelps did not dispute this — that because, on a summary judgment application, the court should assume that the claimant will be able to prove the facts alleged (and there was nothing sufficient here to counteract that assumption), the court must accept the following: that the claimant was defrauded by way of a fraudulent and corrupt scheme; that the defendant bank was 'on inquiry' (ie it had reasonable grounds for believing) that the payment instructions it received were part of an attempt to defraud the claimant; and that, despite that, the defendant bank went ahead and made the payments to Malabu of \$801,540,000 in 2011 and \$74,200,000.03 in 2013. The factual basis for the *Quincecare* duty of care arose because the defendant bank was 'on inquiry'. Mr Masefield then submitted that the terms of the depository agreement did not displace that *Quincecare* duty of care, whether one stood back and looked at the contract generally or one examined the particular terms highlighted by Ms Phelps (each of which, he submitted, should be given a different interpretation than the one Ms Phelps was putting forward). The *Quincecare* duty of care arose by reason of a term implied by law at common law and/or by statute (under s 13 of the *Supply of Goods and Services Act 1982*); and/or was imposed by the tort of negligence. As the duty gave the customer a valuable right and was imposed by the general law for good policy reasons — to encourage banks to help combat fraud — the correct approach to interpretation was that there had to be clear wording in the contract to displace it. There was no such clear wording in the depository agreement. Moreover, there was no reason of principle or authority why the *Quincecare* duty of care should not be applied to a depository account (rather than a current account). Indeed, as such an account had a limited purpose with limited numbers of transactions and instructions — and in that sense would place a less onerous burden on the bank than where an account involves multiple transactions — it was *a fortiori* that a *Quincecare* duty of care should be owed.

17. In so far as relevant to interpreting the contract, Mr Masefield submitted that the *Quincecare* duty of care is a duty which requires a bank, while it is 'on inquiry' that a payment out would be a fraud on its customer, to refrain from paying out. In his submission, the authorities do not establish that, once the bank is on inquiry, it is under any duty to investigate: all that the cases lay down is that the bank should refrain from paying unless and until it no longer has reasonable grounds for believing that the payment would be defrauding the customer.

(ii) the 'causation of loss' issue

18. Mr Masefield submitted that this was pre-eminently a triable issue which the court would need to decide in the light of all the evidence at trial. It raised questions of fact and law; and the legal issues would be influenced by the precise scope of the *Quincecare* duty of care (on which banking expertise would be needed). The defendant bank could not show that the claimant had no realistic prospect of successfully establishing causation of loss. In answer to the defendant bank's submission that further checks by the bank would have led to the same outcome - the money being paid out - Mr Masefield submitted that that would depend on the relevant counterfactual for the causation enquiry. He went through some details of the background, in particular drawing my attention to concerns David Steel J had expressed about instructions to the defendant bank for money to be paid out of the depository account. That was in the context of a freezing order that had been granted over the depository account in relation to a claim brought by Energy Venture Partners Ltd against Malabu (see the comments of David Steel J at a hearing on 21 July 2011 (at bundle 3/23/16) and his judgment at [2011] EWHC 2215 (Comm)). This was put forward by Mr Masefield as part of a general submission that, had the defendant bank not paid out the money, one realistic possibility was that the account would have been frozen by court order (perhaps by reason of the defendant bank invoking clause 5.7 of the depository agreement which, according to Mr Masefield, expressly allowed the bank to come to court for a determination of its duties in the event of a dispute or uncertainty as to its duties).

(iii) the 'circularity' issue

19. Mr Masfield submitted that, on the correct interpretation of clause 10.1(a), there was no circularity. The clause was dealing with the customer indemnifying the bank in respect of claims by third parties against the defendant bank, not claims by the customer. If it were not construed in that way, it would conflict with other clauses of the contract (for example, clause 8 on exclusion of the bank to its customer) and indeed would tend to remove any legal liability of the bank to its customer therefore emptying the contract of its content. Even if that were incorrect, it is well-established in the cases that indemnity clauses should be narrowly construed so that general words, as opposed to clear explicit words, are insufficient for an indemnity clause to cover against negligence, including a negligent breach of contract. One was here concerned with the alleged negligence of the defendant bank (and indeed gross negligence was alleged) and yet there were no words in clause 10.1(a) clearly referring to negligence.

### 3 The Relevant Law

20. I now set out the relevant law on, first, the *Quincecare* duty of care and, secondly, the interpretation of exemption, indemnity, and entire agreement clauses. As regards the former, the parties disagreed as to whether the *Quincecare* duty of care embodies a duty to make enquiries. As regards the latter, the parties were largely in agreement as to the legal principles, albeit with differences of emphasis and starting points, but disagreed as to how those legal principles should be applied in interpreting the depository agreement.

#### (1) the law on the *Quincecare* duty of care

21. The *Quincecare* duty of care was very carefully formulated and explained by Steyn J in *Barclays Bank plc v Quincecare Ltd* [1992] 4 All ER 363. His mode of expression was that it is a duty on a bank to refrain from executing a customer's order if, and for so long as, the bank is 'put on inquiry' in the sense that the bank has reasonable grounds for believing — assessed according to the standards of an ordinary prudent banker — that the order is an attempt to defraud the customer. It is an aspect of the bank's duty of reasonable skill and care in or about executing the customer's orders and therefore arises by reason of an implied term of the contract or under a coextensive duty of care in the tort of negligence.

22. On the facts of the *Quincecare* case, a bank had agreed to loan £400,000 to a company. Under the loan facility, the chairman of the company caused the bank to transfer some £340,000 to a firm of solicitors who, under prior arrangements with him, then transferred that sum into his account in the USA. This constituted a defrauding of the company by the chairman. In the bank's action against the company for repayment of the loan, the company counterclaimed for loss caused by the bank's breach of duty to the company. The counterclaim/defence failed because, on the facts, it was held that the bank was not 'put on inquiry': ie it had no reasonable grounds for believing that the chairman's instruction to make the transfer was an attempt to defraud the company. The duty to refrain from payment did not therefore arise.

23. Steyn J set out the position as follows and, given that he was the first judicial expositor of this duty, I make no excuse for citing this long passage from his judgment which repays careful reading (see [1992] 4 All ER 363 at 376-377 with my emphasis):

In my judgment it is an implied term of the contract between the bank and the customer that the bank will observe reasonable skill and care in and about executing the customer's orders. Moreover, notwithstanding what was said in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1985] 2 All ER 947 at 957, [1986] AC 80 at 107, a banker may in a case such as the present be sued in tort as well as in contract: see *Midland Bank Trust Co Ltd v Hett Stubbs & Kemp (a firm)* [1978] 3 All ER 571, [1979] Ch 384. But the duties in contract and tort are coextensive, and in the context of the present case nothing turns on the question whether the case is approached as one in contract or tort.

Given that the bank owes a legal duty to exercise reasonable care in and about executing a customer's order to transfer money, it is nevertheless a duty which must generally speaking be subordinate to the bank's other conflicting contractual duties. Ex hypothesi one is considering a case where the bank received a valid and proper order which it is prima facie bound to execute promptly on pain of incurring liability for consequential loss to the customer. How are these conflicting duties to be reconciled in a case where the customer suffers loss because it is subsequently established that the order to transfer money was an act of misappropriation of money by the director or officer? If the bank executes the order knowing it to be dishonestly given, shutting its eyes to the obvious fact of the dishonesty, or acting recklessly in failing

to make such inquiries as an honest and reasonable man would make, no problem arises: the bank will plainly be liable. But in real life such a stark situation seldom arises. The critical question is: what lesser state of knowledge on the part of the bank will oblige the bank to make inquiries as to the legitimacy of the order? In judging where the line is to be drawn there are countervailing policy considerations. The law should not impose too burdensome an obligation on bankers, which hampers the effective transacting of banking business unnecessarily. On the other hand, the law should guard against the facilitation of fraud, and exact a reasonable standard of care in order to combat fraud and to protect bank customers and innocent third parties. To hold that a bank is only liable when it has displayed a lack of probity would be much too restrictive an approach. On the other hand, to impose liability whenever speculation might suggest dishonesty would impose wholly impractical standards on bankers. **In my judgment the sensible compromise, which strikes a fair balance between competing considerations, is simply to say that a banker must refrain from executing an order if and for as long as the banker is 'put on inquiry' in the sense that he has reasonable grounds (although not necessarily proof) for believing that the order is an attempt to misappropriate the funds of the company ...** And, the external standard of the likely perception of an ordinary prudent banker is the governing one. That in my judgment is not too high a standard. Indeed, the evidence of Mr Redhead, a most experienced banker, showed that the principle which I have stated is the very criterion usually applied by bankers. He used the language of a banker being put on inquiry. He explained that if the order had been to transfer £350,000 to a local casino, the money would not have been sent. In this case the bank knew that the funds were required to purchase a business, and the bank expected the funds, or a large part of it, to go to the company's solicitors. Mr Redhead made clear that if he had reason to suspect the payment to [the solicitors], he would have made further inquiries, and notably from the solicitors. He would, he said, have put up with the embarrassment. This evidence reinforces my view that the principle which I have stated does not impose too high a duty on a bank.

Having stated what appears to me to be the governing principle, it may be useful to consider briefly how one should approach the problem. Everything will no doubt depend on the particular facts of each case. Factors such as the standing of the corporate customer, the bank's knowledge of the signatory, the amount involved, the need for a prompt transfer, the presence of unusual features, and the scope and means for making reasonable inquiries may be relevant. But there is one particular factor which will often be decisive. That is the consideration that, in the absence of telling indications to the contrary, a banker will usually approach a suggestion that a director of a corporate customer is trying to defraud the company with an initial reaction of instinctive disbelief... [I]t is right to say that trust, not distrust, is ... the basis of a bank's dealings with its customers. And full weight must be given to this consideration before one is entitled, in a given case, to conclude that the banker had reasonable grounds for thinking that the order was part of a fraudulent scheme to defraud the company.'

24. Having then decided that, on the facts, the bank was not 'put on inquiry', Steyn J went on briefly to consider the position if the duty had arisen on the facts: ie if the bank had been 'put on inquiry'. He concluded that, in that situation, causation could not in any event have been satisfied because the only conceivable enquiries that the bank would have made would not have alerted the bank to the fraud so that the payments would still have been made and the loss would not have been averted. In his words, in relation to 'the question of causation' (see [1992] 4 All ER 363 at 381):

'In my judgment, the only inquiries which the bank could conceivably have made would not have alerted the bank to the impending fraud, and would not have averted the loss. For this additional reason the defence must fail.'

25. I was referred to two subsequent cases in which the *Quincecare* duty of care has been discussed. The first was *Lipkin Gorman v Karpnale Ltd* in the Court of Appeal, [1989] 1 WLR 1340. That became a celebrated case in the law of unjust enrichment when it was appealed on separate matters to the House of Lords. But the relevance of the case for present purposes is that the Court of Appeal discussed the duty of care owed by a banker to its customer in terms that are similar to those of Steyn J; and May LJ acknowledged (at 1356) the 'substantial assistance' he had derived from the judgment of Steyn J which, at that stage, had only been reported in *The Times*. On the facts, Cass, a partner in a firm of solicitors, had been drawing on the client account (he was an authorised signatory) to subsidise his addiction to gambling. It was held that the bank, where the client account was held, was not 'put on inquiry' — ie it did not have 'reasonable grounds for believing that Cass was operating the client account in fraud' (to use the words of Parker LJ at 1377) — so that the bank was not in breach of a duty of care by honouring cheques drawn by Cass.

26. The second case is *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd* [2018] EWCA Civ 84, [2018] 1 WLR 2777. The claimant company, Singularis, was wholly owned by Mr Al Sanea. A large sum of money was held for the claimant

in a client account by the defendant 'bank' (Daiwa). The defendant paid out that money on Sanea's instructions to bank accounts in the names of three other companies within the group. This was a fraud by Sanea on the claimant company. The claimant's liquidators successfully argued, inter alia, that the defendant had been in breach of its *Quincecare* duty of care. The major question on appeal, which was decided in the claimant liquidators' favour (subject to a reduction for contributory negligence), was whether Sanea's illegal conduct should be attributed to the claimant so that illegality was a defence to the claim. But a subsidiary question on the appeal was whether the *Quincecare* duty of care applied where only the claimant company's creditors stood to benefit from the claim (because the claimant was insolvent). The important point for our purposes is that, in holding in favour of the claimant on this question, the Court of Appeal (the leading judgment being given by Sir Geoffrey Vos C, with whom Gloster and McCombe LJ agreed) succinctly explained the *Quincecare* duty of care, and contrasted it with the duty of care owed by an auditor. Sir Geoffrey Vos C said the following, at [87]-[88]:

'The [Quincecare] duty was to protect the funds held in Singularis's account from fraudulent disposition, and the fact that vindicating that right will benefit only creditors rather than the company itself is nothing to the point... That duty is a binary one to stop payments from being made out of the customer's bank account in certain very limited circumstances. It is unlike the duty of an auditor in reporting publicly on a company's financial statements, where any number of potential claimants may wish to claim that they suffered loss as a result of what the auditor said having been inaccurate. The question of the scope of the duty is far more difficult there, because it would create an impossible situation if the duty were to protect everyone from loss. The limited scope of the Quincecare duty makes it obvious that it is only to protect the customer from the loss of its money, and that only the customer can vindicate a claim for breach of it.'

27. It is relevant to note that, of the three cases, this is the only one in which the claimant succeeded in its claim based on a *Quincecare* duty of care: ie it is the only case of the three in which the bank was held to have the necessary reasonable grounds for believing that the payments were defrauding the customer (and causation of loss was also satisfied). I should add that, although Mr Masfield submitted that Sir Geoffrey Vos C's reference to a 'binary' duty was because the *Quincecare* duty was an 'on-off' duty (to pay or not to pay) and did not impose a duty of enquiry, there is much to be said for Ms Phelps' submission that, putting that description in its context, Sir Geoffrey Vos C was talking about who the duty was owed to, not the content of the duty: ie it was owed only to the customer and, in contrast to the scope of an auditor's duty of care, not to any wider class.

28. These three cases make clear that the core of the *Quincecare* duty of care is the negative duty on a bank to refrain from making a payment (despite an instruction on behalf of its customer to do so) where it has reasonable grounds for believing that that payment is part of a scheme to defraud the customer. What is not entirely clear is whether, in addition to that core duty, a bank with such reasonable grounds has a duty to make reasonable enquiries so as to ascertain whether or not there is substance to those reasonable grounds. I strongly incline to the view (although, as will become clear at paragraphs 47-50 below, I do not ultimately need to decide this) that Ms Phelps is correct in her submission that the cases do envisage there as being an additional duty of enquiry.

29. In support of this additional duty of enquiry, Ms Phelps invoked, for example, the following passages from the three cases we have referred to above (with Ms Phelps' emphasis).

From Steyn J in the *Quincecare* case:

"If the bank executes the order knowing it to be dishonestly given, shutting its eyes to the obvious fact of the dishonesty, or acting recklessly in failing to make such inquiries as an honest and reasonable man would make, no problem arises: the bank will plainly be liable. But in real life such a stark situation seldom arises. The critical question is: what lesser state of knowledge on the part of the bank will oblige the bank to make inquiries as to the legitimacy of the order?" (at 376d-e).

"[One of the factors to be considered is] the scope and means for making reasonable inquiries" (at 377b).

"I propose to examine only those matters which could arguably be said to be known to the Hull branch, or which they should, on the basis of what was known, have inquired about." (at 380b-c).

From *Lipkin Gorman v Karpnale Ltd* :

"... it is, in my opinion, only when the circumstances are such that any reasonable cashier would hesitate to pay a cheque at once and refer it to his or her superior, and when any reasonable superior would hesitate to authorise payment

**without inquiry**, that a cheque should not be paid immediately on presentation **and such inquiry made**." (at 1356E-F, per May LJ).

" A single telephone call to Mr Gorman, one of the partners in the plaintiff firm of solicitors, would have brought the whole enterprise to a close. Was there any **duty on the bank to make such as call** ? Rather more searching inquiry by the bank of Cass about where he was obtaining his funds with which to gamble, even to the extent of which they were aware, might well also have had the same effect. Was there any **duty on the bank to make that inquiry until the truth was out?**" (at 1357C, per May LJ).

" I think that if Mr Fox [the bank manager] had or ought to have learned of the frequent and substantial withdrawals by Cass in cash from the clients' account even the limited duty of care to which he was subject would have **required him to tell Mr Gorman** ." (at 1358, per May LJ).

"The question must be whether, if a reasonable and honest banker knew of the relevant facts, he would have considered that there was a serious or real possibility, albeit not amounting to a probability, that its customers might be being defrauded, or, in this case, that there was a serious or real possibility that Cass was drawing on the client account and using the funds so obtained for his own and not the solicitors' or beneficiaries' purposes. That, at least, the customer must establish. If it is established, then in my view a reasonable banker would be in breach of duty if he continued to pay cheques **without inquiry** ." (at 1378B, per Parker LJ).

From Sir Geoffrey Vos C in the *Singularis Holdings* case:

" The judge held that Daiwa had breached its duty of care to Singularis in making the payment **without any proper inquiry** ." (at [5] citing Rose J at first instance [2017] EWHC 257 (Ch), [2017] 1 Lloyd's Rep 226, [164].)

'[The duty is] a duty not to pay away money in a customer's account **without proper inquiry** .' (at [87].)

30. To recognise such a duty of enquiry would be in line with sound policy. In the fight to combat fraud, banks with the relevant reasonable grounds for belief should not sit back and do nothing. Moreover, the duty of enquiry on banks would not be unduly onerous because it would always be limited by what an ordinary prudent banker would regard as reasonable enquiries in a situation where there are reasonable grounds for believing that the customer is being defrauded.

31. But even assuming that Ms Phelps is correct in her submission that a bank with the relevant reasonable grounds for belief has a duty of care to make reasonable enquiries, it would be potentially misleading to go on from that to describe the *Quincecare* duty of care as a duty of care to make enquiries/to investigate. The core of the *Quincecare* duty is, as Steyn J set it out, a negative duty not to pay while the bank has the relevant reasonable grounds. A positive duty of enquiry/investigation would be additional to that. In any event, a bank, which is acting honestly and *without* reasonable grounds for believing that its customer is being defrauded, has no duty of care to enquire/investigate. In other words, there is no duty of care to enquire/investigate prior to the point in time when the bank has reasonable grounds for believing that its customer is being defrauded. I shall return to these issues at paragraphs 47-50 below where I deal with the interpretation of clauses 7.2 and 7.4.

(2) *the law on the interpretation of exemption, indemnity, and entire agreement clauses*

32. I have elsewhere summarised the modern approach in English law to contractual interpretation: see, eg, *Greenhouse v Paysafe Financial Services Ltd* [2018] EWHC 3296 (Comm) at [11]. The modern approach is to ascertain the meaning of the words used by applying an objective and contextual approach. One must ask what the term, viewed in the light of the whole contract, would mean to a reasonable person having all the relevant background knowledge reasonably available to the parties at the time the contract was made (excluding the previous negotiations of the parties and their declarations of subjective intent). Business common sense and the purpose of the term (which appear to be very similar ideas) may also be relevant. But the words used by the parties are of primary importance so that one must be careful to avoid placing too much weight on business common sense or purpose at the expense of the words used; and one must be astute not to rewrite the contract so as to protect one of the parties from having entered into a bad bargain. Important cases of the House of Lords and Supreme Court articulating the modern approach include *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, HL, especially at 912-913 (per Lord Hoffmann giving the leading speech), *Rainy Sky SA v*

*Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900, *Arnold v Britton* [2015] UKSC 36, [2015] AC 1619, and *Wood v Capita Insurance Services Ltd* [2017] UKSC 24, [2017] AC 1173.

33. In this case I am particularly concerned with applying the modern approach to contractual interpretation to the interpretation of exemption, indemnity and entire agreement clauses (see, respectively, clauses 8, 10 and 5 of the depository agreement). The submissions of counsel raised two topical questions of legal principle. First, in interpreting exemption and indemnity clauses, what is the present status of the *contra proferentem* rule? Secondly, does an entire agreement clause operate to exclude terms implied by law?

(i) the interpretation of exemption and indemnity clauses: what is the present status of the *contra proferentem* rule?

34. When Lord Hoffmann set out the modern approach to contractual interpretation in *Investment Compensation Scheme v West Bromwich*, he said, at 912: 'Almost all the old intellectual baggage of "legal" interpretation has been discarded'. One question that arises, therefore, is whether the traditional rule of interpretation *contra proferentem* survives and in what form. In the context of exemption clauses that rule was to the effect that an exemption clause should be construed strictly against the person who drew up the exemption clause or was relying on it. But the recent authorities — see, especially, *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6, [2003] 2 Lloyd's Rep 61, at [11], [58]-[67], [95], [116]; *Stocznia Gdynia SA v Gearbulk Holdings Ltd* [2009] EWCA Civ 75, [2010] QB 27, at [23]; *Capita (Bamstead 2011) Ltd v FRIB Group Ltd* [2015] EWCA Civ 1310, [2016] QB 835, at [10]; *Nobahar-Cookson v Hut Group Ltd* [2016] EWCA Civ 128, [2016] 1 CLC 573, at [18]-[21] (and see generally *Chitty on Contracts* (ed Beale) (33rd edn, 2018) paras 15-012 — 15-020) — indicate that the law is as follows:

- i. The ambiguity of who is the 'proferens' (is it the person who drew up the exemption or the person relying on it?) means that reference to a *contra proferentem* rule is problematic.
- ii. In any event, the modern objective and contextual approach to the meaning of the words, with business common sense and purpose also being relevant in some cases, renders it unnecessary to regard there as being a separate *contra proferentem* rule.
- iii. Applying the modern approach, the force of what was the *contra proferentem* rule is embraced by recognising that a party is unlikely to have agreed to give up a valuable right that it would otherwise have had without clear words. And as Moore-Bick LJ put it in the *Stocznia* case, at [23], 'The more valuable the right, the clearer the language will need to be'. So, for example, clear words will generally be needed before a court will conclude that the agreement excludes a party's liability for its own negligence. The well-known principles in *Canada Steamship Lines Ltd v The King* [1952] AC 192 (that general words, not explicitly mentioning negligence, will not exclude or indemnify against negligence unless that is the only possible liability) should be regarded as a flexible guide and not as a rigid code.

35. I should add for completeness that the passing of the [Unfair Contract Terms Act 1977](#) (and see now the [Consumer Rights Act 2015](#)) adds a further reason for not distorting standard principles of interpretation in the context of exemption clauses (and indemnity clauses in consumer contracts) given the power conferred on the courts by the legislature to strike down such clauses as unreasonable.

(ii) the interpretation of an entire agreement clause: are terms implied by law excluded?

36. In relation to clause 5, I was referred to two cases dealing with the law on the question of whether an entire agreement clause excludes implied terms — *AXA Sun Life Services v Campbell Martin Ltd* [2011] EWCA Civ 133, [2011] 2 Lloyd's Rep 1, at [41] and *Great Elephant Corp v Trafigura Beheer BV* [2012] EWHC 1745 (Comm), [2012] 2 Lloyd's Rep 503, at [88]-[91] (reversed on appeal on a different point: [2013] EWCA Civ 905, [2014] 1 Lloyd's Rep 1) — and to passages on this question in *Chitty on Contracts* at para 14-019 and Lewison, *The Interpretation of Contracts* (6th edn, 2015) p 156.

37. The correct approach here is in line with what I have set out in paragraph 34 above in relation to exemption and indemnity clauses. One must, as ever, apply the modern approach to contractual interpretation (see paragraph 32 above). It is unnecessary to regard there as being a separate rule for the interpretation of an entire agreement clause. However, where the entire agreement clause will have the effect of excluding an implied term that would otherwise arise, one should recognise that a party is unlikely to have agreed to give up a valuable right that it would otherwise have had without clear words. The more valuable the right, the clearer the words will need to be. It follows that an entire agreement clause may or may not exclude an implied term. This will primarily depend on the words used, in their context, but it will also be relevant to consider, for example, the nature of the implied term. So it may be that a term implied by law, at common law or by statute, as opposed to some terms implied by fact or by custom, confers a particularly valuable right so that it is unlikely that a party has agreed to give up that right other than by clear wording. In our case, it is not in dispute that the *Quincecare* duty of care

arises either by reason of a term implied by law at common law — because necessary to the particular type of contract or relationship, applying the test in, for example, *Liverpool CC v Irwin* [1977] AC 239 — or by reason of a term implied by s 13 of the Supply of Goods and Services Act 1982 ; or it arises in tort. It is plain that the right that would otherwise be conferred is of considerable value to the customer — hence the implication by law or the imposition by tort — so that clear wording is needed to exclude it.

#### 4 The Reasons Why the Application for Summary Judgment Fails

38. Having outlined the parties' submissions, and having articulated the relevant law, I can now explain why the defendant bank's application for reverse summary judgment (or striking out) fails. I shall take each of the three grounds in turn. The first will take the most time.

##### (1) the 'no Quincecare duty of care' issue

39. In line with the allegations made by the claimant in the Re-amended Particulars of Claim and in the witness statement of Jonathan Cary (dated 26 October 2018), it is not in dispute that I must assume on this application that the claimant has a realistic prospect of successfully establishing at trial that the defendant bank had reasonable grounds for believing that the payments out were part of an attempt to defraud the claimant: ie that the defendant bank was 'put on inquiry'. Prima facie that means that the bank owed a *Quincecare* duty of care to the claimant; and there is no good reason of principle or policy why that duty of care should be confined to current accounts and should not apply to the depository account in this case. That duty of care entailed that the defendant bank could not simply follow the mandate of abiding by the instructions given by the claimant because the bank's duty of care, at its core, was to protect the claimant against being defrauded by not paying out unless and until it was 'off inquiry': ie unless and until those reasonable grounds, for believing that the payment out was part of an attempt to defraud the customer, no longer existed. Indeed, as was forcefully said by Mr Masefield, if the defendant bank's submissions were correct, and the depository agreement, on its true interpretation, meant that no *Quincecare* duty of care was owed in this case, it would appear that the defendant bank, while still reasonably believing that the payment out was an attempt to defraud its customer, should have gone ahead (or at least was entitled to go ahead) and paid out those huge sums of money. Mr Masefield submitted that that would have been an extraordinary contract for the claimant to have entered into and I accept that, at the very least, it would have been an imprudent contract for the claimant.

40. Applying the law on contractual interpretation set out at paragraphs 32-37 above, the depository agreement was not inconsistent with and did not exclude, either generally or by particular terms, the *Quincecare* duty of care. That duty, as we have seen (see paragraphs 21-23 above) is a specific manifestation of the duty of care owed by a banker to its customer in relation to instructions. It is imposed as an implied term of law by common law or by statute under s 13 of the Supply of Goods and Services Act 1982 or is imposed by the tort of negligence. The duty is imposed by law for good policy reasons, not least to encourage banks to help combat fraud, and it gives the customer a valuable right. It is of course possible that the *Quincecare* duty may not arise because it is inconsistent with the express terms of the contract or it may be excluded by an exemption clause. It is trite common law that an implied term cannot be inconsistent with an express term; and that idea is spelt out, as regards the s 13 implied term, in s 16 of the Supply of Goods and Services Act 1982 . Similarly, the duty of care in tort may be shaped by, and can be excluded by, contractual terms. But given that the *Quincecare* duty of care is imposed for good policy reasons and is a valuable right for the customer, clear wording, including clear inconsistency, will be needed before a court concludes that that duty of care does not arise. In my view, there is no such clear wording in the depository agreement whether looked at generally or in focussing on particular clauses.

41. I now turn to the particular clauses in the depository agreement relied on by the defendant bank. Before I do so, I should make clear the perhaps obvious point that I have had the benefit — which is important in applying the modern objective and *contextual* approach to interpretation — of reading the full depository agreement and the full clauses from which these specific terms, or parts of terms, have here been extracted.

##### (i) Clause 5.1

42. '5.1 The duties and obligations of the Depository in respect of the Depository Cash shall be determined solely by the express terms of this Agreement. The Depository has no knowledge of the terms and provisions of any separate agreement or any agreement relating to the Depositor's Obligations, and shall have no responsibility for compliance by the Depositor

with terms of any other agreement, or for ensuring that the terms of any such agreement are reflected in this Agreement and shall have no duties to anyone other than the Depositor.'

43. 'Entire agreement' clauses come in many forms and one may describe this as an 'entire agreement' clause. The question at issue concerns the first sentence. Does that sentence, with its words 'express terms', exclude the *Quincecare* duty of care given that that duty of care arises either by operation of a term implied by law (whether at common law or under statute) or under the tort of negligence?

44. I have set out at paragraphs 36-37 above, the law on the interpretation of entire agreement clauses, and the question of whether implied terms are excluded. Applying that law, the first sentence of clause 5.1 does not exclude the *Quincecare* duty of care implied term, or the imposition of that duty of care by the tort of negligence, for the following reasons:

- i. Clear words are required to exclude the valuable right conferred by the *Quincecare* duty of care. But there is no express mention of implied terms, including terms implied by law, being excluded; nor is there any mention of the operation of the tort of negligence being excluded.
- ii. If one were to interpret the reference to 'express' terms of the contract as ruling out a *Quincecare* duty of care, it would also operate to rule out (because there are no other relevant express terms) all other manifestations of a bank's implied duty of care to its customer in respect of the depository cash; and all other liabilities imposed in tort or in equity (in respect of the depository cash) including, for example, the tort of deceit or knowing receipt or dishonest assistance or breach of confidence. That would be an alarming interpretation given that it would deprive the customer of many valuable rights.
- iii. The ruling out of tort duties would be inconsistent with other clauses in the contract. For example, clause 8.1 limits liability to the customer for 'fraud' or 'gross negligence' but there is nothing in the express terms of the contract prohibiting such conduct: it must follow that at least some tort liability is not being excluded. Again that clause goes on to refer expressly to obligations in tort: ie it limits the bank's liability for indirect or consequential loss for liability under the agreement 'or for obligations relating to this Agreement (including... obligations in tort)'. Excluding breach of confidence (in respect of the depository cash) would also be inconsistent with clauses 2.2 and 5.9 which assume that there would otherwise be a liability for breach of confidence. Again clause 19 on the Governing Law envisages there as being non-contractual obligations. It reads '*This Agreement and any non contractual obligation arising out of it, is governed by, and shall be construed in accordance with, English law.*'
- iv. The relevant context, in applying the required objective and contextual approach to the interpretation of the first sentence of clause 5.1, includes the context of the full clause. In other words, one should not interpret the first sentence in isolation. Looked at as a whole, clause 5.1 is seeking to make clear that the terms of this contract, and no other agreement, govern. In other words, one cannot go outside the provisions of this agreement (for example, to the resolution agreements of 29 April 2011 which are mentioned in the preamble/recital on page 1 of the agreement) to determine what the parties have agreed.
- v. Although the word 'express' could equally well not have been included, the correct interpretation is that this was emphasising that the relevant terms are those of this contract and no other.

45. In reaching this conclusion on clause 5.1, I have not found it necessary to resolve the question whether, as Ms Phelps tentatively submitted, some of what Teare J said in *Great Elephant Corp v Trafigura Beheer BV* [2012] EWHC 1745 (Comm), [2012] 2 Lloyd's Rep 503, at [90] — a case I have referred to in paragraph 36 above — cannot stand in the light of the apparent criticism made by the Supreme Court in *Marks and Spencer plc v BNP Paribas Services Trust Company (Jersey) Ltd* [2015] UKSC 72, [2016] AC 742 of some of Lord Hoffmann's reasoning in *Attorney-General of Belize v Belize Telecom Ltd* [2009] UKPC 10, [2009] 1 WLR 1988. Teare J was considering an entire agreement clause which included the following words: 'Each party further acknowledges that it will only be entitled to remedies in respect of breach of the express terms of the contract...' Part of Teare J's reasoning in deciding that an implied term by law under s 12 of the Sale of Goods Act 1979 was not excluded by that clause was that, applying *Belize Telecom*, implied terms merely 'spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean' (Teare J at [21], citing Lord Hoffmann). In other words, in a high level sense, a reference to express terms included, and did not exclude, implied terms because the two types of term go together in answering the essential single question (as Lord Hoffmann saw it) which is what the contract, read in context, would be reasonably understood to mean. I merely note — because it may possibly make a difference to the analysis — that *Belize Telecom* and the *Marks and Spencer* case were both concerned with terms implied by fact — that is, a term based on the parties' common intentions objectively understood and to which the well-established 'officious bystander' and 'business efficacy' tests apply — rather than terms implied by law (whether at common law or by statute). We are here concerned only with terms implied by law.

(ii) Clauses 7.2 and 7.4

46. '7.2 The Depository shall be under no duty to enquire into or investigate the validity, accuracy or content of any instruction or other communication.'

'7.4 The Depository need not act upon instructions which it reasonably believes to be contrary to law, regulation or market practice but is under no duty to investigate whether any instructions comply with any applicable law, regulation or market practice.'

47. These clauses are consistent with, at least, the core *Quincecare* duty of care. I have considered in detail above (see paragraphs 21-31) what the *Quincecare* duty of care requires. I have explained that, at its core, the *Quincecare* duty of care imposes a negative duty not to pay (ie to refrain from paying) despite compliant instructions where the bank has reasonable grounds (assessed according to the standards of an ordinary prudent banker) for believing that to make the payment would defraud its customer. I have also explained that, in line with what has been said in the three cases on the *Quincecare* duty and as a matter of policy, I am strongly inclined to the view that, once the bank has those reasonable grounds for belief (ie it is 'put on inquiry'), the *Quincecare* duty imposes an additional positive duty to make reasonable enquiries: but that, even if that is correct, it would be potentially misleading to describe the *Quincecare* duty of care as a duty to enquire/investigate not least because there is no duty of care on an honest bank to enquire or investigate prior to the point at which the bank has the relevant reasonable grounds for belief.

48. The correct interpretation of clauses 7.2 and 7.4 is that, apart from the opening sentence in clause 7.4 (which is plainly consistent with a *Quincecare* duty of care), they do not apply at all where the bank has reasonable grounds for believing that the customer is being defrauded. In other words, the references to there being no duty to enquire or investigate are making clear, consistently with the law as I have summarised it in the last paragraph, that there is no duty of care to enquire or investigate prior to the point at which the bank has the relevant reasonable grounds for belief. Put another way still, clauses 7.2 and 7.4 are consistent with the *Quincecare* duty of care even if it is correct that that duty of care imposes an additional positive duty to enquire/investigate along with the core negative duty not to pay.

49. But even if I am wrong on that interpretation, clauses 7.2 and 7.4 are consistent with the core *Quincecare* duty of care and would only go as far as excluding any additional positive duty to enquire or investigate. One might say that the draftsman has explicitly drawn a distinction between, on the one hand, paying out where the bank has reasonable grounds for believing that the instructions are contrary to law - where the bank is expressly not bound to act upon instructions and, applying *Quincecare*, would be bound not to pay out - and, on the other hand, an additional duty to enquire or investigate which is excluded. Put another way, on this interpretation what clauses 7.2 and 7.4 are doing is modifying the *Quincecare* duty of care by excluding any additional duty to enquire or investigate while leaving in place the core negative duty. Such a modification would produce no difficulty for the claimant if, as I understand it — see, for example, the claimant's skeleton argument at paragraph 46 — the claimant is alleging only a breach of that core negative duty. It would only be if the claimant were alleging that there was a duty to make enquiries that clauses 7.2 and 7.4 would bite on the claim (admittedly the last sentence of paragraph 56 of the Re-amended Particulars of Claim still refers to the defendant needing to make further enquiries; and see also paragraph 32.2 of the claimant's Reply). Even then, clauses 7.2 and 7.4 would only bite on the claim to the extent of knocking out an additional positive duty to enquire or investigate: the core negative duty not to pay would be left intact.

50. I consider the interpretation in paragraph 48 to be the correct one. But even if I am wrong about that, I would adopt the alternative interpretation in paragraph 49 which would leave intact the core *Quincecare* duty of care.

(iii) Clauses 5.8 and 11.5

51. '5.8 The Depositor hereby authorises the Depository to act hereunder notwithstanding that :... (ii) The Depository or any of its divisions, branches or affiliates may be in possession of information tending to show that the instructions received may not be in the best interests of the Depositor and the Depositor agrees that the Depository is not under any duty to disclose any such information.'

'11 The Depositor hereby represents and warrants to the Depository on a continuing basis that:

11.5 ...the transactions to be effected under this Agreement will not violate any law, regulation, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected and it is not restricted under the terms of its constitution or in any other manner from performing its obligations hereunder.'

52. It is hard to see how these clauses impact on whether there is a *Quincecare* duty of care or not. Neither of them is purporting to deal with where the customer is itself the victim of a fraud. Neither indicates that the bank should go ahead with instructions where the bank has reasonable grounds for believing that the customer would be the victim of a fraud if the payment were made. The reference in clause 5.8 to being 'in possession of information' so that the instructions may not be in the 'best interests of the Depositor' is best interpreted as referring to commercial information and to the best commercial interests of the customer and does not cover the different and extreme case where the bank has information giving it reasonable grounds for believing that complying with the instructions would defraud the customer. Clause 11.5 is dealing with regulations 'applicable to it' (ie to the bank) such as the laws of Nigeria and it cannot plausibly be regarded as a reference to the law of fraud where the customer is the victim of that fraud: to deny that would be tantamount to adopting a far-fetched interpretation that the customer is warranting to the bank that the customer is not being defrauded by relevant transactions.

(iv) Clause 8.2(d)

53. '8.2(d) [The Depository shall not be liable to the Depositor for any loss suffered by the Depositor by] the Depository acting on what it in good faith believes to be instructions or in relation to notices, requests, waivers, consents, receipts, or other documents which the Depository in good faith believes to be genuine and to have been given or signed by the appropriate parties.'

54. Again this does not help the defendant bank in the situation with which we are here dealing for the following reasons:

- i. In deciding on the correct interpretation, I must apply the law on the interpretation of exemption clauses, as set out at paragraph 34 above. This requires there to be clear words if there is to be an exclusion of the valuable right that, on the facts of this case, would otherwise be conferred on the customer by the *Quincecare* duty of care. Here there are no such clear words.
- ii. On its correct interpretation, clause 8.2(d) does not apply to the alleged facts. This clause protects a bank where apparently authorised instructions have not been authorised (eg because someone impersonated one of the authorised officers) or where apparently genuine documents were non-genuine. But in our case it is not alleged that the instructions were unauthorised (ie it is not in dispute that the authorised officers gave the instructions) or that the documents were non-genuine. Rather the allegation is that authorised instructions (and, in so far as relevant, genuine documents) were being used as part of a scheme to defraud the customer. So the correct interpretation of this clause is that it does not exclude the *Quincecare* duty of care in relation to the alleged facts as to fraud in this case.
- iii. Even if I am wrong on that interpretation, a bank, which has reasonable grounds for believing that its customer is being defrauded, and goes ahead with paying out, may not be acting in 'good faith'. Whether that is so or not will be dependent on the precise facts including the knowledge of the bank. That must be a matter for full evidence at trial and one cannot say now that the claimant has no realistic prospect of successfully showing that the defendant bank was not acting in 'good faith'. Ms Phelps submitted that it was not open to the claimant to rely on this point because there has been no pleading by the claimant that the defendant bank was not acting in good faith (although it has pleaded 'gross' negligence at paragraph 107 of the Re-amended Particulars of Claim). I do not agree. The first indication that the defendant bank was relying on clause 8.2(d) was in paragraph 100 of the Amended Defence dated 24 July 2018. The claimant would then have had the opportunity to plead that the defendant bank was not acting in good faith, so that that clause did not apply, in a Reply to that Amended Defence. But that did not happen because the normal timing and sequence for pleadings were overtaken by the defendant bank issuing its summary judgment application on 31 July 2018. Indeed this was one day after a letter from the claimant's solicitors to the defendant bank's solicitors saying that they would be serving an Amended Reply. It follows that, as Mr Masefield submitted, it cannot fairly be held against the claimant that it has not put in an Amended Reply which includes pleading no good faith. Mr Masefield made clear in open court that, in so far as the normal order for pleadings is resumed following this judgment, the claimant will be pleading the 'good faith' point in an Amended Reply. So I reject Ms Phelps' pleading objection.

55. Alongside clause 8.2(d), Ms Phelps relied on the indemnity clause 10(1)(a) as also constituting an exclusion of liability for the defendant bank acting in accordance with its mandate and therefore as excluding a *Quincecare* duty of care. That indemnity clause is set out and considered in more detail below under the circularity issue. Even if treated as excluding

the liability of the defendant bank to the claimant, rather than indemnifying the bank against liability to third parties (see paragraph 63 below), it would not here exempt the defendant bank for the reasons set out at paragraph 64 below.

(v) Conclusion on the 'no Quincecare duty of care' issue

56. My conclusion on this first issue is that the defendant bank did owe a *Quincecare* duty of care to the claimant, which was imposed by an implied term in the depository agreement (implied by law at common law and/or under statute) and/or by the tort of negligence. On the correct interpretation of the depository agreement, that *Quincecare* duty of care was neither inconsistent with, nor excluded by, the terms of that agreement.

(2) the 'causation of loss' issue

57. I have explained at paragraph 9 above that, in contrast to the other two issues, this is primarily a factual issue, although also raising some legal issues, and should be approached by directly asking whether the claimant has a realistic prospect of success.

58. In my view, causation of loss in this case, as one would expect in most cases, is plainly one that should go to trial where the court will have the benefit of full evidence. Although Ms Phelps submitted that this was the unusual case where one could now say on causation that the claimant has no realistic prospect of success, I disagree. Indeed the complexity of the underlying facts in this case — and the nature and scale of the alleged fraud — means that, far from it being the unusual case where reverse summary judgment can be given on causation of loss, it is *a fortiori* a case where a court needs to examine all the relevant evidence that would be put forward at a trial in order to make a proper determination on the causation issue.

59. It is true that the defendant bank made checks with the Attorney-General of Nigeria and he gave assurance that the money could be paid out. And Ms Phelps submitted that if, as alleged, even the then President of Nigeria was involved in the fraud, it followed that, had the bank been under a duty of care, reasonable checks by it would still have resulted in the money being paid out. But that is a speculative submission. The starting point is that, had the defendant bank complied with its core *Quincecare* duty of care, the payments would not have been made. The determination of what would, or should, then have occurred is dependent on full evidence. I cannot now say what an ordinary prudent bank would have done in those circumstances: that is a matter on which evidence from banking experts would be needed. On the face of it, one plausible possibility would have simply been for the bank — because of continuing reasonable grounds for believing that the payments would defraud the customer - to continue to refrain from making any payment so that the money would have remained in the account. As I have outlined at paragraph 18 above, Mr Masefield submitted that another plausible outcome was that the money would have been frozen in the account by court order. Although Ms Phelps submitted that, if the government were corrupt, there would be no party disputing the payment out, so that interpleader proceedings would not eventuate, and there would be no obvious route to a freezing injunction, I cannot say now that the freezing of the account by court order (perhaps by reason of intervention by the regulatory authorities, such as the Serious Organised Crime Agency) is an unrealistic analysis of what would have happened. It may have been open to the defendant bank to seek directions or a declaration from a court not least by reason of clause 5.7 of the depository agreement which reads as follows (my emphasis):

'5.7 In the event of any dispute between or conflicting claims by any person or persons with respect to the Depository Cash, **or the Depository is uncertain as to its duties or rights hereunder** , the Depository shall be entitled to apply to a court of law to determine the rights of such persons and meanwhile at its option to refuse to comply with any and all claims, demands or instructions with respect to such Depository Cash or any obligations hereunder so long as such dispute or conflict shall continue.'

60. In conclusion on this second issue, the defendant bank has failed to establish that the claimant has no realistic prospect of success in proving causation of loss.

(3) the 'circularity' issue

61. This is a question of law in relation to which, as I have explained at paragraph 9 above, I am grasping the nettle and making a decision at this stage.

62. The relevant clause of the depository agreement on this issue is clause 10.1(a) (clause 10 is headed 'Indemnity'). This reads as follows:

'10.1 The Depositor hereby irrevocably and unconditionally agrees on demand to indemnify, and to keep fully and effectively indemnified ... the Depository, and its directors, officers, agents and employees (the "indemnitees") against all costs, claims, losses, liabilities, damages, expenses, fines, penalties, Tax and other matters ("Losses") which may be imposed on, incurred by or asserted against the indemnitees or any of them directly or indirectly in respect of:

(a) the following of any instruction or other directions upon which the indemnitees is authorised to act or rely pursuant to the terms of this Agreement, or arising as a result of entering into this Agreement or their status as holder of the Depository Cash...'

63. On its correct interpretation, there is no circularity problem posed by this clause. This clause does not entitle the defendant bank to be indemnified against the claim by the claimant. Given that clause 8 deals with the exclusion of the liability of the bank to the customer, this clause is best interpreted as dealing with the liability of the bank to third parties. If that were not so, one would have a clash with clause 8: eg clause 8.1 excludes the bank from liability to the customer for action pursuant to the agreement unless caused by the fraud, gross negligence or wilful misconduct of the bank in which event the extent of liability is limited to the market value of the depository cash. But if, by reason of clause 10.1(a), the customer is bound to indemnify the bank in any event, the exception for fraud, gross negligence or wilful misconduct would be undermined.

64. Even if one were to interpret clause 10.1(a) as excluding the liability of the defendant bank to the claimant, rather than indemnifying the defendant bank against liability to third parties, it would not exempt the defendant bank here. I have set out the law on the interpretation of exemption and indemnity clauses at paragraph 34 above. Although to be treated as a flexible guide, rather than as a rigid code, the *Canada Steamship* principles indicate that a court should be reluctant to find that a generally worded clause, rather than an explicit reference to negligence, exempts, or indemnifies against, negligence (which would take away a valuable right). The following of instructions negligently — in breach of a *Quincecare* duty of care — is in my view not covered by the general words of clause 10.1(a) which do not explicitly refer to negligence.

65. In conclusion, therefore, on a correct interpretation of clause 10.1(a) in the depository agreement, the claim does not fail for circularity.

## 5 Conclusions

66. My conclusions are therefore as follows:

- i. On the 'no *Quincecare* duty of care' issue, the defendant bank did owe a *Quincecare* duty of care to the claimant, which was imposed by an implied term in the depository agreement (implied by law at common law and/or under statute) and/or by the tort of negligence. On the correct interpretation of the depository agreement, that *Quincecare* duty of care was neither inconsistent with, nor excluded by, the terms of that agreement.
- ii. On the 'causation of loss' issue, the defendant bank has failed to establish that the claimant has no realistic prospect of success in proving causation of loss.
- iii. As regards the 'circularity' issue, on the correct interpretation of clause 10.1(a) in the depository agreement, the claim does not fail for circularity.
- iv. My overall conclusion, therefore, is that the defendant bank has failed to establish that the claimant has no real prospect of success under [CPR 24.2](#) .

67. For these reasons, the application for reverse summary judgment under [CPR 24.2](#) fails. It also follows that the Re-amended Particulars of Claim do disclose reasonable grounds for bringing the claim so that the application to strike out under [CPR 3.4\(2\)](#) also fails.

68. It remains for me to thank counsel on both sides for their helpful submissions.

Crown copyright

**EXHIBIT H**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed April 13, 2018

*Henry G. C. George*  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-7  
§  
Alleged Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-7  
L.L.C., §  
§  
Alleged Debtor. §

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
ORDERS FOR RELIEF ISSUED AFTER TRIAL ON  
CONTESTED INVOLUNTARY BANKRUPTCY PETITIONS**

Joshua N. Terry (the "Petitioning Creditor" or "Mr. Terry") filed involuntary bankruptcy petitions (the "Involuntary Petitions") against each of the two above-referenced related

companies (the “Alleged Debtors”) on January 30, 2018.<sup>1</sup> The Involuntary Petitions were contested, and the court held a multi-day trial (the “Trial”) spanning March 21, 22, 23, 27, and March 29, 2018.<sup>2</sup> This constitutes the court’s findings of fact, conclusions of law and ruling, pursuant to Fed. Rs. Bankr. Proc. 7052 and 9014.<sup>3</sup> As explained below, the court has decided that Orders for Relief are legally required and appropriate as to each of the Alleged Debtors.

## **I. FINDINGS OF FACT**

### **A. Introduction.**

1. The Alleged Debtors—Acis Capital Management, L.P. (“Acis LP”), a Delaware limited partnership, and ACIS Capital Management GP, L.L.C. (“Acis GP/LLC”), a Delaware limited liability company—are two entities in the mega-organizational structure of a company that is known as Highland Capital Management, L.P. (“Highland”).

2. Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 (changing its original name from “Protective Asset Management” to Highland in 1997) by James D. Dondero (“Mr. Dondero”), originally with a

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<sup>1</sup> Exhs. 50 & 51.

<sup>2</sup> Shortly after the Involuntary Petitions were filed, the court held hearings on February 6-7, 2018, on the Petitioning Creditor’s Emergency Motion to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Import, Inter Alia, 11 U.S.C. § 363 [DE # 3] (the “303(f) Motion”) and the Alleged Debtors’ Emergency Motion to Seek Emergency Hearing on the Alleged Debtors’ Motion to Dismiss Involuntary Petitions and Request for Award of Fees, Costs, and Damages [DE # 9] (the “Emergency Motion to Set Hearing on Motion to Dismiss”). The court ultimately granted the 303(f) Motion and denied the Emergency Motion to Set Hearing on Motion to Dismiss. Both the Petitioning Creditor and the Alleged Debtors have proposed that the court should consider the evidence it heard at the hearings held on February 6-7, 2018, in determining whether it should enter orders for relief. The court has, accordingly, considered such evidence in this ruling.

<sup>3</sup> Bankruptcy subject matter jurisdiction exists in this contested matter, pursuant to 28 U.S.C. § 1334(b). This is a core proceeding over which the bankruptcy court may exercise subject matter jurisdiction, pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This bankruptcy court has Constitutional authority to issue a final order or judgment in this matter, as it arises under a bankruptcy statute—11 U.S.C. § 303. Venue is proper in this district, pursuant to 28 U.S.C. § 1409(a), as the Alleged Debtors have their business headquarters in this district.

75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest.<sup>4</sup>

3. Both Mr. Dondero and Mr. Akada provided witness testimony at the Trial on the Involuntary Petitions, and their names are mentioned numerous times herein—since they were generally the subject of significant evidence and argument presented at the Trial. Mr. Dondero is the chief executive officer for Highland and Mr. Akada is the chief investment officer. Mr. Dondero is also the president of each of the two Alleged Debtors.

4. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles ranging from: collateral loan obligation funds (“CLOs”); private equity funds; and mutual funds.

5. Highland’s CLO business was front-and-center at the Trial on the Involuntary Petitions. The Alleged Debtor, Acis LP, for approximately the past seven years, has been the vehicle through which Highland’s CLO business has been managed.

6. The Petitioning Creditor, Mr. Terry, became an employee of Highland in the year 2005, starting as a portfolio analyst, promoting to a loan trader, then ultimately becoming the portfolio manager for (and 25% limited partner in) Highland’s CLO business—specifically, Mr. Terry was the human being who was acting for the CLO manager, Acis LP.

7. Mr. Terry was highly successful in his role in the CLO business, managing billions of dollars of assets during his tenure, but Mr. Terry and Mr. Dondero had a bitter parting of ways on June 9, 2016. Specifically, Mr. Terry’s employment was terminated on that date (for

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<sup>4</sup> Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and Akada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable.

reasons that have been highly disputed) and his 25% limited partnership interest in Acis LP was deemed forfeited without any payment of consideration to him.

8. In September 2016, Highland sued Mr. Terry in the 162<sup>nd</sup> Judicial District Court of Dallas County, Texas (“State Court 1”) for breach of fiduciary duty/self-dealing, disparagement, breach of contract, and various other causes of action and theories. Mr. Terry asserted his own claims against Highland, and also claims against the two Alleged Debtors, Mr. Dondero, and others and demanded arbitration. On September 28, 2016, State Court 1 stayed the litigation and ordered the parties to arbitrate. The parties participated in ten days of arbitration in September 2017 before JAMS. On October 20, 2017, Mr. Terry obtained an Arbitration Award (herein so called),<sup>5</sup> jointly and severally against both of the Alleged Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate, which was based on theories of breach of contract and breach of fiduciary duties.

9. There are still claims pending between and among the Petitioning Creditor, Highland, and others (not including the Alleged Debtors) in State Court 1.

10. A Final Judgment (herein so called) confirming the Arbitration Award was entered by the 44<sup>th</sup> Judicial District Court of Dallas County, Texas (“State Court 2”) on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.<sup>6</sup>

11. Mr. Terry began pursuing post-judgment discovery soon after obtaining his Arbitration Award and even more so after entry of the Final Judgment. Mr. Terry undertook a UCC search on November 8, 2017, to investigate whether there were any liens on the Alleged

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<sup>5</sup> Exh. 1.

<sup>6</sup> Exh. 105.

Debtors' assets (none appeared).<sup>7</sup> Mr. Terry also pursued a garnishment of an Acis LP bank account (at a time when there was only around \$2,000 in the account). Mr. Terry's counsel deposed Highland's General Counsel Scott Ellington (who sat for the deposition as a representative of Acis, LP) on January 26, 2018, and asked numerous questions about: (a) how many creditors the Alleged Debtors had,<sup>8</sup> and (b) whether Acis LP was able to pay its debts as they became due,<sup>9</sup> but did not receive meaningful answers.

12. Mr. Terry requested a temporary restraining order ("TRO") from State Court 2, on January 24, 2018, after discovering certain transactions and transfers involving Acis LP's interests, that he believed were pursued without any legitimate business purpose and with the purpose of denuding Acis LP of its assets and to make it judgment proof. Most particularly, it appeared as though Highland was engaged in a scheme to transfer certain fee-generating CLO management contracts of Acis LP away from it and into a Cayman Island affiliate of Highland.<sup>10</sup> At a January 24, 2018 hearing on the request for a TRO, Acis LP agreed and State Court 2 ordered that, between that hearing and a later hearing on a request for a temporary injunction, no CLO management contracts would be transferred away from Acis LP and that no monies would be diverted from it.<sup>11</sup>

13. Then, on January 29, 2018, the Controller of and CPA for Highland (David Klos) submitted a Declaration to State Court 2 concerning the net worth of the Alleged Debtors, stating

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<sup>7</sup> Exh. 84.

<sup>8</sup> Exh. 25, pp. 7-9.

<sup>9</sup> *Id.* at pp. 102-04.

<sup>10</sup> Exh. 27.

<sup>11</sup> Exh. 28.

that Acis GP/LLC had a net worth of \$0 and that Acis LP might have a net worth, at best, of \$990,141.<sup>12</sup> Mr. Terry thought this was preposterous—given the management fees that Acis LP was entitled to and the receivables that should be owing to it. Mr. Terry believes that the collateral management agreements on which Acis LP receives management fees have a present value of \$30 million (about \$6 million for each of the five CLOs which Acis LP has been managing).

14. On January 29, 2018, the Alleged Debtors filed a motion for leave to post a supersedeas bond in the amount of \$495,070.50 with State Court 2 (purportedly half of the net worth of the two Alleged Debtors—as stated in the David Klos Declaration), so that they could suspend enforcement of the Final Judgment while they appealed it.<sup>13</sup> Although there is a very stringent standard for appealing an Arbitration Award, the Alleged Debtors apparently believe they have an argument that State Court 2 lacked the subject matter jurisdiction to confirm the Arbitration Award (a motion to vacate the Final Judgment based on this argument has previously been denied by State Court 2).<sup>14</sup>

15. Meanwhile, Mr. Terry was learning of more transactions and transfers involving Acis LP's assets and interests. On January 29, 2018, Mr. Terry filed supplemental pleadings with State Court 2, alleging that further shenanigans (*i.e.*, transfers and transactions that would amount to fraudulent transfers) were underway at Acis LP and seeking a receiver.<sup>15</sup> Also, at

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<sup>12</sup> Exh. 26.

<sup>13</sup> Exh. 73.

<sup>14</sup> See DE # 35, in Case No. 18-30264 and DE # 34 in Case No. 18-30265. Unless otherwise noted, references to “DE #” herein refer to the docket entry number at which a pleading appears in the docket maintained with the Bankruptcy Clerk in the Acis Capital Management L.P. bankruptcy case (Case No. 18-30264).

<sup>15</sup> Exhs. 28-31.

some point, in the weeks leading up to this, an Acis LP lawyer represented to Mr. Terry's counsel that the Alleged Debtors were "judgment proof."<sup>16</sup>

16. At approximately 11:57 p.m. on January 30, 2018 (on the evening before a scheduled temporary injunction hearing in State Court 2—at which time State Court 2 presumably might have considered the Alleged Debtors' request to post the \$495,070.50 supersedeas bond to stay enforcement of the Final Judgment), Mr. Terry filed the Involuntary Petitions, as a sole petitioning creditor, against both Acis LP and Acis GP/LLC.

17. For purposes of this Trial (and this Trial only), the Alleged Debtors do not dispute that Mr. Terry has standing to be a petitioning creditor pursuant to Bankruptcy Code section 303(b)—in other words, they do not dispute that Mr. Terry is a holder of a claim against the Alleged Debtors that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount and that aggregates at least \$15,775 in unsecured amount. However, the Alleged Debtors argue that: (a) the Alleged Debtors have **12 or more creditors** and, thus, three or more petitioning creditors were required to prosecute the Involuntary Petitions pursuant to Bankruptcy Code section 303(b)(1); (b) the Petitioning Creditor did not establish, pursuant to Bankruptcy Code section 303(h)(1), that the Alleged Debtors are not **generally paying their debts as such debts become due** unless such debts are the subject of a bona fide dispute as to liability or amount; (c) regardless of whether the Petitioning Creditor has met the statutory tests in sections 303(b)(1) and (h)(1), the Petitioning Creditor has acted in **bad faith**—which serves as an equitable basis for dismissal of the Involuntary Petitions; and (d) if the court disagrees with the Alleged Debtors and determines that the section 303(b) and (h) statutory tests are met, and also determines that the Petitioning Creditor has not acted in bad faith, the court should

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<sup>16</sup> Exh. 27 (exhibit 3 thereto).

nevertheless *abstain* in this matter, pursuant to Bankruptcy Code *section 305*, since this is essentially a two-party dispute and the interests of creditors and the debtor would be better served by dismissal.

18. The Petitioning Creditor argues that he has met the statutory tests of sections 303(b) and (h) but, even if he has not, there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor—which “special circumstances,” Mr. Terry alleges, have been established here. Moreover, the Petitioning Creditor argues that the facts here *do not warrant section 305 abstention* because the interests of creditors and the Alleged Debtors would not be better served by dismissal.

19. As further explained below, the court finds and concludes that the Petitioning Creditor has met his burden of proving by a preponderance of the evidence that the statutory tests of sections 303(b) and (h) are met here. Thus, the court does not need to reach the question of whether there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor, and—if so—whether the exception is applicable here.<sup>17</sup>

20. Moreover, the Alleged Debtors have not shown by a preponderance of the evidence that the Petitioning Creditor acted in bad faith, such that the Involuntary Petitions should be dismissed.

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<sup>17</sup> See e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

21. Finally, the Alleged Debtors also have *not shown facts here that warrant section 305 abstention* because they have not shown that the interests of creditors and the Alleged Debtors would be better served by dismissal.

**B. The CLO Business: Understanding the Alleged Debtors' Business Operations, Structure, and What Creditors and Interest Holders They Actually Have.**

22. Highland set up its first CLO in the year 1996. Highland was one of the early participants in the CLO industry.

23. The Alleged Debtors were formed in 2011 to be the new “brand” or face of the Highland CLO business, after Highland’s name had suffered some negative publicity in the marketplace.

24. Acis LP has acted as the portfolio manager of Highland’s CLOs since 2011. Acis LP currently has a contractual right to CLO portfolio management fees on five CLOs<sup>18</sup> which were referred to at the Trial as CLO 2013-1; CLO 2014-3; CLO 2014-4; CLO 2014-5; and CLO 2016-6. CLOs typically have an 8-12 year life. Thus, there are still several years of life left on these CLOs (since the oldest one was established in the year 2013).

25. The key “players” in and features with regard to the Highland CLOs, during the time period relevant to the issues adjudicated at the Trial, have been:

- (a) The CLO manager. As mentioned earlier, the CLO manager is the Alleged Debtor, Acis LP. Acis LP, has collateral management agreements (hereinafter, the “CLO Collateral Management Agreements”) with the CLOs (which CLOs were set up as special purpose entities) and, pursuant thereto, receives

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<sup>18</sup> There is still another Highland CLO (CLO 2017-7), set up in April 2017, as to which Acis LP’s contractual right to manage was terminated shortly before the Petition Date, as will be further described herein.

management fees<sup>19</sup> from the CLOs in exchange for managing the pool of assets within the CLOs and communicating with investors in the CLOs.<sup>20</sup> As mentioned earlier, Mr. Terry was the human being that performed the management function at Acis LP until Highland fired him on June 9, 2016 and also terminated his limited partnership interest in Acis LP. Mr. Terry, and all employees who have ever provided services to the CLO manager, are Highland employees—which were provided to Acis LP through shared and sub-advisory services agreements—as further explained below. Thus, to be clear, Acis LP has always essentially subcontracted its CLO managerial function out to Highland.

- (b) The pool of assets. Within each CLO that the CLO manager manages is a basket of loans that the CLO manager purchases. The basket of loans typically consists of approximately 200 loans-payable (or portions of loans payable), on which large well-known companies typically are the makers/obligors (and which loans, collectively, provide a variable rate of interest).<sup>21</sup> The CLO manager can typically decide to buy and sell different loans to go into the pool of assets, with certain restrictions, during a four or five year reinvestment time period.

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<sup>19</sup> These fees typically include “senior fees” (*e.g.*, 15 basis points); additional “subordinate fees” (*e.g.*, 25 basis points) if the CLOs are passing certain tests; and perhaps even an “incentive fee” beyond a certain hurdle rate (*e.g.*, after the equity in the CLO received an internal rate of return of 10%, the CLO manager would get 15% of the excess). Exh. 82, p. 59, lines 14-25.

<sup>20</sup> *See*, as an example, Exh. 3 (the collateral management agreement between Acis LP and CLO 2014-3). Note that the document is entitled “Portfolio Management Agreement” but, to avoid confusion with other similarly titled documents and to highlight the true nature of the agreement, the court uses the defined term “CLO Collateral Management Agreement,” which terminology the lawyers also sometimes used at the Trial.

<sup>21</sup> Exh. 8.

- (c) The CLO investors (*i.e.*, CLO note holders). These may be any number of persons or entities, including pension funds, life insurance companies, or others who decide to invest in the CLOs and contribute capital to fund the purchase of a CLO's loan pool, and, in return, receive fixed rate notes payable—the ratings on which can range anywhere from Triple-A to Single-B, depending upon the risk option the investor chooses. There are typically five or six tranches of notes issued by the CLO (with the top AAA-rated tranche being the least risky and the bottom tranche being the most risky) and—to be clear—the CLO itself (again, in each case, the CLO is a special purpose vehicle) is the obligor. As the CLO manager receives income from the pool of loans in the CLO, he distributes that income to the CLO investors, in accordance with their note indentures,<sup>22</sup> starting with the top tranche of notes and then down to the other tranches. The top tranche of notes (AAA-rated) is considered the “controlling” class and a majority of holders in this class can terminate the CLO manager (*i.e.*, Acis LP) for cause on 45 days' notice, although all parties seem to agree this would be a rare event.
- (d) The CLO equity holder. The CLO equity holder actually is a holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash

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<sup>22</sup> The indenture trustee on the CLO notes may actually operate as a payment agent in some cases, for purposes of making the quarterly note payments to holders.

flow from the CLOs. It, in certain ways, controls the CLO vehicle<sup>23</sup>—for example, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. (“ALF”), which was incorporated under the laws of the island nation of Guernsey,<sup>24</sup> was the CLO equity holder. To be clear, *ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP*. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the “ALF Portfolio Management Agreement”—not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements). The complicated structure of the CLO business—all parties seemed to agree—has been developed, among other reasons, to comply with “risk-retention requirements” imposed by the U.S. Congress’s massive Dodd-Frank financial reform legislation<sup>25</sup> enacted in year 2010, in response to the financial crisis and recession that first began in 2008.

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<sup>23</sup> The top tranche of AAA notes also has certain control—such as the ability to terminate the portfolio manager for cause, on notice.

<sup>24</sup> Guernsey is located in the English Channel. ALF was created in August 2015.

<sup>25</sup> Simply put, one of the results of the Dodd-Frank legislation (*i.e.*, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Congress, effective July 21, 2010), which was implemented over a period of several years, was that, *subsequent to December 2016*, managers of securitizations needed to retain at least a 5% interest in that securitization. Thus, if a \$400 million CLO were to be

(e) The Equity Owners of ALF. Until recently (*i.e.*, until October 24, 2017—four days after the Arbitration Award), Acis LP itself, as required for a CLO manager, had a 15% indirect ownership in ALF, in order to be regulatory compliant.<sup>26</sup> The parties sometimes refer to ALF (and the web of ownership between it and Acis LP) as the “risk retention structure.”<sup>27</sup> The evidence at the Trial revealed that ALF (which has recently been renamed), now, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from Highland, is managed/advised by Highland, and whose independent trustee is a long-time friend of Highland’s chief executive officer, Mr. Dondero; (ii) 2% is owned by Highland employees; and (iii) finally, ALF *may* be 49% owned by a third-party institutional investor based in Boston that Highland believed it was required to keep anonymous at the Trial. Not only is the court unaware of who this independent third-party is, but the evidence seems to suggest that it may have acquired its interest fairly recently or may have simply committed to invest recently.<sup>28</sup>

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issued, the CLO manager would need to retain at least 5% or \$20 million of the assets in the CLO (which 5% could be either all at the equity level or vertically, up and down the note tranches). There are multiple ways to accomplish this 5% retention (*i.e.*, with either the CLO manager directly investing in at least 5% of the CLO or doing it through a controlled subsidiary). This particular rule was announced in **December 2014** and the SEC thereafter issued a no action letter stating that *if a CLO was issued prior to December 2014*, then any refinancing of such CLO that happens within four years can be done without risk retention in place. Resets of any CLO (*i.e.*, changes in terms and maturity—as opposed to mere changes in interest rates), on the other hand, must have risk retention in place. **Four of Acis LP’s current CLOs were issued prior to December 2014**. Thus, these four CLOs are still technically able to do a refinancing without a risk retention structure in place. In any event, by early-to-middle 2017, Acis LP was risk retention compliant. Exh. 82, pp. 65-69 & 75. That was recently changed—on October 24, 2017—four days after the Arbitration Award—as later explained herein.

<sup>26</sup> See n.23, *supra*.

<sup>27</sup> See Demonstrative Aid No. 3.

<sup>28</sup> See Exh. 173, which seems to suggest that the only equity owners of ALF just prior to October 24, 2017 were Acis LP and the DAF, until Acis LP’s interest in ALF was sold back to ALF on October 24, 2017. See also Exh. 82, p. 162, lines 2-7.

- (f) The underwriter for the CLO notes. As with any publicly traded notes, there is an underwriter for the CLO notes which solicits investors for the CLO notes (examples given at the Trial: Mizuho Securities USA, LLC; Merrill Lynch; JP Morgan Chase).<sup>29</sup> The CLO notes are traded on the Over-the-Counter Market.
- (g) The independent indenture trustee for the CLO notes. As also with any issuance of publicly traded notes, there is an indenture trustee (example given at the Trial: U.S. Bank).<sup>30</sup>

26. Mr. Terry, the Petitioning Creditor, as earlier mentioned, began working for Highland in 2005 until his employment was terminated on June 9, 2016.

27. Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called),<sup>31</sup> which provides “back office” personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called),<sup>32</sup> which provides “front office” personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements. The court notes that

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<sup>29</sup> See Exh. 193.

<sup>30</sup> See Exh. 7.

<sup>31</sup> Exhs. 17, 99, 179 & 5.

<sup>32</sup> Exhs. 18, 178 & 4.

all iterations of the Shared Services Agreements and Sub-Advisory Agreements between Acis LP and Highland were signed by Mr. Dondero both as President of Acis LP and as President of the General Partner of Highland.

28. Because Acis LP essentially subcontracts out all of its functions to Highland pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, Acis LP has very few vendors or creditors. Rather Highland incurs expenses and essentially bills them to Acis LP through these two agreements.<sup>33</sup> In other words, Highland is one of Acis LP's largest and most frequent creditor.

29. The evidence reflected that at all times Mr. Dondero has been the President of both of the Alleged Debtors, and there have been, at all times, very few, if any, other officers. It appears that the only other officer of Acis GP/LLC that ever existed was Frank Waterhouse, Treasurer.<sup>34</sup> It also appears that the only other officer of Acis LP that ever existed was Frank Waterhouse, Treasurer, Mr. Terry as Portfolio Manager, and someone named Patrick Boyce as Secretary at one time.<sup>35</sup>

30. Mr. Dondero testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) and is rarely involved in "nitty gritty negotiations." Sometimes instructions will come to him from the compliance group headed up by Chief Compliance Officer Thomas Surgent. Additionally, he testified that he signs hundreds of documents per

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<sup>33</sup> Exh. 83, pp. 228 (line 8)-230 (line 14).

<sup>34</sup> See, e.g., Exh. 10 & Exh. 173, p.3

<sup>35</sup> Exhs. 14 & 15.

week, and much of what he signs is on advice of counsel and he sometimes even delegates to his assistant the authority to sign his name. As set forth above, Mr. Ellington (who *did not* testify at the Trial)<sup>36</sup> and Mr. Leventon (who *did* testify at the Trial) are not officers, directors, or employees of the Alleged Debtors. Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-Trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington, although Highland partners can ask him to perform legal services for any of Highland’s 2,000 entities.

**C. Transfers and Transactions Involving the Alleged Debtors Since the Litigation with Mr. Terry Commenced—and Especially After the Arbitration Award.**

31. Below is a listing of some (but not necessarily all) of the transfers and transactions that the Alleged Debtors, Highland, and related parties undertook *after* the litigation with Mr. Terry commenced.

- (a) Acis LP’s Sale to Highland of a “Participation Interest” in its CLO Cash Flow Stream. On October 7, 2016 (approximately one month after the litigation arose among Mr. Terry, Highland, and the Alleged Debtors), Acis LP sold to Highland a participation interest in its expected future cash flow from the CLO Collateral Management Agreements—specifically, it sold a portion of the cash flow it expected to earn from November 2016 to August 2019 (not the full life of the CLOs), for \$666,655 cash, plus a \$12,666,446 note payable from Highland to

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<sup>36</sup> Mr. Ellington did testify at a hearing in the bankruptcy court on February 6, 2018—which the parties asked this court to take judicial notice of—and also provided deposition testimony that was submitted into evidence. *See* Exh. 25.

Acis LP (hereinafter, the “Acis LP Note Receivable from Highland”). Mr. Dondero signed the purchase and sale agreement for both purchaser and seller.<sup>37</sup> Mr. Dondero signed the Acis LP Note Receivable from Highland, which accrued interest at 3% per annum. It appears that the \$666,665 cash down payment was actually paid, and a payment required on the Acis LP Note Receivable from Highland of \$3,370,694 on May 31, 2017, was actually made. The Acis LP Note Receivable from Highland was payable in three installments, with a \$5,286,243 payment required on May 31, 2018, and a \$4,677,690 payment required on May 31, 2019. When viewed in complete isolation, this transaction does not necessarily appear problematic. Although there was evidence that Acis LP had been managing the five CLOs for about \$10 million per year of fees, some of the recitals in the purchase and sale agreement suggest that there may have been a sound business reason for the transaction and the arbitration panel,<sup>38</sup> viewing this transaction in isolation, did not think it was necessarily problematic or actionable. In any event, Highland is adamant it was a net neutral transaction.

- (b) Transfer of Acis LP’s interest in ALF. Recall that ALF was the entity that held equity (*i.e.*, the subordinated notes) in the CLO special purpose vehicles, and held voting rights and was a capital provider to the overall risk retention structure supporting the CLOs. And Acis LP, in turn, held a 15% indirect interest in ALF. On October 24, 2017 (*four days after the Arbitration Award*), Acis, LP entered into an agreement with ALF whereby ALF acquired back the shares that Acis LP

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<sup>37</sup> Exhs. 14 & 15.

<sup>38</sup> Exh. 1, p. 18.

indirectly held in ALF (966,679 shares) for the sum of \$991,180.13.<sup>39</sup> No credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was “toxic” in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.<sup>40</sup> The court finds the testimony about Acis LP’s toxicity in the marketplace to not be credible or at all convincing. For one thing, a new CLO (Acis CLO 2017-7, Ltd.) was closed on April 10, 2017 with Acis LP as the portfolio manager. Moreover, Acis LP subcontracts all of its CLO management function to Highland—and there was no evidence to suggest that anyone in the marketplace at this juncture differentiates between Acis LP (whose president is Mr. Dondero) and Highland (whose president is Mr. Dondero). *In any event, the October 24, 2017 transaction had the highly consequential effect of making Acis LP “noncompliant” or unable to continue serving as a CLO manager for regulatory purposes for any new CLOs or reset CLOs (or for a refinancing of any of the Highland CLOs that had been created after December 2014)*<sup>41</sup> *because aspects of the federal Dodd Frank legislation require CLO managers to have “skin in the game” with regard to the CLOs they manage (i.e., they must retain at least 5% of CLOs they manage).* Mr. Akada, who testified that he had been involved with the CLO business from the beginning and that the CLO team

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<sup>39</sup> Exh. 173.

<sup>40</sup> There were also a few hearsay-laden emails offered, that the court did not find probative. Exhs, 19-22.

<sup>41</sup> See n.23 *supra*.

reported to him (including Mr. Terry before his termination), testified that he had no knowledge of this particular transaction. The document effectuating this transaction was signed by Frank Waterhouse, Treasurer for and on behalf of Acis LP, acting by its general partner, Acis GP/LLC.<sup>42</sup>

- (c) ALF Next Decides to Jettison Acis, LP as its Portfolio Manager and Replace it with a new Highland Cayman Island Entity. On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF.<sup>43</sup> This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.<sup>44</sup>
- (d) The Acis LP Note Receivable from Highland is Transferred from Acis LP to Yet Another Highland Cayman Island Entity. On November 3, 2017 (10 days after the Arbitration Award), Acis LP assigned and transferred its interests in the Acis LP Note Receivable from Highland—which at that point had a balance owing of over \$9.5 million—to a Highland Cayman Island entity known as Highland CLO

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<sup>42</sup> Exh. 173, p. 3.

<sup>43</sup> Exh. 43.

<sup>44</sup> Exh. 168.

Management Ltd. which apparently was created sometime recently to be the new collateral manager of the CLOs (in other words, the new Acis LP).<sup>45</sup> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.<sup>46</sup> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, *Highland CLO Management Ltd.* agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.<sup>47</sup>

- (e) Various Additional Transactions that further Transitioned CLO Management and Fees Away from Acis LP to Highland Cayman Island Entity. On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP “risk retention structure” (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO

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<sup>45</sup> Exh. 16.

<sup>46</sup> *Id.* at p.6.

<sup>47</sup> *Id.* at pp. 1 & 2.

Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017<sup>48</sup>).

- (f) In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7.<sup>49</sup> In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.<sup>50</sup>
- (g) Change of Equity Owners of the Alleged Debtors. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the Trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed

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<sup>48</sup> Exh. 157.

<sup>49</sup> See Ex. 45 (the Transfer Document); see also Ex. 4 (the March 17, 2017 Third Amended and Restated Sub-Advisory Agreement between Acis LP and Highland); Ex. 5 (the March 17, 2017 4th Amended & Restated Shared Services Agreement between Acis LP and Highland); Ex. 165 (March 17, 2017 Staff and Services Agreement between Acis CLO Management, LLC and Acis LP); Ex. 166 (March 17, 2017 Master Sub-Advisory Agreement between Acis CLO Management, LLC and Acis LP).

<sup>50</sup> See Exhs. 161 & 162.

(i.e., the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, more importantly, on the day after entry of Mr. Terry's Final Judgment (i.e., on December 18, 2017), both Mr. Akada and Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to a Cayman Island entity called Neutra, Ltd., a Cayman Islands exempted company. Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra, Ltd. Mr. Akada testified that he did this on advice of counsel. He also did not dispute that he had made millions of dollars of equity dividends from his equity investment in Acis LP in recent years<sup>51</sup>—which he conveyed away for no consideration on December 18, 2017.

- (h) The Intended Reset of Acis CLO 2014-3. With all of the above maneuverings having been accomplished, Highland was posed to do a reset on Acis CLO 2014-3 in February 2018 (until Mr. Terry filed the Involuntary Petitions). The investment bank Mizuho Securities USA, LLC was engaged November 15, 2017<sup>52</sup> and a final offering circular was issued in January 2018<sup>53</sup>—contemplating a reset of Acis CLO 20-14-3 with the recently created Highland CLO Management Ltd.

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<sup>51</sup> Exh. 23, p.3.

<sup>52</sup> Exh. 104.

<sup>53</sup> Exh. 31.

Identified as the new portfolio manager, rather than Acis LP. The act of implementing a reset on the CLO was not in itself suspect. However, the reset would, of course, have the effect of depriving Acis LP from a valuable asset—an agreement that could realistically be expected to provide millions of dollars of future collateral management fees—coincidentally (or not) just after Mr. Terry obtained his large judgment.

**D. Findings Regarding Credibility of Witnesses.**

32. The court found the testimony of Mr. Terry to be very credible. He was very familiar with the financial condition of the Alleged Debtors, since he presided over the business of the Alleged Debtors from their inception until June 9, 2016, and has also closely followed publicly available information regarding the companies since his termination. Mr. Terry credibly testified that the Alleged Debtors have never had a significant number of creditors, since most of the Alleged Debtors' vendors are engaged by and send their invoices to Highland, and Highland simply obtains reimbursement from the Alleged Debtors (and other entities in the Highland family), as its in-house lawyers determine is appropriate, through the Shared Services Agreement and Sub-Advisory Agreement. Thus, Highland should at all times be the Alleged Debtors' main creditor. The court finds that Mr. Terry had a good faith belief that the Alleged Debtors had only a handful of creditors (maybe four or so) besides him and Highland. The court also finds that Mr. Terry—at the time he filed the Involuntary Petitions—had a good faith belief that the Alleged Debtors and those controlling them were engaged in an orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value (*i.e.*, transferring assets and rights for

less than reasonably equivalent value), which started with intensity after issuance of the Arbitration Award (if not sooner).<sup>54</sup>

33. The court found the testimony of almost all of the witnesses for the Alleged Debtors to be of questionable reliability and, oftentimes, there seemed to be an effort to convey plausible deniability. For example, sometimes business decisions concerning the Alleged Debtors were said to have been made by a “collective,” and other times the in-house Highland lawyers (who, of course, are not themselves officers or employees of Acis LP and Acis GP/LLC) stressed that Mr. Dondero (the president and manager of the two entities) had ultimate decision making authority for them. Meanwhile, Mr. Dondero testified that, while he has decision making authority at Acis LP, he usually delegates to Highland’s in-house lawyers Scott Ellington and Isaac Leventon. He testified that he signs hundreds of documents per week and often must rely on information of others when signing. Additionally, Mr. Dondero (again, the President of each of the Alleged Debtors) testified that he had never even read the Arbitration Award. While Mr. Dondero is the chief executive of a multi-billion dollar international investment company, and naturally has widespread responsibilities and must delegate to and rely upon others including lawyers, this court simply does not believe that he never read the Arbitration Award. The court perceived the animosity between Mr. Dondero and Mr. Terry to be rather enormous and Mr. Dondero even testified (as did others) that the litigation with Mr. Terry was hurting Acis LP and Highland in the CLO marketplace (*i.e.*, no investors or underwriters wanting to be associated

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<sup>54</sup> The court also found that the deposition testimony of Brian Shaw and Rahkee Patel (counsel for Mr. Terry) was also credible and did not demonstrate any bad faith on their parts in filing the Involuntary Petitions on behalf of Mr. Terry.

with the Acis brand).<sup>55</sup> If that were the case, it strains credulity to suggest Mr. Dondero never even read the Arbitration Award.

34. As mentioned earlier, in December 2017, Acis GP/LLC became 100% owned by a Cayman Island entity known as Neutra, Ltd. (whose beneficial owner is a Dondero family trust) and Acis LP became 99.9% owned by Neutra, Ltd. The directors of Acis GP/LLC and Acis LP are provided to it now by an entity known as “Maples Fiduciary Services”—another Cayman Island entity, but the Highland Assistant General Counsel could not remember the names of those directors provided to Acis GP/LLC and Acis LP, except for perhaps one. Mr. Dondero, when questioned about some of the recent transactions pertaining to Acis LP, testified that there were tax reasons—tax lawyers recommended the recent transactions and transfers. No tax lawyers testified. Mr. Dondero also testified that certain transactions were at the directive of the Thomas Surgent group (the Highland chief compliance officer). Neither Mr. Surgent nor anyone else from the compliance group testified.

35. Meanwhile, Mr. Akada, who, while testifying, seemed like a generally lovely person and seemed as knowledgeable as a human being could possibly be on the topic of CLOs generally, had no idea if he was an officer or director of the Alleged Debtors, nor did he know whom its officers were. He could not testify as to the meaning of certain transactions in which Acis LP had engaged in during recent weeks and said that he signed certain documents on advice of counsel. He also could not even testify as to whether Highland was opposing the Involuntary Petitions.

36. Again, there was a lot of plausible deniability at Trial as to the “whos” and “whys” for the recent maneuverings involving the Alleged Debtors assets and rights in the weeks

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<sup>55</sup> No such investors or underwriters provided testimony.

since the Arbitration Award. The one thing that the court was wholly convinced of was that conflicts of interest among Highland and the Alleged Debtors abound, and no one is looking out for the interests of the Alleged Debtors as a fiduciary should.

**E. Evidence Regarding the Number of Creditors of the Alleged Debtors.<sup>56</sup>**

37. The Alleged Debtors do not dispute Mr. Terry's claim for the purposes of counting creditors under section 303(b) of the Bankruptcy Code. However, Mr. Terry asserts that the Alleged Debtors have fewer than 12 creditors, and the Alleged Debtors dispute this fact. Specifically, the Alleged Debtors initially filed on January 31, 2018, a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Dondero listing 18 creditors (the "Original Notice of Creditors").<sup>57</sup> The Alleged Debtors subsequently filed on February 5, 2018, a First Amended Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Leventon listing 19 creditors (the "First Amended Notice of Creditors").<sup>58</sup> Finally, the Alleged Debtors filed on March 6, 2018, a Second Amended Notice of List of Creditors Pursuant to Fed. R. Bank. P. 1003(b) signed by Mr. Leventon listing 20 creditors (the "Second Amended List of Creditors").<sup>59</sup> The following chart summarizes the name, amount, and nature of the 20 creditors listed by the Alleged Debtors in their Second Amended List of Creditors.

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<sup>56</sup> The court notes that neither Mr. Terry nor the Alleged Debtors attempted to differentiate between the creditors of Acis GP/LLC versus the creditors of Acis LP, but rather presented evidence regarding the collective number of creditors for both of the Alleged Debtors. This seems legally appropriate, since Acis LP is the entity that incurred most of the debt, and ACIS GP/LLC would be liable on such debt as the general partner of Acis LP.

<sup>57</sup> See DE # 7 in Case No. 18-30264 & DE # 7 in Case No. 18-30265.

<sup>58</sup> See DE # 17 in Case No. 18-30264 & DE # 16 in Case No. 18-30265.

<sup>59</sup> See DE # 39 in Case No. 18-30264 & DE # 38 in Case No. 18-30265.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness <sup>60</sup>
1	Andrews Kurth	Legal Fees	\$211,088.13
2	Case Anywhere, LLC	Law Firm Vendor	\$417.20
3	CSI Global Deposition Services	Law Firm Vendor	\$38,452.56
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	Elite Document Technology	Data Hosting/Law Firm Vendor	\$199.72
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	\$1,352.27
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group. Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

38. First, the court believes it necessary to remove certain insider creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code.<sup>61</sup> This would clearly include Highland (the Alleged Debtors do not dispute this).

<sup>60</sup> The dollar amounts listed here are based upon the amounts listed in the Second Amended List of Creditors.

<sup>61</sup> *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000).

39. Additionally, there were certain creditors that filed sworn statements saying they were not creditors of the Alleged Debtors or were subsequently removed from the creditor list by agreement of the Alleged Debtors. These creditors would include Case Anywhere, CSI Global Deposition Services,<sup>62</sup> Elite Document Technology, JAMS, Inc.,<sup>63</sup> Stanton Advisors LLC,<sup>64</sup> and the TASA Group, Inc..<sup>65</sup> Thus, the updated chart now shows 13 creditors of the Alleged Debtors.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	<del>Highland Capital Management, L.P.</del>	<del>Advisory and Participation Fees</del>	<del>\$2,770,731.00</del>
9	<del>JAMS, Inc.</del>	<del>Law Firm Vendor</del>	<del>\$1,352.27</del>
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75

<sup>62</sup> CSI Global Deposition Services was removed as a creditor by the agreement of the Alleged Debtors.

<sup>63</sup> JAMS, Inc. was removed as a creditor by agreement of the Alleged Debtors.

<sup>64</sup> Stanton Advisors LLC was removed as a creditor by agreement of the Alleged Debtors.

<sup>65</sup> See Exh. 40B, Exh. 186, Exh. 92, and Exh. 94.

16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group, Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

40. Next, the court finds that there are certain creditors included in the “Law Firm Vendor” category (*e.g.*, experts, data hosting, document managers, court reporters) that are really creditors of the individual law firms and/or Highland, and that these law firm vendor creditors should not be considered creditors of the Alleged Debtors. For these, there was no evidence of a direct contractual obligation on the part of either the Alleged Debtors or Highland—although the court certainly understands that, when the law firms would retain vendors, they would bill these to either the Alleged Debtors or Highland as an expense to be reimbursed. Most of these were already eliminated with agreement of the Alleged Debtors but, from the remaining list of creditors, this would include David Langford (a Dallas County court reporter).<sup>66</sup> To be clear, while the individual law firm creditors may ultimately have a right to reimbursement for these vendor expenses from Highland (who may then potentially have a right to reimbursement from the Alleged Debtors via the Shared Services and Sub-Advisory Agreements), the court does not find this vendor to have a claim *directly* against the Alleged Debtors for purposes of section 303(b) of the Bankruptcy Code.

<sup>66</sup> See Exh. 40D, Exh. 187, Exh. 400.

41. Next, as to the Stanton Law Firm, the court finds that this creditor should also be removed from the pool of creditors that “count,” for section 303(b) purposes, since this claim appears to be the subject of a “bona fide dispute as to liability or amount,”<sup>67</sup> based on the evidence presented at the Trial. First, there was no engagement letter between either of the Alleged Debtors and the Stanton Law Firm produced.<sup>68</sup> Second, the heavily redacted invoice of the Stanton Law Firm dated October 18, 2016 shows only that it was relating to the “Joshua Terry Matter” and that it was billed to Highland.<sup>69</sup> Third, the Responses and Objections to Mr. Terry’s Notice of Intention to Take Depositions by Written Questions sent to the Stanton Law Firm<sup>70</sup> provides the following responses:

**Question No. 11:** What is the total amount of debt Acis Capital Management L.P. to the Firm. is liable to the Firm.

**Answer:** Acis Capital Management L.P.’s debt to the Firm is unknown at this time.

**Question No. 12:** What is the total amount of debt Acis Capital Management GP, LLC is liable for to the firm?

**Answer:** Acis Capital Management GP, LLC to the Firm is unknown at this time.

**Question No. 13:** Is any other party also liable for the debt of Acis Capital Management L.P. to the Firm? If so, please state the liable party and portion of Acis Capital Management L.P. debt the other party is liable for to the Firm.

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<sup>67</sup> See *Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014) (a claimholder does not have standing to file a petition under section 303(b) if its claim is “the subject of a bona fide dispute as to liability or amount”); *In re Smith*, 415 B.R. 222, 237 (Bankr. N.D. Tex. 2009) (only “a holder of a claim ... that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount” is counted in determining the number of creditors necessary to file an involuntary petition).

<sup>68</sup> Rather, there is only an engagement letter between Lackey Hershman LLP (acting on behalf of its client, Highland) and Stanton Advisors LLC to act as an expert in the Terry litigation. See Exh. 144. As previously noted, the claim of Stanton Advisors LLC was removed from the creditor list by agreement of the Alleged Debtors.

<sup>69</sup> See Exh. 40R.

<sup>70</sup> The court notes that these responses were actually signed by James Michael Stanton, attorney for Stanton LLP. See Exh. 139.

**Answer:** Whether any other party is also liable to the firm for the debt of Acis Capital Management, L.P. is unknown at this time.

**Question No. 14:** Is any other party also liable for the debt of Acis Capital Management GP, LLC to Firm? If so, please state the liable party and portion of Acis Capital Management GP, LLC debt the other party is liable for to the Firm.

**Answer:** Whether any other party is also liable for the debt of Acis Capital Management GP, LLC is unknown at this time. . . .

**Question No. 21:** Does the Firm currently represent Acis Capital Management, L.P.? If so, please state the representation.

**Answer:** Based on Acis’s assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time.

**Question No. 22:** Does the Firm currently represent Acis Capital Management GP, LLC? If so, please state the representation?

**Answer:** Based on Acis’s assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time. . . .<sup>71</sup>

The court finds that this evidence demonstrates that the claim of the Stanton Law Firm is the subject of a bona fide dispute as to either liability or amount and should not be counted since there is no real way of even knowing who the Stanton Law Firm was engaged by and, thus, whether the Alleged Debtors are even responsible for these alleged legal fees. The court would also specifically refer to the testimony of Mr. Leventon, the in-house lawyer employed by Highland who was in charge of allocating all of the bills that came into Highland’s legal invoicing system, where he described a process in which all legal bills relating to the “Terry Matter” would automatically be assigned to the Alleged Debtors, without any real regard to whether the particular law firm had even been engaged by the Alleged Debtors or if whether the

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<sup>71</sup> See Exhibit 139.

representation was actually relating to one of the other parties in the Terry litigation (*e.g.*, Highland, Mr. Dondero, etc.). Accordingly, the court finds that there is a bona fide dispute as to whether the Alleged Debtors are actually liable for the Stanton Law Firm legal fees and that they should not be counted as a creditor for purposes of section 303(b) of the Bankruptcy Code.<sup>72</sup>

42. Thus, it appears, at most, that there are 11 creditors<sup>73</sup> of the Alleged Debtors as set forth in the chart below:

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	\$1,352.27
10	Jones Day	Legal Fees	\$368.75

<sup>72</sup> See also *In re CorrLine Int'l, LLC*, 516 B.R. 106, 152 (Bankr. S.D. Tex. 2014) (bankruptcy court found that creditors contained in the alleged debtor's list of creditors with uncertain or unknown amounts could not be counted towards the numerosity requirement of section 303(b)).

<sup>73</sup> The court notes that, in all likelihood, the list of creditors that should be tallied for purposes of section 303(b) may actually be less than 11, because certain of the remaining creditors (*i.e.*, Drexel Limited, Highfield Equities, Inc., Lackey Hershman LLP, and David Simek) received payments during the 90 days preceding the Petition Date—and, thus, arguably should not be counted as creditors pursuant to section 303(b) of the Bankruptcy Code (which instructs that transferees of voidable transfers should not be counted). See, *e.g.*, Exh. 124 & Exh. 131. Additionally, certain of the remaining law firm creditors that are owed legal fees are also creditors of Highland and Highland-affiliates, not just the Alleged Debtors. To elaborate, many of these law firm creditors were employed to represent not only the Alleged Debtors, but also Highland and Highland-affiliates, so there may be an actual dispute as to the allocation of these legal fees among Highland and the Alleged Debtors (thus there could be bona fide disputes as to the amounts allocated by Highland's in-house lawyers to the Alleged Debtors). See, *e.g.*, Ex. 123 (McKool Smith, P.C. engagement letter referencing representation of numerous parties) & Exhibit 90 (Reid Collins & Tsai's Answers and Objections to Mr. Terry's Deposition by Written Questions, questions 13 & 14, stating that based upon allocation determinations to be made by Highland, other individuals may be liable for the full amount of the debt including Acis LP, Highland, Mr. Dondero, and Mr. Okada).

11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees <sup>74</sup>	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group, Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

43. Finally, on the topic of creditor numerosity, the court further finds that the evidence strongly suggested hurried manufacturing of creditors on the part of the Alleged Debtors and Highland, in order to bolster an argument that having a sole petitioning creditor was legally inadequate in this case.<sup>75</sup> For example, the Klos Declaration and other information, that was provided to State Court 2 and in discovery, only days before the Involuntary Petitions were filed,

<sup>74</sup> Mr. Terry has also argued that certain of the law firm creditors (McKool Smith, P.C., Lackey Hershman, LLP, and Reid Collins & Tsai) are “insiders” that must be excluded from the creditor list pursuant to section 303(b) of the Bankruptcy Code. While there may be some support in case law for such an argument, Mr. Terry would ultimately need to show by a preponderance of the evidence that the law firms exercised such control or influence over the Alleged Debtors as to render their transactions not at arm’s length. *See In re CorrLine Intern., LLC*, 516 B.R. 106, 157-58 (Bankr. S.D. Tex. 2014) (citing to *Kepler v. Schmalbach (In re Lemanski)*, 56 B.R. 981, 983 (Bankr.W.D.Wis.1986)). *See also In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992) (in evaluating whether insider status existed for purposes of evaluating alleged fraudulent conveyance court considered (1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm’s length). Because there was no evidence suggesting abuse or control by these law firm creditors, nor was there any evidence that would suggest that their dealings with the Alleged Debtors were anything but arm’s length, the court finds that these law firm creditors should not be excluded from the creditor list as “insiders” pursuant to section 303(b) of the Bankruptcy Code.

<sup>75</sup> *See* the Original Notice of Creditors, the First Amended Notice of Creditors, and the Second Amended Notice of Creditors.

seemed to show only a small number of creditors of Acis LP—Mr. Terry credibly testified that he thought there were less than 12 creditors based on his review of such information, as well as his understanding of the Alleged Debtors’ business. Yet, only a few days later, the Alleged Debtors filed their Original Notice of Creditors, which showed 18 creditors, which was amended twice to add another creditor and then yet another. This simply does not jive in the court’s mind and supports this court’s belief that the Alleged Debtors were scurrying to determine which Highland creditors might cogently be painted as Acis LP creditors—so as to preclude Mr. Terry from being able to file the Involuntary Petitions as the single, petitioning creditor.

**F. Evidence Regarding Whether the Alleged Debtors are Generally Not Paying Debts as They Become Due (Unless Such Debts are the Subject of a Bona Fide Dispute as to Liability or Amount).**

44. The evidence submitted reflects that, for the 11 creditors identified above, 9 out of 11 have unpaid invoices that were more than 90 days old. The remaining 2 of the 11 were McKool Smith, P.C. (current counsel for the Alleged Debtors) and the Petitioning Creditor.<sup>76</sup> The court makes findings with regard to each of the 11 creditors below—focusing specifically on whether the Alleged Debtors have been paying these creditors as their debts have become due.

45. First, with regard to Andrews Kurth & Kenyon (“AKK”), the evidence reflected that out of the \$211,088.13 allegedly owed by Acis LP to AKK, the great majority of it—\$173,448.42—was invoiced on November 16, 2016<sup>77</sup> (more than 14 months before the Petition Date). Other, smaller amounts were invoiced on a monthly basis in each of the months August 2017, September 2017, October 2017, November 2017, and December 2017. Although requested in discovery, no engagement letter for AKK was produced and AKK represented in

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<sup>76</sup> Exhs. 40 & 54.

<sup>77</sup> Exh. 40.

written discovery that, to its knowledge, none existed.<sup>78</sup> The court notes anecdotally that AKK's invoices (although allegedly related to Acis LP legal matters) were addressed to Highland.<sup>79</sup> In any event, AKK represented that both the Alleged Debtors and Highland are jointly and severally liable for the fees owed to it.<sup>80</sup> AKK also represented that, to its knowledge, the amounts owing to it by Acis LP and Highland are not disputed.<sup>81</sup> AKK also represented that it has not provided legal work on a contingency basis for the Alleged Debtors or Highland.<sup>82</sup> The court makes a logical inference that AKK expected timely payment of its invoices—the largest of which was dated more than 14 months prior to the Petition Date—and, thus, it has generally not been paid timely.

46. Next, with regard to Drexel Limited, the Petitioning Creditor concedes that its \$6,359.96 indebtedness (which is a fee rebate owing to it) is not past-due.

47. Next, with regard to Highfield Equities, Inc., the Petitioning Creditor concedes that its \$2,510.04 indebtedness (which is also a fee rebate owing to it) is not past-due.

48. Next, with regard to the Jones Day law firm, the \$368.75 indebtedness owed to it is well more than 90 days old. Specifically, there is a six-and-a-half-month old invoice dated July 19, 2017 invoice in the amount of \$118.75, and two five-month old invoices dated August 30, 2017 (both in the amount of \$150).<sup>83</sup> The court makes a logical inference that Jones Day

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<sup>78</sup> Exh. 98, Requests 1-2.

<sup>79</sup> Exh. 98, pp. AKK000061-AKK000060.

<sup>80</sup> Exh. 98, Question 13.

<sup>81</sup> Exh. 98, Questions 52-55.

<sup>82</sup> Exh. 98, Questions 73-75.

<sup>83</sup> Exh. 40K.

expected timely payment of its invoices prior to the Petition Date and, thus, it has generally not been paid timely.

49. Next with regard to the Petitioning Creditor, Mr. Terry, the court notes that his liquidated claim in the amount of \$8,060,827.84 first arose with the final Arbitration Award on October 20, 2017 (although such award was not confirmed by State Court 2 until December 18, 2017). The judgment was unstayed as of the January 30, 2018 Petition Date, although the Alleged Debtors state that they still desire to appeal it—as difficult as that is in the situation of an arbitration award. The court makes a logical inference that the Alleged Debtors had, on the Petition Date, no intention of paying this claim any time soon based on their conduct after the Arbitration Award—although the Arbitration Award had only been in existence for three-and-a-half months as of the Petition Date. The cash in the Alleged Debtors’ bank accounts is wholly insufficient to cover the Arbitration Award and, meanwhile, corporate transactions have been ongoing to ensure that no cash streams will be coming into Acis LP in the future in the same way that they have in the past. Thus, this court finds that this large claim, as of the Petition Date, was not being paid timely.

50. Next with regard to KPMG LLP, the \$34,000 indebtedness owed to it was for the service of auditing Acis LP’s financial statements, pursuant to an engagement letter with it dated March 1, 2017.<sup>84</sup> KPMG’s engagement letter reflected a \$40,000 flat fee was agreed to by Acis LP for the service, of which 40% was due October 2017 (*i.e.*, \$16,000), with another 45% was due in January 2018 (\$18,000), and the remaining 15% would be due at the time that a final bill was sent. Acis LP has only paid \$6,000 of the agreed upon amount—meaning \$28,000 was overdue as of the January 30, 2018 Petition Date (with \$10,000 of that being four months past

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<sup>84</sup> Exh. 40M.

due). The court makes a logical inference that KPMG LLP expected payment of its audit fees in accordance with its engagement letter and, thus, it has generally not been paid timely.

51. Next with regard to Lackey Hershman LLP, the \$236,977.54 indebtedness owed to it was for legal services provided to the Alleged Debtors and Highland in connection with the arbitration and litigation with Mr. Terry. No engagement letter was provided, but the invoices for their services are all directed to Highland.<sup>85</sup> The evidence reflected that three invoices had not been paid as of the Petition Date: an October 31, 2017 invoice in the amount of \$56,909.53; a November 30, 2017 invoice setting forth new fees in the amount of \$84,789.83; and a December 31, 2017 invoice setting forth new fees in the amount of \$95,278.18.<sup>86</sup> The court makes a logical inference that Lackey Hershman LLP expected prompt payment on its invoices (if nothing else, the statement on its invoice indicating “Total now due”)<sup>87</sup> and, thus, it has generally not been paid timely.

52. Next with regard to Reid Collins & Tsai LLP, the \$17,383.75 indebtedness owed to it was billed in an invoice dated August 31, 2017, indicating an August 31, 2017 “Due Date” (five months before the Petition Date).<sup>88</sup> Although requested in discovery, no engagement letter for this firm was produced and Reid Collins & Tsai LLP in fact represented in written discovery that none existed.<sup>89</sup> Moreover, written discovery propounded on the law firm indicated that, while Acis LP was liable on this debt, other parties including Acis GP/LLC, Highland, Mr.

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<sup>85</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>86</sup> Exh. 40, p. 3.

<sup>87</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>88</sup> Exh. 40P; Exh. 130, pp. 7-8.

<sup>89</sup> Exh. 90, Requests 1 & 2; Ex. 130, Requests 1 & 2.

Dondero, the Dugaboy Trust, and Mr. Akada might also be liable for the full amount of the debt—subject to Highland’s allocation determinations.<sup>90</sup> Based on this evidence, the court makes a logical inference that Reid Collins & Tsai LLP generally has not been paid timely.

53. Next with regard to CT Corporation and the \$517.12 indebtedness that the Alleged Debtors represent is owed, CT Corporation asserts that \$4,074.84 is, in fact, owed to it by Acis LP and Acis GP/LLC.<sup>91</sup> CT Corporation also believes Highland has liability for the Alleged Debtors’ indebtedness.<sup>92</sup> CT Corporation also believes the amount owed to it is undisputed.<sup>93</sup> CT Corporation further represents that its invoices are due upon receipt.<sup>94</sup> CT Corporation produced several invoices in discovery, all showing due upon receipt, and one was dated as far back as December 31, 2016 (in the amount of \$932).<sup>95</sup> Based on this evidence, the court makes a logical inference that CT Corporation expected prompt payment on its invoices and, thus, has not been paid timely.

54. Next with regard to David Simek, the Petitioning Creditor concedes that his \$1,233.19 indebtedness (which is apparently an expense reimbursement relating to some consulting) is not past-due.

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<sup>90</sup> Exh. 90, Questions 13 & 14; Exh. 130, Questions 13-14.

<sup>91</sup> Exh. 143, Questions 12 & 13.

<sup>92</sup> *Id.* at Question 14.

<sup>93</sup> *Id.* at Questions 22 & 23.

<sup>94</sup> *Id.* at Question 30.

<sup>95</sup> *Id.* at p. 8; Exh. 40T.

55. In summary, the evidence reflects that the creditors of the Alleged Debtors are generally not being paid timely (except for perhaps four that are relatively insignificant and which may also be able to look to Highland for payment).<sup>96</sup>

56. Further on the topic of timeliness, Mr. Leventon (Highland's in-house Assistant General Counsel) testified that 96% of bills submitted get paid more than 90 days after they are submitted, that approximately 70% of bills are later than 120 days after they are submitted, and some are even later than 150 days. Mr. Leventon testified that this was a result of Acis LP receiving cash on a quarterly basis from the CLOs. He further elaborated and testified that, for example, if Acis LP got cash on say February 1st, and it received a legal bill on that same day, that he would probably not approve it and allocate it until say February 8th. By that time, Acis LP would have already used up all its cash, and that particular creditor would need to wait until the next quarterly payment was received in order to be paid. He further testified that he explained this to law firms before their engagements and that, if they wanted the business, they would need to understand the process. There are several things the court finds problematic about this testimony. First, no testimony was offered showing that this was, in fact, the understanding of the law firms or other creditors, and, moreover, none of the engagement letters or invoices submitted into evidence reflect such payment terms. Without this additional evidence, the court believes that the Alleged Debtors' testimony regarding how it paid invoices was mostly self-serving and did not support a finding that the Alleged Debtors were generally paying their debts

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<sup>96</sup> Courts have also held that a debtor is generally not paying its debts as they become due when a debtor is found to have been transferring assets so as to avoid paying creditors. *See, e.g., In re Moss*, 249 B.R. 411, 423 (Bankr. N.D. Tex. 2000) (bankruptcy court determined that an alleged debtor was not paying its debts as they came due when the alleged debtor "attempted to delay creditors through the transfers of assets she has made," concluding that "[the alleged debtor's] overall conduct of her financial affairs has been poor"). This court has also found that there may have been significant transfers of the Alleged Debtors' assets prior to the filing of the Involuntary Petitions to potentially avoid paying creditors (*i.e.*, Mr. Terry) and this may provide further support for the court's finding that the Alleged Debtors are generally not paying their debts as they become due under section 303(h).

as they became due.<sup>97</sup> Second, to the extent Mr. Leventon's testimony demonstrates that creditors of the Alleged Debtors expected to be paid on a quarterly basis (at the latest), certain of the remaining 11 creditors have debts that are significantly older than four months (*i.e.*, CT Corporation, Jones Day, AKK, and possibly even Reid Collins & Tsai LLP). Third, the Financial Statements of Acis LP submitted into evidence do not support the notion that the cash balances at Acis LP were only sufficient enough to pay vendors once every quarter.<sup>98</sup> For example, the balance sheet for January 31, 2017 shows a cash balance in Acis LP bank accounts of \$1,061,663.19; the balance sheet for February 28, 2017 shows a cash balance in Acis LP bank accounts of \$905,212.36; the balance sheet for March 31, 2017 shows a cash balance in Acis LP bank accounts of \$525,626.59; the balance sheet for April 30, 2017 shows a cash balance in Acis LP bank accounts of \$117,885.96; the balance sheet for May 31, 2017 shows a cash balance in Acis LP bank accounts of \$62,733.31; the balance sheet for June 30, 2017 shows a cash balance in Acis LP bank accounts of \$10,329.15; the balance sheet for July 31, 2017 shows a cash balance in Acis LP bank accounts of \$701,904.39; the balance sheet for August 31, 2017 shows a cash balance in Acis LP bank accounts of \$332,847.05.<sup>99</sup> In summary, while there may be cash fluctuations with Acis LP, there is not a clear pattern of Acis LP being only able to pay vendors once every quarter.

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<sup>97</sup> See *In re Trans-High Corp.*, 3 B.R. 1, 2-3 (Bankr. S.D.N.Y. 1980) (bankruptcy court found that evidence showing that the petitioning creditor gave the debtor generous terms of payment (90 days) which were substantially better than the terms set forth in the actual writings between the parties supported finding that the alleged debtors were generally paying debts as they became due and that the involuntary petition must be dismissed).

<sup>98</sup> Exh. 147.

<sup>99</sup> *Id.*

## II. Conclusions of Law

Section 303 of the Bankruptcy Code sets forth the various requirements for initiating an involuntary bankruptcy case. First, pursuant to section 303(b) of the Bankruptcy Code, an involuntary case may be filed against a person by the filing with the bankruptcy court of a petition under Chapter 7—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount ... [that] aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . .<sup>100</sup>

Thus, if there are twelve or more eligible creditors holding qualified claims on the Petition Date, three or more entities must participate in the involuntary filing and must hold unsecured claims aggregating \$15,775.00. If there are less than twelve creditors, a single creditor with an unsecured claim of \$15,775.00 may file the involuntary petition. To the extent a bankruptcy court finds that the requisite number of petitioning creditors have commenced the involuntary case, the court shall order relief against the debtor under the chapter under which the petition was filed only if “the debtor is generally not paying such debtor’s debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount.”<sup>101</sup>

Here, as noted earlier, the Alleged Debtors have made four arguments as to why an order for relief should not be entered against the Alleged Debtors: (1) the Alleged Debtors have 12 or

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<sup>100</sup> 11 U.S.C.A § 303(b) (West 2018).

<sup>101</sup> 11 U.S.C.A § 303(h) (West 2018).

more creditors, and, thus, with Mr. Terry being the sole petitioning creditor, the Involuntary Petitions were not commenced by the requisite number of creditors; (2) the Alleged Debtors are generally paying their debts as they become due; (3) the Involuntary Petitions were filed in bad faith by Mr. Terry; (4) the interests of creditors and the debtors would be better served by dismissal and the court should abstain pursuant to section 305 of the Bankruptcy Code.

**A. *Have the Requisite Number of Creditors Commenced the Involuntary Proceedings?***

Pursuant to section 303(b)(2) of the Bankruptcy Code, a sole petitioning creditor holding at least \$15,775 in claims can initiate an involuntary bankruptcy case so long as the alleged debtors have fewer than 12 creditors. After the Second Amended List of Creditors was filed, Mr. Terry had the burden, by a preponderance of the evidence, of showing that the Alleged Debtors actually had less than 12 qualified creditors.<sup>102</sup> Here, the court has found that the Alleged Debtors have, *at most*, 11 qualified creditors.<sup>103</sup> Accordingly, Mr. Terry has met his burden of showing that the Alleged Debtors have less than 12 creditors for section 303(b) purposes, and that he, as the sole petitioning creditor, was permitted to file the Involuntary Petitions. While Mr. Terry has made additional arguments as to why certain of these 11 creditors should not be counted as creditors for purposes of section 303(b) of the Bankruptcy Code, the court does not believe it necessary to address these arguments at this time.<sup>104</sup>

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<sup>102</sup> See *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222, 229 (Bankr. N.D. Tex. 2009).

<sup>103</sup> To be clear, the court believes that even on these 11, there are likely bona fide disputes as to the liability or amount that *Acis LP* has—as opposed to the liability or amount that Highland or other insiders bear responsibility.

<sup>104</sup> Moreover, as previously stated, since the court has determined there are fewer than 12 creditors, the court need not address whether there is a “special circumstances” exception to the statutory requirements of section 303, in situations where an alleged debtor may have engaged in fraud, schemes, or artifice to thwart a creditor or creditors. See, e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

**B. Are the Alleged Debtors Generally Paying Their Debts as They Become Due?**

Section 303(h) of the Bankruptcy Code requires that a court shall enter order for relief in an involuntary case “if ... (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount . . . .”<sup>105</sup> Again, the burden is on the Petitioning Creditor to prove this element by a preponderance of the evidence.<sup>106</sup> The determination is made as of the filing date of the Involuntary Petitions.<sup>107</sup> In determining whether an alleged debtor is generally paying its debts as they come due, courts typically look to four factors: (i) the number of unpaid claims; (ii) the amount of such claims; (iii) the materiality of the non-payments; and (iv) the nature of the debtor's overall conduct in its financial affairs.<sup>108</sup> No one factor is more meritorious than another; what is most relevant depends on the facts of each case.<sup>109</sup> Courts typically hold that “generally not paying debts” includes regularly missing a significant number of payments *or* regularly missing payments which are significant in amount in relation to the size of the debtor's operation.<sup>110</sup>

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<sup>105</sup> 11 U.S.C.A § 303(h) (West 2018).

<sup>106</sup> See *Norris v. Johnson (In re Norris)*, No. 96-30146, 1997 WL 256808, at \*3-\*4 (5th Cir. Apr. 11, 1997) (unpublished).

<sup>107</sup> *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993).

<sup>108</sup> See, e.g., *In re Moss*, 249 B.R. 411, 422 (Bankr. N.D. Tex. 2000) (citing *In re Norris*, 183 B.R. 437, 456-57 (Bankr. W.D. La. 1995)).

<sup>109</sup> *In re Bates*, 545 B.R. 183, 186 (Bankr. W.D. Tex. 2016) (also noting that petitioning creditors' counsel consistently argued that the final prong—overall conduct in financial affairs—should be afforded more weight than the other factors, and the court found no authority to support this assertion).

<sup>110</sup> See, e.g., *In re All Media Props., Inc.*, 5 B.R. 126, 143 (Bankr. S.D. Tex. 1980). See also *Concrete Pumping Serv., Inc. v. King Constr. Co. (In re Concrete Pumping Serv., Inc.)*, 943 F.2d 627, 630 (6th Cir.1991) (a debtor was not paying his debts as they became due where the debtor was in default on 100% of its debt to only one creditor); *Knighthead Master Fund, L.P. v. Vitro Packaging, LLC (In re Vitro Asset Corp.)*, No. 3:11-CV-2603-D (N.D.Tex. Aug. 28, 2012) (district court found error in bankruptcy court ruling that the debtors were generally paying their debts as they became due, where bankruptcy court had relied on the fact that the alleged debtors had a significant number of third-party creditors/trade vendors, which had been continually paid, even though the unpaid debts to the petitioning creditors far exceeded the paid debts in terms of dollar amount; petitioning creditors were holders of promissory notes that were guaranteed by the alleged debtors, as to which the primary obligor and alleged

Furthermore, any debt which the alleged debtor is not current on as of the petition date should be considered as a debt not being paid as it became due.<sup>111</sup>

Here, the court concludes that the creditors of the Alleged Debtors—what few there are—are generally not being paid as their debts have become due (except for perhaps four<sup>112</sup> that are relatively insignificant and which may also be able to look to Highland for payment). Mr. Terry has met his burden by a preponderance of the evidence as to section 303(h) of the Bankruptcy Code.

***C. With the Section 303 Statutory Requirements Being Met by the Petitioning Creditor, Should the Court, Nonetheless, Dismiss the Involuntary Petitions Because They Were Filed in Bad Faith?***

Despite Mr. Terry meeting the necessary statutory requirements for this court to enter orders for relief as to the Alleged Debtors pursuant to section 303 of the Bankruptcy Code, the Alleged Debtors have argued that the Involuntary Petitions must, nonetheless, be dismissed because they were filed in “bad faith” by Mr. Terry. As support for this argument, the Alleged Debtors rely primarily on the Third Circuit’s decision in *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328 (3d Cir. 2015). While the court certainly acknowledges that authority exists in other circuits that suggests that dismissal of an involuntary bankruptcy case may be appropriate—even when section 303’s statutory requirements have been met—based upon an

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debtors had ceased making interest payments; the unpaid debts represented 99.9% of the total dollar amount of debt of each of the alleged debtors); *Crown Heights Jewish Cmty. Council, Inc. v. Fischer (In re Fischer)*, 202 B.R. 341, 350–51 (E.D.N.Y. 1996) (even though the debtor only had two outstanding debts, the total dollar amount failed to establish that, in terms of dollar amounts, the debtor was paying anywhere close to 50% of his liabilities, so he was not generally paying his debts as they became due); *In re Smith*, 415 B.R. 222, 231 (Bankr. N.D. Tex. 2009) (while the debtor was paying small recurring debts, he was not paying 99 percent of his debts in the aggregate amount and thus was not generally paying his debts as they became due).

<sup>111</sup> *In re Bates*, 545 B.R. 183, 188 (Bankr. W.D. Tex. 2016).

<sup>112</sup> Those four are: Drexel Limited (\$6,359.96); Highfield Equities (\$2,510.04); David Simek (\$1,233.19); and McKool Smith (\$70,082.18).

independent finding of “bad faith,” the court need not ultimately decide the efficacy or applicability of such authority, because the court does not believe that the evidence demonstrated any “bad faith” on the part of Mr. Terry (or his counsel) in filing the Involuntary Petitions. Indeed, the evidence suggested that Mr. Terry and his counsel filed the Involuntary Petitions out of a legitimate concern that Highland was dismantling and denuding Acis LP of all of its assets and value and that a bankruptcy filing was the most effective and efficient way to preserve value for the Acis LP creditors. The court concludes that Mr. Terry was wholly justified in pursuing the Involuntary Petitions.

***D. Should This Court, Nonetheless, Abstain and Dismiss the Involuntary Petitions Pursuant to Section 305 of the Bankruptcy Code?***

Section 305(a)(1) of the Bankruptcy Code provides that:

- (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; . . .<sup>113</sup>

Courts construing section 305(a)(1) of the Bankruptcy Code have found that abstention in a properly filed bankruptcy case is an *extraordinary remedy*.<sup>114</sup> Moreover, granting an abstention motion pursuant to section 305(a)(1) of the Bankruptcy Code requires more than a simple balancing of harm to the debtor and creditors; rather, the interests of *both* the *debtor* and its *creditors* must be served by granting the request to abstain.<sup>115</sup> The moving party bears the

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<sup>113</sup> 11 U.S.C.A. § 305(a)(1) (West 2018).

<sup>114</sup> *In re AMC Investors, LLC*, 406 B.R. 478, 487 (Bankr. D. Del. 2009); *see also In re Compania de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007); *In re 801 S. Wells St. Ltd. P’ship*, 192 B.R. 718, 726 (Bankr. N.D. Ill. 1996).

<sup>115</sup> *In re Smith*, 415 B.R. 222, 238-39 (Bankr. N.D. Tex. 2009) (citing to *AMC Investors, LLC*, 406 B.R. at 488).

burden to demonstrate that dismissal benefits the debtor and its creditors.<sup>116</sup> Courts must look to the individual facts of each case to determine whether abstention is appropriate.<sup>117</sup>

Case law has set forth a litany of factors to be considered by the court to gauge the overall best interests of the creditors and the debtor for section 305(a)(1) purposes:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.<sup>118</sup>

While all factors are considered, not all are given equal weight in every case and the court should not conduct a strict balancing.<sup>119</sup>

*i. Factor 1: The Economy and Efficiency of Administration.*

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<sup>116</sup> *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2008).

<sup>117</sup> *In re Spade*, 258 B.R. 221, 231 (Bankr. D. Colo. 2001).

<sup>118</sup> *Monitor Single Lift I, Ltd.*, 381 B.R. at 464-65 (citing to *In re Paper I Partners, L.P.*, 283 B.R. 661, 679 (Bankr. S.D.N.Y. 2002)); see also *Smith*, 415 B.R. at 239; *AMC Investors, LLC*, 406 B.R. at 488; *In re Euro-American Lodging Corp.*, 357 B.R. 700, 729 (Bankr. S.D.N.Y. 2007); but see *Spade*, 258 B.R. at 231-32 (Bankr. D. Colo. 2001) (applied a four criteria test in evaluating section 305 abstention which included: (1) the motivation of the parties who sought bankruptcy jurisdiction; (2) whether another forum was available to protect the interests of both parties or there was already a pending proceeding in state court; (3) the economy and efficiency of administration; and (4) the prejudice to the parties). The Alleged Debtors cite to the case of *In re Murray*, 543 B.R. 484 (Bankr. S.D.N.Y. 2016), in particular, as support for why this court should abstain under section 305(a) of the Bankruptcy Code and dismiss the Involuntary Petitions. However, in *Murray*, Judge Gerber was analyzing dismissal of an involuntary proceeding pursuant to section 707 of the Bankruptcy Code, more specifically for “cause,” and not based upon abstention under section 305(a) of the Bankruptcy Code. Thus, the court is not convinced *Murray* is relevant to this court’s section 305 abstention analysis.

<sup>119</sup> *In re TPG Troy, LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013) (citing *Monitor Single Lift*, 381 B.R. at 464).

The economy and efficiency of administering a case in the bankruptcy court is routinely evaluated in considering abstention under section 305 of the Bankruptcy Code. Here, the evidence suggests that the most economical and efficient forum for these parties to resolve their disputes is the bankruptcy court. The court heard ample evidence that the Alleged Debtors are already, essentially, in the process of being liquidated by Highland. This is not a situation where an ably-functioning, going-concern business is being foisted in disruptive fashion into a bankruptcy.<sup>120</sup> Because of the fact that the Alleged Debtors are already in the process of being liquidated, the bankruptcy court (and not a state court) is the most efficient and economical forum to complete this liquidation and distribute whatever assets remain to creditors in accordance with the distribution scheme set forth in the Bankruptcy Code and with the oversight of a neutral third-party trustee. Thus, with the bankruptcy court being the more economic and efficient forum for administering this case, this factor goes against abstention.

- ii. *Factors 2, 3, 4, 5, and 6: Whether Another Forum is Available to Protect the Interests of Both Parties or There is Already a Pending Proceeding in State Court; Whether Federal Proceedings are Necessary to Reach a Just and Equitable Solution; Whether There is an Alternative Means of Achieving an Equitable Distribution of Assets; Whether the Debtor and the Creditors are Able to Work Out a Less Expensive Out-of-Court Arrangement Which Better Serves All Interests in the Case; and Whether a Non-Federal Insolvency Has Proceeded so Far in Those Proceedings That it Would Be Costly and Time Consuming to Start Afresh With the Federal Bankruptcy Process.*

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<sup>120</sup> See, e.g., *In re The Ceiling Fan Distrib., Inc.*, 37 B.R. 701 (Bankr. M.D. La. 1983) (noting that while the dissection of a living business may not properly be the business of a bankruptcy court, the division of a “carcass” and the reclamation of pre-petition gouging may well be); *In re Bos*, 561 B.R. 868, 898-99 (Bankr. N.D. Fla. 2016) (citing as one of the reasons to abstain under section 305 of the Bankruptcy Code the fact that entities and subsidiaries under the alleged debtor’s umbrella were still operating successful businesses and had employed more than 500 people); but see *Remex Elecs. Ltd. v. Axl Indus., Inc. (In re Axl Indus., Inc.)*, 127 B.R. 482, 484-86 (S.D. Fla. 1991) (in affirming the bankruptcy court’s decision to dismiss an involuntary bankruptcy case, the district court also found that “the interests of a defunct business enterprise would be little affected by the pendency of a bankruptcy proceeding,” which the district court believed favored abstention).

The court believes that factors 2-6 should be grouped together for purposes of its abstention analysis, since all of these factors specifically touch on the availability of an alternative forum to achieve an *equitable* distribution.<sup>121</sup> By way of example, where bringing a case into the bankruptcy court would simply add an additional layer of expense to the resolution of a two-party dispute and another forum already provides a suitable place to resolve the dispute, some courts have found that abstention is the more appropriate choice since keeping the case would transform the bankruptcy process into a collection device.<sup>122</sup> Here, the Alleged Debtors have repeatedly argued that, because there is already pending state court litigation involving Mr. Terry, Highland, and the Alleged Debtors, these cases should be dismissed and the parties should go back to state court to resolve their issues. The court does not agree for several reasons.

First, it is worth noting that this court has already heard multiple days of evidence in this case (including almost five days just for the Trial) and would certainly not be “starting afresh” by any means if things go forward in the bankruptcy court. Additionally, while the Alleged Debtors have argued that a significant amount of attorney’s fees have already been spent litigating this case in state court (which they believe supports abstention), the court surmises that these fees have not been wasted dollars, as the money expended by the parties developed discovery of facts that could assist a bankruptcy trustee in pursuing avoidance actions that may be viable and might lead to value that could pay creditors’ claims.<sup>123</sup>

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<sup>121</sup> See, e.g., *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 460-70 (Bankr. S.D.N.Y. 2008).

<sup>122</sup> *AMC Investors, LLC*, 406 B.R. at 488; see also *Axl Indus., Inc.*, 127 B.R. at 484-86.

<sup>123</sup> See, e.g., *The Ceiling Fan Distributor, Inc.*, 37 B.R. at 703 (the court noted that, despite there being significant legal expenses in the state court, such expenses were not wasted since the legal work done to date would be quite helpful to a trustee).

Second, this court heard considerable evidence involving potentially voidable transfers that may have occurred involving the Alleged Debtors and Highland/Highland-affiliates and, while the state court certainly provides a forum for eventually bringing fraudulent transfer claims, the court also heard evidence that none of these claims have actually been brought in the state court.<sup>124</sup> Moreover, to the extent fraudulent transfer claims were to be pursued in state court and were successful, the state court would still need the ability to reach the assets of alleged fraudulent transfer recipients (which, in this situation, include certain Highland-affiliates located in the Cayman Islands). The bankruptcy court has concerns whether a state court process could efficiently accomplish this task.<sup>125</sup> Similarly, it is worth noting that, while a request for a receiver was filed in the state court by Mr. Terry, such request had not yet been heard and decided by the state court. Thus, at the present time, it does not appear that there is an alternative forum to address the pertinent issues in this case, without the necessity of significant, additional steps being taken by the parties in the state court.

Third, this court believes that a federal bankruptcy proceeding is necessary in order to achieve an equitable result in this case. Specifically, the court heard evidence from the Alleged Debtors that, if this court chose to abstain and dismiss the Involuntary Petitions, the Alleged Debtors would ultimately pay all of their creditors in full, except for Mr. Terry. This clearly demonstrates how keeping the case in the bankruptcy court is necessary to allow an equitable

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<sup>124</sup> See, e.g., *In re Texas EMC Mgmt., LLC*, Nos. 11-40008 & 11-40017, 2012 WL 627844, at \*3 (Bankr. S.D. Tex. 2012) (noting that one of the reasons abstention was proper under section 305 of the Bankruptcy Code was because the issues to be litigated amongst the parties were already joined in the state court litigation); *Spade*, 258 B.R. at 236 (court held that one of the reasons abstention was warranted under section 305 of the Bankruptcy Code was because the petitioning creditors had already filed and had pending a “collection case” in the state court).

<sup>125</sup> See, e.g., *Smith*, 415 B.R. at 239 (the bankruptcy court held that there “are remedies under the Bankruptcy Code that are not available to Rhodes under state law, due to Mr. Smith's transfer of the majority of his assets to the Cook Island Trust,” and “federal proceedings may be necessary to reach a just and equitable solution”).

distribution to *all creditors*, including Mr. Terry. Additionally, a federal bankruptcy court has certain tools available to it that are not available to a state court such as the ability to invalidate potential *ipso facto* clauses in contracts pursuant to section 365 of the Bankruptcy Code, sell assets free and clear of liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, and impose the automatic stay pursuant to section 362 of the Bankruptcy Code. These are all useful tools available to the Alleged Debtors in a bankruptcy case that would be lost if this court were to ultimately abstain.

Finally, there was more than enough evidence showing the acrimonious and bitter relationship that exists between Mr. Terry and Mr. Dondero. Thus, the availability of an out-of-court arrangement being obtained in this case is, in this court's mind, slim to none.

In summation, the court finds that all of the factors above support this case staying with the bankruptcy court.

*iii. Factor 7: The Purpose for Which Bankruptcy Jurisdiction Has Been Sought.*

The Alleged Debtors have repeatedly argued that Mr. Terry filed this case in bad faith and as a litigation tactic to gain some sort of advantage in the state court proceedings. The court has already found above that these cases were not filed in bad faith and that Mr. Terry has met the necessary statutory requirements of section 303 of the Bankruptcy Code. Moreover, it is worth noting that at least one court has stated that the filing of an involuntary bankruptcy petition is always a "litigation tactic," but whether the filing is inappropriate for abstention purposes is a fact-dependent determination.<sup>126</sup> Here, the facts show that there was no inappropriateness

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<sup>126</sup> *In re Marciano*, 459 B.R. 27, 50 (B.A.P. 9th Cir. 2011) (noting that while the filing of the involuntary bankruptcy was a litigation tactic, the bankruptcy court did not abuse its discretion in denying the alleged debtor's motion to dismiss based upon the bankruptcy court's primary concern that the issue of equality of distribution would not effectively be dealt with in another forum).

behind Mr. Terry's decision to file the Involuntary Petitions. Specifically, Mr. Terry repeatedly and credibly testified that the purpose for filing the Involuntary Petitions was to ensure that creditors (including him) were treated fairly and received an equal distribution from the Alleged Debtors' assets, not to gain some sort of advantage in the state court. This testimony was absolutely consistent with additional evidence showing that, since the entry of the arbitration award, there has been a calculated effort (largely by Highland) to effectively liquidate the Alleged Debtors. Unlike the bankruptcy court in *In re Selectron Mgmt. Corp.*,<sup>127</sup> which had no evidence or "smoking gun" showing that steps were being taken by the alleged debtor to evade payment on the petitioning creditor's judgment, thereby necessitating abstention, this court has heard ample evidence showing that the Alleged Debtors, with the aid of Highland, were transferring assets away from the Alleged Debtors, so that Mr. Terry would have nowhere to look at the end of the day.

In light of the court's analysis of all the seven factors above, the Alleged Debtors have not credibly shown how both the Alleged Debtors and the creditors are better served outside of bankruptcy. If this matter were to remain outside of bankruptcy, there seems to be a legitimate prospect that the Alleged Debtors and Highland will continue dismantling the Alleged Debtors, to the detriment of Acis LP creditors. Abstention would fly in the face of fundamental fairness and the principles underlying the Bankruptcy Code.

Beyond just addressing the factors above, the Alleged Debtors have also argued that, if this court were to not abstain under section 305 of the Bankruptcy Code, there would be

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<sup>127</sup> *In re Selectron Mgmt. Corp.*, No. 10-75320-DTE, 2010 WL 3811863, at \*6-7 (Bankr. E.D.N.Y. Sept. 27, 2010); *see also In re White Nile Software, Inc.*, No. 08-33325-SGJ-11, 2008 WL 5213393, at \*4 (Bankr. N.D. Tex. Sept. 16, 2008) (finding that where the filing of a voluntary chapter 11 did not appear to be about insuring a distribution to creditors or winding down or giving a soft landing to a business or avoiding dismantling and dissipation of valuable assets or preserving avoidance actions, but rather was about changing the forum of ongoing litigation between the parties, abstention under section 305 was proper).

significant harm to the “equity” of the Alleged Debtors. Specifically, the Alleged Debtors have argued that, if this court were to enter orders for relief, the equity would be forced to “call” and ultimately liquidate CLO 2014-3 (and perhaps all of the CLOs Acis LP manages), resulting in substantial losses to the equity on their investments. First, to be clear, the current equity of the Alleged Debtors is being held by a Highland-affiliate called Neutra, Ltd., which actually only became the equity of the Alleged Debtors on December 19, 2017. But this is not the “equity” being referred to by the Alleged Debtors in its argument. Rather, the so-called “equity,” about which the Alleged Debtors seemed so concerned, is actually *certain parties that own the equity of the entity that owns the equity in the CLOs*—which includes (a) an unnamed third-party investor out of Boston (49%),<sup>128</sup> (b) a charitable foundation managed by a Highland-affiliate (49%), and (c) Highland employees (2%). However, abstention under section 305 of the Bankruptcy Code does not require this court to look at what is in the best interests of these third-parties (who are not current creditors or interest holders of the Alleged Debtors), but rather what is in the best interests of the Alleged Debtors and the creditors. Accordingly, the Alleged Debtors’ effort to argue potential harm to these parties is misplaced for purposes of evaluating abstention under section 305 of the Bankruptcy Code, and, if anything, further highlights who the Alleged Debtors are really out to protect—Highland and Highland-affiliates. Moreover, the court would note that, even if there were to be a “call” and liquidation of CLO 2014-3, thereby ending the Alleged Debtors’ right to receive future management fees, there would still be potential assets for a chapter 7 trustee to administer such as chapter 5 causes of action (which include fraudulent transfers) as well as the Alleged Debtors’ contingent claim for approximately

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<sup>128</sup> Notably, this entity never appeared at the Trial or filed papers stating that it would be harmed by entry of orders for relief in these cases.

\$3 million in expense reimbursement owing by Highland CLO Management Ltd., as part of the November 3, 2017 transfer of the Acis LP Note Receivable from Highland. Thus, even if the so-called doomsday scenario of an equity call on CLO 2014-3 (or other CLOs) were to happen, there is still a potential benefit to creditors if this court chooses not to abstain.

### **III. CONCLUSION**

In conclusion, these involuntary proceedings were appropriately filed under section 303, and orders for relief will be issued forthwith. This court declines to exercise its discretion to abstain, because a chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP, as discussed above. A chapter 7 trustee appears necessary to resolve the inherent conflicts of interest between the Alleged Debtors and Highland. A chapter 7 trustee will have tools available to preserve value that a state court receiver will not have. The bankruptcy court is single handedly the most efficient place to administer property of the estate for creditors. This is not just a two party dispute between Mr. Terry and the Alleged Debtors, and even if it were, dismissal or abstention is clearly not warranted.

**###END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW###**

**EXHIBIT I**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed January 31, 2019

*Henry G. C. George*  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-11  
§ (Chapter 11)  
Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-11  
L.L.C., § (Chapter 11)  
§  
Debtor. §

**BENCH RULING AND MEMORANDUM OF LAW IN SUPPORT OF:**  
**(A) FINAL APPROVAL OF DISCLOSURE STATEMENT; AND (B)**  
**CONFIRMATION OF CHAPTER 11 TRUSTEE'S THIRD AMENDED JOINT PLAN**

Before this court is a request by the Chapter 11 Trustee (herein so called) for final approval of the adequacy of a disclosure statement and for confirmation of his Third Amended

Joint Plan of Reorganization,<sup>1</sup> as amended, modified or supplemented (the “Plan”), for the two above-referenced debtors: (1) Acis Capital Management, L.P. (the “Debtor-Acis”), a Delaware limited partnership, and (2) Acis Capital Management GP, LLC, a Delaware limited liability company (the general partner of the Debtor-Acis; collectively, the “Debtors”). The two chapter 11 cases have been administratively consolidated.<sup>2</sup>

The hearing on these matters transpired over multiple days in December 2018, and the court considered the testimony of more than a dozen witnesses, more than 700 exhibits, and hundreds of pages of legal briefing. Based on the foregoing, the court *overrules all objections* and will confirm the Plan, including all proposed modifications to it. The Chapter 11 Trustee has demonstrated, by a preponderance of the evidence, that the Plan, as modified, satisfies the applicable provisions of the Bankruptcy Code including but not limited to Sections 1122, 1123, 1127, and 1129 of the Bankruptcy Code.<sup>3</sup> The court also approves on a final basis the adequacy of the accompanying disclosure statement to the Plan, determining that it meets the requirements set forth in Section 1125 of the Bankruptcy Code. Notice and solicitation with respect to the

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<sup>1</sup> Exhs. 508 & 509; *see also* DE ## 660, 661, 693, 702, & 769. References to “DE # \_\_” from time to time in this ruling relate to the docket number at which a pleading or other item appears in the docket maintained in these administratively consolidated Bankruptcy Cases, in Case # 18-30264.

<sup>2</sup> Note that the Debtor-Acis is, essentially, the debtor that is the operating company. As a general partner, Acis Capital Management GP, LLC is legally obligated on all of the operating company’s debt. *See* 6 Del. C. § 17-403(b) (“Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners.”); *see also* 6 Del. C. § 15-306(a) (“(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law”). The Plan jointly addresses both of the Debtors’ debts.

<sup>3</sup> *Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sears Methodist Ret. Sys.*, No. 14-32821-11, 2015 Bankr. LEXIS 709, at \*8 (Bankr. N.D. Tex. Mar. 5, 2015); *In re Couture Hotel Corp.*, 536 B.R. 712, 732 (Bankr. N.D. Tex. 2015); *In re Mirant Corp.*, No. 03-46590, 2007 Bankr. LEXIS 4951, at \*19-20 (Bankr. N.D. Tex. Apr. 27, 2007).

Plan is determined to have complied with the applicable Bankruptcy Rules and due process. The court provides reasoning for its ruling below. The court directs the Chapter 11 Trustee to submit to the court for signing the proposed Findings of Fact and Conclusions of Law and Order that were filed at DE # 814. This Bench Ruling supplements those Findings of Fact and Conclusions of Law and Order and, where appropriate, should be considered additional findings and conclusions as contemplated by Fed. R. Bankr. Proc. 7052.

**I. Background.**<sup>4</sup>

The above-referenced bankruptcy cases (the “Bankruptcy Cases”) have been pending since January 30, 2018 and have been astonishingly contentious. The Chapter 11 Trustee has been in place since on or about May 14, 2018. The Plan (which is the fourth one proposed by the Chapter 11 Trustee) has been objected to by three related entities: (a) Highland Capital Management, L.P. (“Highland”), (b) Highland CLO Funding Ltd. (“HCLOF Guernsey”), and (c) Neutra, Ltd. (“Neutra Cayman”). The Chapter 11 Trustee loosely refers to these three objectors (the “Objectors”) as “the Highlands” because they are not only related to each other (*i.e.*, they are all, directly or indirectly, part of the Highland 2,000-member corporate organizational structure), but they also have been in “lockstep” with one another in objecting to virtually every position taken by the Chapter 11 Trustee during the Bankruptcy Cases.<sup>5</sup> These Objectors’ parties-in-interest status will be explained below.

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<sup>4</sup> For a complete set of background facts, the court incorporates herein by reference its Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Petitions, entered April 13, 2018. DE # 118. Exh. 243.

<sup>5</sup> It is also undisputed that, prior to the appointment of the Chapter 11 Trustee, *the Debtors* and Highland were affiliated and had a close relationship. Exhs. 17, 18, 22-27, 251, 619 & 649.

In simplest terms, the Debtor-Acis, which was formed in the year 2011, is primarily a CLO portfolio manager.<sup>6</sup> It manages hundreds of millions of dollars' worth of CLOs (which is an acronym for "collateralized loan obligations"). Specifically, it provides fund management services to various special purpose entities that hold CLOs. The Debtor-Acis was providing management services for five such special purpose entities (the "Acis CLOs") as of the time that it and its general partner were put into the involuntary Bankruptcy Cases. The parties have informally referred to the special purpose entities themselves as the "CLO Issuers" or "CLO Co-Issuers" but, to be clear, these special purpose entities (hereinafter, the "CLO SPEs") are structured as follows: (a) on the asset side of their balance sheets, the entities own pieces of senior debt owed by large corporations and, therefore, earn revenue from the variable interest payments made by those corporations on such senior debt; and (b) on the liability side of their balance sheets, the entities have obligations in the form of notes (*i.e.*, tranches of fixed interest rate notes) on which the CLO SPEs themselves are obligated—the holders of which notes are mostly institutions and pension funds (these tranches of notes are usually rated anywhere from Triple A to Single B, depending upon things such as their interest rate and perceived risk). The CLO SPEs make a profit, based on the spread or "delta" between: (a) the variable rates of interest paid on the assets that the CLO SPEs own (*i.e.*, the basket of senior notes); and (b) the fixed rates of interest that the CLO SPEs must pay on their own tranches of debt. At the bottom of the CLO SPEs' capital structure is their equity (sometimes referred to as "subordinated notes," but these "notes" are genuinely equity). As portfolio manager, the Debtor-Acis manages the CLO SPEs' pools of assets (by buying and selling senior loans to hold in the CLO SPEs'

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<sup>6</sup> The Debtor-Acis has managed other funds, from time to time, besides CLOs.

portfolios) and communicates with investors in the CLO SPEs. The CLO SPEs' tranches of notes are traded on the Over-the-Counter market.

To be perfectly clear, none of the CLO SPEs themselves are in bankruptcy. This has never been threatened or a concern. Only the Debtor-Acis which *manages* the CLO business is in bankruptcy. For the most part, the CLO SPEs have continued somewhat “business as usual” during the Chapter 11 Bankruptcy Cases (*i.e.*, they have continued to receive interest payments on their baskets of loans; the usual interest payments on their tranches of debt have been paid;<sup>7</sup> and baskets of loans have been bought and sold from time to time). The CLO SPEs have retained their own separate counsel during the Chapter 11 cases, have appeared from time-to-time on matters, and are not currently objecting to the Plan. There is also an indenture trustee (U.S. Bank National Association) for the CLO SPEs' debt, that has seemingly faithfully carried on its role during the Chapter 11 Bankruptcy Cases without many objections to the bankruptcy process—only making occasional statements aimed at ensuring that the indentures for the CLOs are not interfered with or disrespected. The indenture trustee has retained and appeared through its own separate counsel during the Chapter 11 Bankruptcy Cases and is not currently objecting to the Plan.

Historically, the Debtor-Acis has had four main sets of contracts that were at the heart of its business and allowed it to function. The Chapter 11 Trustee has from time-to-time credibly

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<sup>7</sup> The evidence reflected that there have been a couple of occasions recently when there were insufficient funds to make distributions to the equity. *E.g.*, Transcript 12/11/18 (PM) [DE # 790], at p. 15 (line 2) through p. 16 (line 18). But it appears to this court that these missed distributions were due to actions of Highland—as later explained herein—in improperly, surreptitiously attempting to liquidate the Acis CLOs, from the time period after the Chapter 11 Trustee was appointed, until the bankruptcy court issued an injunction to temporarily halt Highland's actions. *E.g.*, Transcript 12/11/18 (AM) [DE # 789], p. 67 (line 14) through p. 68 (line 6).

testified that these agreements essentially created an “eco-system” that allowed the Acis CLOs to be effectively and efficiently managed by the Debtor-Acis.

1. The PMAs with the CLO SPEs.<sup>8</sup>

First, the Debtor-Acis has various portfolio management agreements (the “PMAs”) *with the CLO SPEs*, pursuant to which the Debtor-Acis earns management fees. The PMAs have been the primary “assets” (loosely speaking) of the Debtor-Acis (to be more precise, the PMAs are executory contracts pursuant to section 365 of the Bankruptcy Code). They are what generate revenue for the Debtor-Acis.

2. The Sub-Advisory Agreement with Highland.<sup>9</sup>

Second, the Debtor-Acis had a Sub-Advisory Agreement (herein so called) with an insider, *Highland* (*i.e.*, one of the Objectors). Highland’s “insider” status will be further explained below. Pursuant to this agreement, the Debtor-Acis essentially sub-contracted for the use of Highland front-office personnel/advisors to perform management services for the Debtor-Acis (*i.e.*, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). The Debtor-Acis paid handsome fees to Highland pursuant to this agreement. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was rejected (with bankruptcy court approval)<sup>10</sup> by the Chapter 11 Trustee during the Bankruptcy Cases, when the Chapter 11 Trustee credibly represented that he had not only found resources to provide these services at a much lower cost to the estate, but he also had begun to

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<sup>8</sup> Exhs. 6-10.

<sup>9</sup> Exh. 17.

<sup>10</sup> *See* 11 U.S.C. § 365(a).

believe that Highland was engaging in stealth efforts to liquidate the Acis CLOs, to the detriment of the Debtor-Acis's creditors.<sup>11</sup>

3. The Shared Services Agreement with Highland.<sup>12</sup>

Third, the Debtor-Acis also had a Shared Services Agreement (herein so called) with Highland, pursuant to which the Debtor-Acis essentially sub-contracted for the use of Highland's back-office services (again, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). To be clear, the Debtor-Acis had no employees of its own—only a couple of officers and members. The Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was also rejected by the Chapter 11 Trustee during the Bankruptcy Cases (with bankruptcy court approval) for the same reasons that the Sub-Advisory Agreement with Highland was rejected.

4. The Equity PMA.<sup>13</sup>

Fourth, until a few weeks before the Bankruptcy Cases were filed, the Debtor-Acis also had yet another portfolio management agreement (distinct from its PMAs with the CLO SPEs) whereby the Debtor-Acis provided services not just to the CLO SPEs themselves, but separately to the equity holder in the CLO SPEs. This portfolio management agreement with the equity holder in the CLO SPEs is sometimes referred to by the parties as the "ALF PMA," but it would probably be easier to refer to it as the "Equity PMA" (for ease of reference, the court will refer to

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<sup>11</sup> See Transcript 12/11/18 (AM) [DE # 789], at p. 48 (line 15) through p. 49 (line 16); p. 50 (line 12) through p. 52 (line 7).

<sup>12</sup> Exh. 18.

<sup>13</sup> Exh. 11.

it as the “Equity/ALF PMA”).<sup>14</sup> The Debtor-Acis did not earn a specific fee pursuant to the Equity/ALF PMA, but the Chapter 11 Trustee and certain of his witnesses credibly testified that the Debtor-Acis considered the agreement valuable and very important, because it essentially gave the Debtor-Acis the ability to control the whole Acis CLO eco-system—in other words, gave the Debtor-Acis the ability to make substantial decisions on behalf of the CLO SPEs’ *equity*—distinct from making decisions for the CLO SPEs themselves pursuant to the PMAs. The more credible evidence before the court suggests that the Equity/ALF PMA delegated to the portfolio manager (*i.e.*, the Debtor-Acis) the right to control the terms of any liquidation of collateral in an optional redemption under the terms of the CLO indentures.<sup>15</sup> In any event, shortly before the Bankruptcy Cases were filed, agents of Highland and/or others controlling the Debtor-Acis (including but not limited to Mr. James Dondero—the chief executive officer of both the Debtor-Acis and of Highland): (a) caused the Debtor-Acis to terminate this Equity/ALF PMA (notably, the counter-party to this agreement, the equity owner, would have only been able to terminate it “for cause”<sup>16</sup>); and (b) then caused the equity owner to enter into a new Equity PMA with a newly formed offshore entity called Highland HCF Advisor, Ltd. (“Highland HCF”).<sup>17</sup> Mr. Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland HCF.<sup>18</sup> The Equity/ALF PMA

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<sup>14</sup> There were actually different iterations of the Equity/ALF PMA including one dated August 10, 2015, and another dated December 22, 2016.

<sup>15</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 11 at §§ 5 and 6.

<sup>16</sup> The Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager “for cause” at § 14(a)-(e). Exh. 11. On the contrary, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11.

<sup>17</sup> Exh. 23 (testimony of Scott Ellington), p. 175 (lines 6-25); *see also* Transcript 12/11/18 (AM) [DE # 789], at p. 54 (line 11) through p. 55 (line 5).

<sup>18</sup> *Id.* at p. 266 (lines 1-4).

would have been an executory contract of the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if it had not been terminated shortly before the Bankruptcy Cases. The court has heard credible testimony that leads it to conclude that the Equity/ALF PMA would have been assumed by the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if not terminated by agents of Highland on the eve of bankruptcy. The court has heard credible testimony that it is important for a portfolio manager to have not only the PMAs with the CLO SPEs themselves, but also with the equity owners of the CLO SPEs.

## **II. A Few More Basics About CLOs.**

In the world of CLOs (like other public debt instruments) there are occasionally redemptions, refinancings, and resets. A redemption is essentially when the equity in the CLO, before maturity, calls for the liquidation of the collateral in the CLO and the repayment of the tranches of notes, so that the CLO comes to an end. A refinancing is when a lower interest rate can be accomplished in the market place on the tranches of debt of the CLO, but the maturity date and other terms remain in place (similar to a refinancing on a home mortgage). This can happen typically after a two-year non-call period. A reset is when the maturity date, the reinvestment period, or other changes in the terms of a CLO (beyond simply interest rate) are accomplished.<sup>19</sup>

It should be noted that the top tranche of notes in the CLO SPEs (AAA-rated) is considered the “controlling” class, and a majority of holders in this class can terminate the CLO manager (*i.e.*, the Debtor-Acis LP) for cause on 45 days’ notice, but these folks have apparently been content to ignore the Bankruptcy Cases and the fighting between the Debtor-Acis and

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<sup>19</sup> See generally Transcript 2/9/2018 [DE # 26], at p. 74-75.

Highland (as further described below)—no doubt because they are earning their fixed income stream without a hitch. And the bottom tranche of “notes” in the CLO SPEs (the equity) has voting rights and is a capital provider and, in certain ways, controls the CLO SPEs, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s. But, by virtue of the Equity/ALF PMA, the Debtor-Acis was really acting for the equity. It seems substantially likely to the court that this is why Highland and its agents caused the Debtor-Acis to terminate the Equity/ALF PMA (which, as mentioned above, was an agreement that the equity could have only terminated “for cause”—and it appears there would have been no “cause”).

### **III. The Non-Insider Creditors.**

The Debtor-Acis does not have many creditors. The non-insider creditors are, for the most part, Joshua Terry (“Mr. Terry”) and a few vendors (most of which are law firms).

Mr. Terry commenced the Bankruptcy Cases with the filing of involuntary bankruptcy petitions. Mr. Terry was the human being who formerly, quite successfully served as the portfolio manager for the Debtor-Acis for many years. Mr. Terry was terminated under contentious circumstances on June 9, 2016, after getting into disagreements with Mr. Dondero. Mr. Terry was technically an employee of Highland itself (like all employees are, in the Highland family of companies—no matter which subsidiary or affiliate they work for). After his employment termination, Highland sued Mr. Terry in September 2016. Mr. Terry asserted claims back against Highland and both of the above-referenced Debtors. The litigation was referred to arbitration, and, after a ten-day arbitration trial in September 2017 before “JAMS,” Mr. Terry obtained an Arbitration Award (herein so called), on October 20, 2017, jointly and

severally, against both of the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. A Final Judgment (the “Terry Judgment”) confirming the Arbitration Award was entered on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.

Mr. Terry commenced the Bankruptcy Cases when he became concerned that the Debtor-Acis was being rendered insolvent and unable to pay creditors including himself, due to actions undertaken by Highland and its agents immediately after entry of the Arbitration Award (*e.g.*, transfers of assets, contracts, and business away from the Debtor-Acis).

The Debtor-Acis also is obligated on large administrative expense claims, since: (a) a Chapter 11 Trustee was appointed very early—due to what the bankruptcy court perceived to be massive conflicts of interest with regard to the Debtors’ management; and (b) the Objectors have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.

#### **IV. The Objectors (all of which are “Insiders”).**

*There are no non-insider creditors objecting to the Plan.* Mr. Terry supports the Plan. The CLO SPEs and Indenture Trustee do not oppose the Plan. None of the vendors oppose the Plan. The U.S. Trustee is not opposing the Plan. As a technical matter, two impaired classes of creditors voted to accept the Plan.<sup>20</sup> *So who are the Objectors to the Plan (which Plan will be further described below) and what is their party-in-interest status here?*

As earlier mentioned, the Objectors are: (a) Highland, (b) HCLOF Guernsey, and (c) Neutra Cayman. As noted earlier, the Chapter 11 Trustee frequently refers to them collectively as “The Highlands”—but the Objectors do not like this conflation. At one time Highland and

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<sup>20</sup> Classes 2 and 3. *See* Exh. 613.

HCLOF Guernsey had the same lawyers. They do not anymore. However, they frequently file joint pleadings and take the same positions. Highland and Neutra Cayman do still have the same lawyers.

1. Highland.

Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 by Mr. Dondero, originally with a 75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest. As mentioned earlier, Mr. Dondero is the chief executive of Highland. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles including CLOs, private equity funds, and mutual funds. Highland provides employees to entities in the organizational structure, such as it did with the Debtor-Acis, through the mechanism of shared services agreements and sub-advisory agreements (as mentioned above). *Notably, Highland’s chief executive, Mr. Dondero, served as the President of the Debtor-Acis at all relevant times prepetition.*<sup>21</sup> Highland claims to be a large creditor of the Debtor-Acis for services provided to the Debtor-Acis under the Shared Services Agreement and the Sub-Advisory Agreement. The Chapter 11 Trustee disputes these claims and has asserted numerous claims back against Highland in an adversary proceeding (the “Highland Entities Adversary Proceeding”).

In any event, Highland is a *disputed insider creditor*. It is an “insider,” as contemplated by Bankruptcy Code section 101(31)(C), because it, beyond any shadow of a doubt, controlled the Debtor-Acis until these Bankruptcy Cases developed to the point of having a Chapter 11

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<sup>21</sup> One witness, Hunter Covitz, referred to the Debtor-Acis as the “structured credit arm of Highland.” Transcript 12/13/18 (AM) [DE # 793], at p. 57.

Trustee take charge of the Debtor-Acis. Highland does not seem to dispute that it is an insider.<sup>22</sup> But, for the avoidance of doubt, Highland should be considered an insider of the Debtor-Acis for at least the following reasons: (a) the same human being (Mr. Dondero) was president of the Debtor-Acis and was the chief executive of Highland; (b) Highland's General Counsel, Scott Ellington, testified that Mr. Dondero controlled them both;<sup>23</sup> and (c) Highland provided the Debtor-Acis with employees and management services pursuant to the Sub-Advisory Agreement and Shared Services Agreement.<sup>24</sup>

Additionally, the court believes that the Chapter 11 Trustee made a convincing argument in connection with Plan confirmation (and his justification for the separate classification of Highland's claim in the Plan from other general unsecured creditors) that Highland should also be regarded as a "competitor" of the Debtor-Acis at this juncture, since they are both in the fund management business and Highland's control over the Debtor-Acis has now been divested. Highland's competitor status, in addition to its insider status, warrants additional scrutiny of its

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<sup>22</sup> Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, *etc.* Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See Wilson v. Huffman (In re Missionary Baptist Foundation of Am., Inc.)*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018). The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008, 1011 (5th Cir. 1992).

<sup>23</sup> *E.g.*, Exh. 23, at pp. 160 (line 15) through 161 (line 4); p. 196 (lines 14-19); p. 219 (lines 1-21).

<sup>24</sup> *See* 11 U.S.C. §§ 101(2)(D); (31)(C)(5). The court notes that, although Highland has, from time to time, alleged that Mr. Terry is a "non-statutory insider" of the Trustee, it has never put on any credible evidence to support this contention.

motivations in objecting to the Plan. More importantly, it provides a sound legal and business justification for separately classifying its claim in the Plan.

2. HCLOF Guernsey.

The second Objector, HCLOF Guernsey, is an entity formed in the island nation of Guernsey. It has two allegedly independent Directors from Guernsey who have provided testimony in connection with confirmation of the Plan. It was enormously clear to the court (as will be elaborated upon below) that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere “figureheads” for HCLOF Guernsey and they defer to Highland *entirely* to tell them what to do, what to say, and when. In any event, HCLOF Guernsey is the owner of the equity in the CLO SPEs (as earlier mentioned, this equity is sometimes referred to as the “subordinated notes” in the CLO SPEs). According to HCLOF Guernsey's 2017 Annual Report and Audited Financials, all of its subordinated notes issued by the Acis CLOs are physically held at and are pledged to HCLOF Guernsey's lender, NexBank, which happens to be a Dallas bank that is an affiliate of Highland.<sup>25</sup> HCLOF Guernsey was created in the year 2015 and was formerly known as “ALF.”<sup>26</sup> Its name was changed on October 30, 2017 (ten days after Mr. Terry's Arbitration Award was entered), to allegedly distance itself from the Debtor-Acis. The equity owner HCLOF Guernsey, in turn, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from *Highland*, is managed/advised by *Highland*, and whose *independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero*; (ii) 2% is owned by *Highland employees*; and (iii) a 49% equity owner that is a third-party institutional investor based in

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<sup>25</sup> Exh. 647.

<sup>26</sup> “ALF” is short-hand for Acis Loan Funding, Ltd.

Boston, Massachusetts that only recently invested in HCLOF Guernsey (*i.e.*, in November 2017, just after the Terry Arbitration Award was issued), and desires to remain passive and anonymous (hereinafter, the “Passive Investor”).<sup>27</sup> Notably, the Debtor-Acis itself owned a small percentage of HCLOF Guernsey, in addition to providing management services to it, until October 24, 2017 (four days after the Terry Arbitration Award was issued).

The court has allowed HCLOF Guernsey to vigorously participate in the confirmation hearing (and other hearings during the Bankruptcy Cases), although its party-in-interest status has been questionable. So how is HCLOF Guernsey a party-in-interest? The answer is a bit of a stretch—but the court has decided it is impacted by the Plan, so it should have the right to object. Its party-in-interest status has evolved during the Bankruptcy Cases.

First, early on in these Bankruptcy Cases, HCLOF Guernsey (together with Highland) sued the Chapter 11 Trustee in the above-mentioned “Highland Entities Adversary Proceeding”—mostly, if not entirely, seeking injunctive relief. At that point, the Chapter 11 Trustee treated HCLOF Guernsey as a disputed creditor,<sup>28</sup> since it was seeking equitable relief that could arguably be monetized.<sup>29</sup> However, HCLOF Guernsey subsequently withdrew its requests for relief in that Highland Entities Adversary Proceeding. But then, the Chapter 11 Trustee subsequently filed claims *against* HCLOF Guernsey in the Highland Entities Adversary Proceeding (along with his claims against Highland and a couple of other Highland entities) asserting avoidance actions and other causes of action against HCLOF Guernsey (among other

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<sup>27</sup> The testimony was that the Passive Investor committed to a \$150 million investment (\$75 million immediately and \$75 million callable over the next several years).

<sup>28</sup> In fact, on August 15, 2018, the Chapter 11 Trustee filed a proof of claim on behalf of HCLOF Guernsey. HCLOF Guernsey has since objected to the proof of claim.

<sup>29</sup> *See* 11 U.S.C. §§ 101(5)(B) & 101(10).

things, the Chapter 11 Trustee alleged that HCLOF Guernsey schemed with Highland to terminate the Equity/ALF PMA, in a step toward systematically dismantling the Debtor-Acis of its value). Thus, HCLOF Guernsey may ultimately owe money to this estate. But most importantly, HCLOF Guernsey should be deemed a party-in-interest because of a proposed temporary injunction in the Plan that essentially would enjoin (for a finite, defined period) HCLOF Guernsey from exercising certain of its rights with regard to its equity in the CLO SPEs, pending resolution of the Highland Entities Adversary Proceeding. This temporary injunction in the Plan, directed towards HCLOF Guernsey and affiliates, will be further described below.

### 3. Neutra Cayman.

Neutra Cayman is a Cayman island exempted company that is the equity owner *of the Debtor-Acis itself* (in contrast to HCLOF Guernsey, which only owns equity in the CLO SPEs). Neutra Cayman only acquired its equity interest in the Debtor-Acis the day after the Terry Judgment was entered (on December 18, 2017), and for no consideration, from the Dugaboy Investment Trust (a family trust on which Mr. Dondero’s sister is named trustee, that previously owned 74.9% of the Debtor-Acis) and from Mr. Akada (who previously owned 25% of the Debtor-Acis).<sup>30</sup> The court concludes that Neutra Cayman has standing to object to the Plan,

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<sup>30</sup> The court is repeatedly referring to the Debtor-Acis but, to be clear, there are two consolidated Debtors: Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP/LLC”). See note 2, *supra*. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) the Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed (*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and the Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, most importantly, on the day after entry of Mr. Terry’s Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and the Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to Neutra Cayman. The Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra Cayman.

since it is an equity owner of the Debtors (albeit only having acquired its equity about a month before the bankruptcy). As with HCLOF Guernsey, the court also concludes that Neutra-Cayman is absolutely, beyond any reasonable doubt, controlled by Highland, as explained further below.

## **V. The Plan.**

The Plan is fairly simple, considering the complexity of the business and the relationships, and the contentiousness of the Bankruptcy Cases. Again, there aren't many creditors.

The Plan proposes<sup>31</sup> that the Debtor-Acis, as a "Reorganized Debtor," will continue with the business operations of the Debtors after the Effective Date<sup>32</sup> of the Plan. Specifically, the Debtor-Acis will assume, pursuant to section 365 of the Bankruptcy Code, its CLO PMAs and continue to serve as the portfolio manager to the CLO SPEs (and as to any resets of the CLOs therein). The Reorganized Debtor will continue to earn fees and will pay claims from post-Effective Date income as provided in the Plan. The Reorganized Acis will actively pursue additional fund management contracts. Again, there is no objection by the CLO SPEs to the Plan, and the indenture trustee on the tranches of CLO notes has no objection.

Mr. Terry (again, the former human manager of the Debtor-Acis and also the largest creditor) shall receive 100% of the equity interests in the Reorganized Debtor, in exchange for a negotiated \$1 million reduction in his partially secured claim.<sup>33</sup> The remainder of his claim will

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<sup>31</sup> This is merely a high-level summary of the Plan. The Plan terms, as modified, shall in all ways govern, not this summary.

<sup>32</sup> The "Effective Date" is defined, essentially, as the first business day which is fourteen (14) days after entry of an order confirming the Plan, if the confirmation order is not stayed.

<sup>33</sup> Mr. Terry has asserted partial secured status as to his claim in the proofs of claim he has filed in these cases. The Chapter 11 Trustee credibly testified that there was no other logical party to take the equity of

be treated as an unsecured claim. Each unsecured creditor will receive on the Plan Effective Date an unsecured cash flow note in the full amount of its claim, which notes will mature three years after the Effective Date of the Plan, with equal quarterly payments of principal and interest, at 5% interest per annum. These cash flow notes are expected to yield payment in full (actually 102%) to the unsecured creditors.<sup>34</sup>

As for the sub-advisory and shared services agreements with Highland, as noted earlier, the Chapter 11 Trustee, with bankruptcy court approval, has already (as of August 2018) rejected these during the Bankruptcy Cases, pursuant to section 365 of the Bankruptcy Code. The Chapter 11 Trustee caused the Debtor-Acis to subsequently contract, with bankruptcy court approval, with a different entity, Brigade Capital Management, L.P. (“Brigade”), to provide the sub-advisory and shared services going forward, for a minimum two-year term (unless the Reorganized Debtor and Brigade otherwise agree), at a much cheaper cost than Highland.<sup>35</sup> Thus, Brigade will provide sub-servicing and sub-advisory services to the Reorganized Debtor.

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the Reorganized Debtor, at this juncture, and that he had negotiated this reduction to Mr. Terry’s secured claim, and he thought it was justified by the circumstances of this case. While the Objectors have argued that the secured status of Mr. Terry’s claim may be subject to challenge under section 547(b) of the Bankruptcy Code, section 547(b) is discretionary (*e.g.*, a “trustee may avoid any transfer” that might be avoidable as a preference). The Chapter 11 Trustee credibly emphasized that this was negotiated treatment of an asserted secured claim, and he had no “exclusivity” on proposing a plan if someone else had wanted to propose something different. Transcript 12/11/18 (AM) [DE # 789], at p. 70 (line 3) through p. 71 (line 2).

<sup>34</sup> Insider claims—namely Highland—are separately classified from general unsecured claims under the Plan. To the extent such claims are ultimately allowed (after any allowed defenses and offsets), and to the extent such claims are not equitably subordinated by Bankruptcy Court adjudication, these claims will receive the same treatment as other general unsecured claims (cash flow notes). To the extent any of these claims are ultimately allowed but equitably subordinated, they will receive subordinated promissory notes, accruing interest at 5% per annum, that will not be payable until all non-subordinated claims have been paid in full (they will have maturity dates to occur on the earlier of: (i) the date that is two years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five years after the Effective Date). The expected recovery under the Plan for the insider claims is from 65% to 100%.

<sup>35</sup> An entity named Cortland Capital Markets Services LLC (“Cortland”) is actually providing some of the back-office shared services agreement type functions.

As for the Equity/ALF PMA, it is not an agreement with the Debtor-Acis anymore to either be assumed or rejected, pursuant to section 365. However, in the Highland Entities Adversary Proceeding, the Chapter 11 Trustee seeks to avoid the termination of the Equity/ALF PMA. Pursuant to the Plan, the Reorganized Debtor will be vested with certain Assets of the Debtors, including Estate Claims and Estate Defenses, to be administered and liquidated by the Reorganized Debtor.

1. The Highland Entities Adversary Proceeding (Adv. Proc. No. 18-03212).

Suffice it to say that the Highland Entities Adversary Proceeding is a somewhat significant part of the Plan; it is what justifies the temporary injunction that is a critical part of the Plan. With regard to the Highland Entities Adversary Proceeding, the Defendants in it (there are five of them) are: (i) Highland; (ii) HCLOF Guernsey; (iii) Highland HCF (*i.e.*, the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA); (iv) Highland CLO Management, Ltd. (“Highland Management”) (an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry’s Arbitration Award); and (v) Highland CLO Holdings, Ltd. (yet another entity incorporated in the Cayman Island on October 27, 2017). The Highland Entities Adversary Proceeding is essentially a multi-faceted fraudulent transfer action. The statutory predicates for the relief sought are sections 502, 542, 544, 547, 548, and 550 of the Bankruptcy Code and Texas Business & Commerce Code § 24.001 et seq. (“TUFTA”).

Distilled to its essence, the Highland Entities Adversary Proceeding argues that Highland, along with its related Co-Defendants, *orchestrated a systematic transfer of value away from the Debtor-Acis to other Highland entities* (all of those transferee-entities are offshore entities—whereas the Debtor-Acis is a Delaware entity), beginning almost immediately after Mr. Terry

was terminated in June 2016, and continuing on during Mr. Terry’s litigation/arbitration with the Debtor-Acis, and then rapidly unfolding after the Arbitration Award. This was allegedly done to denude the Debtor-Acis of value and make the Debtors “judgment proof.” This was allegedly also done to ensure that the Debtor-Acis's very valuable business as portfolio manager would be taken over by other Highland entities and remain under Highland’s and Mr. Dondero's control.<sup>36</sup>

The evidence is rather startling on this point. Among other things, pursuant to amendments made to the Debtor-Acis’s Sub-Advisory Agreement and Shared Services Agreements with Highland, starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level. Then, in April 2017, a new CLO was issued (or actually a former Acis CLO was reset) and a new Highland-affiliated Cayman Island entity was ultimately put in place to manage it instead of the Debtor-Acis (even though the Debtor-Acis managed all other CLOs in the Highland corporate empire). Numerous other transactions were undertaken through the Fall of 2017, removing assets and agreements away from the Debtor-Acis. For example, a multi-million dollar note receivable owed to the Debtor-Acis by Highland<sup>37</sup> was transferred out of the Debtor-Acis,<sup>37</sup> and

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<sup>36</sup> Exh. 627.

<sup>37</sup> On November 3, 2017, the Debtor-Acis, Highland, and Highland Management (a newly created, offshore Highland affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the “Note Assignment and Transfer Agreement”). Exh. 225. The Note Assignment and Transfer Agreement, among other things, transferred a \$9.5 million principal amount promissory note executed by Highland and payable to the Debtor-Acis (the “Note”), Exh. 218, from the Debtor-Acis to Highland Management (the “Note Transfer”). The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for the Debtor-Acis. The document recites that (i) Highland is no longer willing to continue providing support services to the Debtor-Acis, (ii) the Debtor-Acis, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland Management agrees to step into the collateral manager role if the Debtor-Acis will assign the Note to it. Notably, Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer. Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach. The Debtor-

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 4**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

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1. Notice of Appeal
    - 000001 a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
    - 000005 b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
  2. The Judgment, Order, or Decree Appealed from:
    - 000009 a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

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		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)	
Vol. 2 000450	12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
000466	01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
000481	01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
000491	01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
000501	01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
000502	01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
000505	01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

001021

vol 5

001024

01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

shares in HCLOF Guernsey held by the Debtor-Acis were sold back to HCLOF Guernsey (four days after the Arbitration Award). And then the Equity/ALF PMA was terminated so that the Debtor-Acis would no longer have management-control over HCLOF Guernsey as its portfolio manager—arguably putting Highland in a position to liquidate the Acis CLOs and put the Debtor-Acis out of business. Specifically, on October 27, 2017, just seven days after Mr. Terry's Arbitration Award, the Debtor-Acis ostensibly terminated its own portfolio management rights under the Equity/ALF PMA<sup>38</sup> and transferred its authority and its valuable portfolio management rights—for no value—to Highland HCF, an affiliate of Highland. It appears that the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highland entities or their representatives.

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Acis appears to have received no or insufficient consideration for the Note Transfer. The primary consideration for the Note Transfer was an alleged payable due from the Debtor-Acis to Highland in the approximate amount of \$7.5 million for participation fees, which was transferred to Highland Management shortly before the Note Assignment and Transfer Agreement was entered. The validity of the alleged “participation fees” is unknown. The remainder of the consideration for the Note Transfer is a promise to pay certain expenses of the Debtor-Acis, which has apparently never occurred. In any event, it appears highly likely that the Note Transfer took away the Note as an asset from which Mr. Terry could collect his judgment.

<sup>38</sup> As mentioned earlier, the Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager by the equity owner (now known as HCLOF Guernsey) “*for cause*” at § 14(a)-(e). Exh. 11. Meanwhile, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11. It would appear that these terms were wholly ignored by the persons orchestrating the Equity/ALF PMA termination. It appears that the Debtor-Acis was simply manipulated to consent and agree to its removal and replacement as portfolio manager of HCLOF Guernsey. This transfer of the Debtor-Acis's portfolio management rights to the offshore entity Highland HCF was accomplished by way of a new portfolio management agreement entered into by the equity owner (now known as HCLOF Guernsey) and Highland HCF on October 27, 2017, which empowered Highland HCF with the same broad authority to direct the management of HCLOF Guernsey as was previously held by the Debtor-Acis LP under the Equity/ALF PMA. See Exh. 19, October 27, 2017 PMA §§ 1 & 5(a)-(q). This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017. Exh. 215. The Debtor-Acis received no consideration for this transfer.

The Highland Defendants argue that the Equity/ALF PMA (its termination being arguably the most significant transfer referenced in the Highland Entities Adversary Proceeding) did not have value. But the evidence convinces the court that it absolutely did. A witness, Mr. Zachary Alpern, credibly testified that the portfolio manager (under the Equity/ALF PMA) made decisions regarding the underlying financial instruments including seeking an optional redemption and negotiating a reset. Mr. Alpern also credibly testified about the importance, in the CLO industry, of the portfolio manager having control of a CLO's equity to ensure an "evergreen fee stream."<sup>39</sup> Additionally, Mr. Terry also credibly testified that the portfolio manager (not the CLO equity interest holder) has the right to control the terms of the liquidation of collateral in an optional redemption under the terms of the indentures.<sup>40</sup> The Chapter 11 Trustee also credibly testified that the Equity/ALF PMA allowed the Debtor-Acis to have control of an optional redemption.<sup>41</sup> Finally, a witness, Mr. Klein, credibly testified about the value of the Equity/ALF PMA and the negative impact of its transfer on the Debtor-Acis LP.<sup>42</sup>

To be clear, Highland and HCLOF Guernsey have argued in opposition to the Chapter 11 Trustee's position that it is HCLOF Guernsey—the actual equity holder of the CLO SPEs—that had/has the absolute power and authority to control the CLO SPEs' destinies and it is ludicrous to suggest otherwise. However, not only does the Equity/ALF PMA appear to this court to have delegated the relevant power and authority *to the Debtor-Acis*, but Highland's own expert on this

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<sup>39</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 65-67, 81-93 and Transcript 8/23/18 (PM) at pp. 34-35, 38-40, 46, and 49.

<sup>40</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 405, Transcript 8/27/18 (AM) at pp. 63-75.

<sup>41</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 53.

<sup>42</sup> Exh. 405, Transcript 8/27/18 (PM) at pp. 143-144, 147-159 and 205-207.

topic, Mr. Castro, testified that the “actual humans” who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF).<sup>43</sup> Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.<sup>44</sup>

The court concludes that the Chapter 11 Trustee has demonstrated a likelihood of success on the merits with regard to his claims set forth in the Highland Entities Adversary Proceeding. Therefore, the Temporary Injunction that is part of the Plan is supportable (as further explained below). Of course, the nature and extent of the rights ultimately recovered by the Debtor-Acis will either be determined in the Highland Entities Adversary Proceeding or, as HCLOF Guernsey’s own Guernsey expert conceded, in a binding arbitration in Dallas, Texas under the terms of the Equity/ALF PMA.<sup>45</sup>

## 2. The Plan Injunction.

The most controversial aspect of the Plan—the aspect of it that seems to be the primary focus of the Objectors—is a *portion* of an injunction in the Plan (the “Temporary Injunction”). The Temporary Injunction would *temporarily* enjoin the following parties *from effectuating an optional redemption or liquidating the Acis CLOs* and related actions: (i) Highland; (ii) HCLOF

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<sup>43</sup> Exh. 406, Transcript 8/28/18 (PM) at pp. 61-63.

<sup>44</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 85-89 and Exhs. 323-325 (Notices of Optional Redemption signed by the Debtor-Acis as portfolio manager of HCLOF).

<sup>45</sup> Transcript 12/13/18 (PM) [DE #794], at pp. 116, 118-19, 122, 124 (Corfield); *see also*, p. 140 (McGuffin).

Guernsey; (iii) CLO Holdco, Ltd. (the donor advised fund, seeded with Highland contributions and managed by Highland that owns 49% of HCLOF Guernsey); (iv) Neutra Cayman; (v) Highland HCF (the Cayman Island entity created shortly before the Bankruptcy Cases to replace the Debtor-Acis under the Equity/ALF PMA); (vi) Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017); and (vii) any affiliates of Highland and their respective employees, agents, representatives, transferees, assigns, and successors.<sup>46</sup> This Temporary Injunction is proposed to only last until the earlier of when: (a) the creditors of the Debtors are paid in full; (b) resolution of the Highland Entities Adversary Proceeding; (c) a material breach in the Plan; or (d) the bankruptcy court terminates the Temporary Injunction upon request of a party-in-interest. ***Fully consensual resets of the Acis CLOs are permissible if HCLOF Guernsey, as the equity owner in the CLO SPEs, chooses to agree to resets.*** The basis for the Temporary Injunction is as follows: The Chapter 11 Trustee has asserted numerous claims in the Highland Entities Adversary Proceeding against Highland, HCLOF Guernsey, and affiliates, including claims to recover the Debtor-Acis's rights under the Equity/ALF PMA.<sup>47</sup> The Temporary Plan Injunction essentially provides for the continuation, after the Effective Date, of injunctive relief that the bankruptcy court previously granted in its Preliminary Injunction Order (the "Preliminary Injunction") [DE # 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Highland Entities Adversary Proceeding. The Preliminary Injunction was originally set to expire by its

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<sup>46</sup> There is another portion of this Plan injunction that is more of a general plan injunction (*i.e.*, very typical) that would prohibit actions against the Debtors, Reorganized Debtor and the Estate Assets, based on acts occurring before the Effective Date, which would be permanent and would not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

<sup>47</sup> See Exh. 627, Trustee's Counterclaims and Claim Objection.

own terms upon confirmation of the Plan but would be extended pursuant to an order confirming the Plan, through the Effective Date of the Plan.

As the Fifth Circuit has stated, the four elements to justify a preliminary injunction are (a) substantial likelihood of success on the merits; (b) substantial threat that the plaintiff will suffer irreparable injury; (c) the threatened injury outweighs any harm the injunction might cause the defendant; and (d) the injunction is in the public interest.<sup>48</sup> Each element is present in these cases.

*Immediate and Irreparable Harm.* The court finds and concludes that the Temporary Injunction is legally permissible, necessary, and appropriate to avoid immediate and irreparable harm to the Reorganized Debtor (*i.e.*, evisceration of the Acis CLOs, by parties with unclean hands, that would have no authority to effectuate a liquidation of the CLOs, absent the prepetition wrongful termination of the Equity/ALF PMA). Mr. Scott, a director of HCLOF Guernsey, testified that, absent the Temporary Plan Injunction, HCLOF Guernsey would call for an optional redemption of the Acis CLOs.<sup>49</sup> The testimony of Ms. Bestwick, the other director of HCLOF Guernsey, also implied that, when the injunction expires, HCLOF Guernsey would redeem the Acis CLOs so that they could once again be managed by Highland.<sup>50</sup> The Chapter 11 Trustee credibly testified that if the Acis CLOs are liquidated, there is nothing for the Debtor-Acis to manage.<sup>51</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction

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<sup>48</sup> *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998).

<sup>49</sup> Exh. 721, Mr. Scott Depo. at pp. 204.

<sup>50</sup> Exh. 719, Bestwick Depo. at p. 112.

<sup>51</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 40.

is very important because it protects the revenues under the Acis PMAs, which is a source of potential recovery to creditors under the Plan.<sup>52</sup> Mr. Terry credibly testified that the Temporary Plan Injunction is a critical component of the Plan and that the Debtor-Acis would have no going concern value without it. In fact, without the Plan Injunction, Mr. Terry will be precluded from reorganizing the business and paying creditors.<sup>53</sup>

The Objectors have argued that the Chapter 11 Trustee cannot suffer irreparable harm because he has an adequate remedy at law. This argument misses the mark. The destruction of the Debtors' ongoing business, which has the potential to repay creditors under the Plan in two years, constitutes irreparable harm. The fact that the estate possesses a number of avoidance claims for damages against Highland and its affiliates, and could potentially obtain damages on such claims, does not render the destruction of the Debtor-Acis's ongoing business any less harmful. Indeed, according to the Fifth Circuit:

[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.' For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.<sup>54</sup>

*Likelihood of Success on the Merits.* The Chapter 11 Trustee has also demonstrated a likelihood of succeeding on the merits in the Highland Entities Adversary Proceeding.

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<sup>52</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>53</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>54</sup> *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Lee v. Bickell*, 292 U.S. 415, 421 (1934) ("we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction.")).

The record contains substantial evidence of both intentional and constructive fraudulent transfers with regard to the Equity/ALF PMA and other assets.<sup>55</sup> The numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors' creditors. Highland's only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis's brand was toxic in the market place.<sup>56</sup> However, these business justifications were not supported (and, in fact, were contradicted) by the evidence.

Indeed, while representatives of Highland and its affiliates said that the Passive Investor's demands were the reason for the termination (*i.e.*, essentially a "transfer") of the Equity/ALF PMA, the Passive Investor's representative testified that this was untrue and that these alleged demands were never made by the Passive Investor.<sup>57</sup> In fact, the Passive Investor was just that—a passive, minority investor in HCLOF Guernsey with no ability to influence or control any of

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<sup>55</sup> *E.g.*, Exh. 22, Transcript 2/6/18 at pp. 82-109, 130, 202-244, and the exhibits discussed therein; Exh. 201, Transcript 3/21/18 at pp. 110-133 & 186-191; Exh. 24, Transcript 3/22/18 at pp. 71-75 & pp. 204-205; Transcript 12/11/18 [DE # 789], at pp. 52-56; *see also* Transcript 8/27/18 (AM) [DE # 552], at p. 52; Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98;

<sup>56</sup> Highland General Counsel Scott Ellington testified that the Passive Investor said it had no interest in doing business with the Debtor-Acis because the Debtor-Acis brand was purportedly toxic and, consequently, nothing associated with the Debtor-Acis could be managed or marketed as a CLO. Exh. 23, Transcript 2/7/18 at pp. 55-58. Mr. Ellington further testified that the Passive Investor demanded that the Equity/ALF PMA be transferred. Exh. 23, Transcript 2/7/18 at pp. 203-204. Mr. Ellington also testified that, because the Passive Investor would be putting in additional capital in connection with any reset CLOs, it had the ability to "start calling the shots" and dictate the terms of any reset transactions. Exh. 23, Transcript 2/7/18 at p. 226. Additionally, Highland executive Mark Okada testified that a reset transaction could not be performed by the Debtor-Acis because the market would not accept the Debtor-Acis as a portfolio manager and the Debtor-Acis was no longer risk-retention compliant. Exh. 25, Transcript 3/23/18 at p. 53. Additionally, Mr. Dondero testified that the "Boston investor" deal was contingent on getting away from the Debtor-Acis and getting a new collateral manager. Exh. 25, Transcript 3/23/18 at pp. 143-144.

<sup>57</sup> *See* Exh. 720 and excerpts read in to the trial record on 12/11/18 (PM) at pp. 149-157.

the actual investment decisions.<sup>58</sup> The only other business justification Highland and HCLOF Guernsey have suggested for the prepetition transfers was that the Debtor-Acis “was a shell” and not capable of being risk retention compliant.<sup>59</sup> However, Highland portfolio manager Hunter Covitz testified that in October 2017, prior to the Terry Arbitration Award, there was a structure in place that would comply with risk retention.<sup>60</sup> Mr. Covitz could not convincingly distinguish why the “shell” status of the Debtor-Acis was distinguishable from the “shell” status of other Highland-related entities that were the recipients of various fraudulent transfers.<sup>61</sup> Mr. Covitz also subsequently admitted that the Passive Investor did not request that the Debtor-Acis end its involvement with HCLOF Guernsey through the Equity/ALF PMA fraudulent transfer or request that ALF change its name to HCLOF [Guernsey].<sup>62</sup> Mr. Covitz’s testimony contradicted the testimony provided by Scott Ellington, General Counsel<sup>63</sup> and Mr. Dondero.<sup>64</sup> And, at bottom, if the Debtor-Acis was a thinly capitalized “shell,” it appears to be only because Highland systematically made it that way after the Terry Arbitration Award.

The evidence established overwhelmingly that there is a substantial likelihood that the transfers were part of an intentional scheme to keep assets away from Mr. Terry as a creditor. Highland put on an expert, Mr. Greenspan, who testified that he did not consider whether the

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<sup>58</sup> Exh. 720, Depo. of Passive Investor representative at pp. 32-33.

<sup>59</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 55-58.

<sup>60</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 77-78.

<sup>61</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 78; Transcript 12/18/18 [DE # 804], at pp. 59-63.

<sup>62</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 103.

<sup>63</sup> See Exh. 23, Transcript 2/7/18 at pp. 177-178.

<sup>64</sup> See Ex. 25, Transcript 3/23/28 at pp. 143-44.

Equity/ALF PMA transfer was an “actual” fraudulent transfer, but only considered whether the transfer was “constructively” fraudulent.<sup>65</sup> While Highland has taken the position that termination of the Equity/ALF PMA was not a transfer, Mr. Greenspan testified that the termination of a contract can constitute a transfer and acknowledged that the definition of a transfer in the Bankruptcy Code does not include a value component.<sup>66</sup>

*Balance of Harms.* The Chapter 11 Trustee has also shown the balance of harms weighs in his and the estates’ favor in granting the Plan’s Temporary Injunction. The Chapter 11 Trustee is entitled to the Temporary Injunction pending resolution of the claims asserted in the Highland Entities Adversary Proceeding. The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction is important to the Plan, because it allows the cash flow from the CLO management to be collected by the Reorganized Debtor, and that is the source of revenue available at this time to pay creditors.<sup>67</sup> Mr. Terry also credibly testified that the Temporary Plan Injunction is a critical component of the Plan necessary to preserve the Debtors’ going concern value and allow the Reorganized Debtor to generate new business and repay creditors.<sup>68</sup> Conversely, in this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan.<sup>69</sup> Mr. Scott, a director of HCLOF Guernsey, testified that

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<sup>65</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 116-117 and 161.

<sup>66</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98. Section 548(a)(1)(A) of the Bankruptcy Code only requires that a transfer be made with actual intent to hinder, delay or defraud creditors. In the context of an intentionally fraudulent transfer claim, questions of value are immaterial. 11 U.S.C. § 548(a)(1)(A). The definition of “transfer” under the Texas Uniform Fraudulent Transfer Act (“TUFTA”) also does not include a value component. Tex. Bus. & Comm. Code Ann. § 24.002(12) (West, Westlaw through 2017).

<sup>67</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>68</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>69</sup> Transcript 12/11/18 (AM) [DE # 792], at p. 92.

HCLOF Guernsey can sell its interest in the subordinated notes in the market.<sup>70</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction would not impair the value of the subordinated notes because a rational investor would not want to liquidate the Acis CLOs, but rather would acquire them to do a reset under the Plan.<sup>71</sup> Mr. Terry credibly testified that even if the Acis CLOs are not reset, it still does not make sense to redeem the Acis CLOs.<sup>72</sup>

*Public Interest.* Finally, issuance of the Plan Injunction is consistent with public policy. Public policy favors the equitable collecting of a debtor's assets, maximizing the value of those assets, and distributing the proceeds in an orderly fashion in accordance with the priorities and safeguards set forth in the Bankruptcy Code, rather than in an uncontrolled, piecemeal, and potentially wasteful way. Public policy also supports successful reorganizations.<sup>73</sup> The public interest is furthered by confirming a plan that saves the Debtor-Acis's business operations and allows it to pay its creditors under a successful plan of reorganization. The public interest is also furthered by maintaining the status quo through the Temporary Plan Injunction so that the avoidance action relating to the Equity ALF PMA can be determined on its merits. The public interest is not furthered by allowing potential wrongdoers to complete the last step in what appears likely to have been a scheme to strip the Debtor-Acis of its assets, steal its business, and leave it unable to pay creditors. The public interest is not furthered by leaving the Debtors

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<sup>70</sup> Exh. 721, Mr. Scott Depo. at p. 28.

<sup>71</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 23-24.

<sup>72</sup> Transcript 12/12/18 (AM) [DE #791], at p. 82.

<sup>73</sup> *Tex. Comptroller of Pub. Accounts v. Transtexas Gas Corp. (In re Transtexas Gas Corp.)*, 303 F.3d 571, 580 (5th Cir. 2002).

without sufficient resources to pursue and effectively litigate potentially valuable causes of action.

In sum, the court finds and concludes that the proposed Plan injunction (including the Temporary Injunction) is legally permissible and justified under all the circumstances. It is narrowly tailored to address the specific harm to which it is directed and comports with governing case and statutory authority and applicable rules of bankruptcy and civil procedure. The Plan Injunction is consistent with Fifth Circuit precedent.<sup>74</sup> Such an injunction would not violate section 524(e) of the Bankruptcy Code. That subsection provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”<sup>75</sup> The Plan Injunction would not affect the liability of any entity, or the liability of any property. The injunction would only temporarily prohibit Highland and its Co-Defendants from exercising one form of economic recourse, thereby preserving the status quo while the Chapter 11 Trustee and/or Reorganized Debtor has a fair opportunity to prosecute the

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<sup>74</sup> The Fifth Circuit, in an unpublished opinion, has recognized the propriety of an injunction to preserve the status quo in cases where equitable relief is sought. *See Animale Group v. Sunny’s Perfume, Inc.*, 256 F. App’x 707, 709 (5th Cir. 2007) (“Because Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze.”). The Chapter 11 Trustee’s claims in the Highland Entities Adversary Proceeding to avoid fraudulent transfers seek equitable relief. *See United States ex rel. Rahmen v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999) (“The complaint’s request to void transfers as fraudulent—a form of rescission—is also an equitable remedy.”); *Dong v. Miller*, No. 16-CV-5836 (NGG) (JO), 2018 U.S. Dist. LEXIS 48506, at \*30-31 (E.D.N.Y. Mar. 23, 2018) (“The setting-aside of a fraudulent conveyance is a form of equitable relief.”). *See also Iantosca v. Step Plan Servs.*, 604 F.3d 24, 33 (1st Cir. 2010) (affirming preliminary injunction where creditors had a “colorable claim that appellants’ own supposed interest under the settlement rests upon a fraudulent conveyance”); *Seidel v. Warner (In re Atlas Fin. Mortg., Inc.)*, Adv. No. 13-03222, 2014 Bankr. LEXIS 140 at \*10 (Bankr. N.D. Tex. Jan. 14, 2014) (granting preliminary injunction where complaint sought avoidance of fraudulent transfers under the Bankruptcy Code and the Texas Uniform Fraudulent Conveyance Act); *Paradigm Biodevices, Inc. v. Centinel Spine, Inc.*, No. 11 Civ. 3489 (JMF), 2013 U.S. Dist. LEXIS 66858, at \*7 (S.D.N.Y. May 9, 2013) (authority to grant preliminary injunction existed because plaintiff alleged not only a legal claim for money damages, but also an equitable claim to avoid fraudulently transferred assets).

<sup>75</sup> 11 U.S.C. § 524(e).

Highland Entities Adversary Proceeding.<sup>76</sup> Likewise, the proposed injunction does not contravene any other provision of the Bankruptcy Code or the Bankruptcy Rules.<sup>77</sup> Finally, the Chapter 11 Trustee’s avoidance claim relating to the Equity/ALF PMA transfer under TUFTA also provides a statutory basis for injunctive relief.<sup>78</sup>

3. Feasibility of the Plan—Specific Findings and Conclusions Regarding Mr. Terry and Brigade.

The Objectors have challenged the feasibility of the Plan.<sup>79</sup> The court finds and concludes that the preponderance of the evidence supported the feasibility of the Plan. Among other things, the Chapter 11 Trustee credibly testified that Mr. Terry has an excellent track record as a portfolio manager, and that there is no reason why Mr. Terry will not be able to obtain new business—that is, new portfolios to manage which will provide additional revenue streams for the Reorganized Debtor.<sup>80</sup> The evidence was credible and compelling that Mr. Terry

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<sup>76</sup> See *In re Seatco, Inc.*, 259 B.R. 279, 283-84 (Bankr. N.D. Tex. 2001) (approving temporary injunction of suit against nondebtor on guaranty of debt treated in plan).

<sup>77</sup> Compare *Omni Mfg. v. Smith (In re Smith)*, 21 F.3d 660, 666-67 (5th Cir. 1994) (disapproving injunction extending time to file proof of claim beyond limits set in Bankruptcy Rules 3003(c)(3) and 9006(b)(1)); *Chiasson v. Bingler (In re Oxford Mgmt.)*, 4 F.3d 1329, 1334 (5th Cir. 1993) (disapproving injunction ordering payment that altered distribution scheme set forth in § 726(b)); *Unites States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (disapproving injunction ordering spousal support payments contrary to § 523(a)(5)).

<sup>78</sup> Tex. Bus. & Comm. Code Ann. § 24.008 (West, Westlaw through 2017) (providing a creditor may obtain “an injunction against further disposition by the debtor or the transferee, or both, of the asset transferred or of other property . . . [or] any other relief the circumstances may require.”). TUFTA’s injunction provision is construed broadly and courts have found that “[a] claim for fraudulent transfer under Texas law contemplates the issuance of a preliminary injunction.” *Sargeant v. Al Saleh*, 512 S.W.3d 399, 413 (Tex. App.—Corpus Christi 2016, no pet.); accord, *Janvey v Alguire*, 647 F.3d 585, 602-03 (5th Cir. 2011).

<sup>79</sup> 11 U.S.C. § 1129(a)(11).

<sup>80</sup> Transcript 12/11/18 (AM) [DE # 789], at p. 90 (lines 5-12). Moreover, to the extent there are any gaps, recoveries from the Highland Entities Adversary Proceeding might eventually be available for ongoing operations and payment of creditors.

will be capable of fulfilling the equity owner position in the Reorganized Debtor (stepping in to essentially run the Reorganized Debtor) and will be able to ensure the feasibility of the Plan. He is well qualified to reorganize the Debtor-Acis. Mr. Terry testified that his role with the Reorganized Debtor will be similar to the role he very successfully performed for the Debtor-Acis.<sup>81</sup> The Debtor-Acis received numerous awards during Mr. Terry's service as the portfolio manager of the Acis CLOs.<sup>82</sup> The arbitration panel that issued the Arbitration Award found that Mr. Terry was terminated for essentially doing the right thing for investors.<sup>83</sup> Mr. Terry credibly testified that numerous market participants have expressed an interest in working with the Reorganized Debtor if the Plan is confirmed.<sup>84</sup>

Moreover, the court finds and concludes that Brigade (who stepped in as sub-advisor in place of Highland during the Bankruptcy Cases and is a registered investment advisor) is qualified to serve as a sub-advisor to the Reorganized Acis. Mr. Jared Worman, a portfolio manager for Brigade,<sup>85</sup> credibly testified that Brigade, founded in the year 2007, currently has \$20 billion of total assets under management, \$5 billion of which consists of six U.S. CLOs, two U.S. CDOs, and three European CLOs.<sup>86</sup> Mr. Worman credibly testified that Brigade has issued 17 CLOs and has reset or refinanced several of them.<sup>87</sup> Mr. Worman and Mr. Terry credibly

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<sup>81</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 172-73.

<sup>82</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 162-163 and Exh. 752.

<sup>83</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 161-62.

<sup>84</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 16-18.

<sup>85</sup> Mr. Worman has an undergraduate degree from Emory University and an MBA from Wharton.

<sup>86</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 84.

<sup>87</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 86.

testified that Brigade is willing to serve as sub-advisor to the Reorganized Acis for fifteen basis points.<sup>88</sup> Highland attempted to show with evidence and argument that Brigade had made some failed trades since stepping in as sub-advisor to the Acis CLOs and that this perhaps made them unfit to serve in this role. But Mr. Terry credibly testified that the fact that a few failed trades were made by Brigade does not make them unfit to serve as sub-advisor to Reorganized Acis, and that trades out of compliance with the applicable CLO tests occasionally happen, and Brigade has handled them appropriately.<sup>89</sup> In fact, the evidence suggested that at least ten failed trades occurred while Highland was acting as sub-advisor to the Debtor-Acis.<sup>90</sup>

Highland's suggestions that Brigade is not up to the task to manage the Reorganized Debtor are specious. Likewise, HCLOF Guernsey's insistence that it will not be getting the benefit of its bargain if the Acis CLOs are not managed by Highland personnel going forward appears to be a manufactured position aimed at thwarting Mr. Terry at all costs. Not only is there no credible evidence of Brigade mismanagement but, to the contrary, it appears that Highland (prior to the Debtor-Acis's rejection of the Sub-Advisory Agreement and Shared Services Agreement), intentionally liquidated assets of the CLO SPEs and built up cash without reasonable justification. Specifically, Mr. Terry credibly testified that there were \$85 million in purchases in the Acis CLOs in the hours leading up to the entry of the orders for relief, but virtually no purchases of loans in the CLOs afterwards—only sales.<sup>91</sup> And Mr. Worman further

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<sup>88</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 89; Transcript 12/12/18 (AM) [DE # 791], at p. 62.

<sup>89</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 182-83; Transcript 12/18/18 [DE # 804], at pp. 72-73.

<sup>90</sup> See Exhs. 727, 728; Transcript 12/11/18 (PM) [DE # 790], at pp. 71-74, 182-83.

<sup>91</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 18-19, 28-31; Transcript 12/18/18 [DE # 804], at pp. 87-89; *see also*, Terry Demonstrative.

credibly testified that Highland, while acting as sub-advisor, allowed approximately \$380 million in cash to build up in the Acis CLOs. Meanwhile, Brigade has subsequently reduced that cash balance by \$280 million to approximately \$100 million.<sup>92</sup> Mr. Worman also credibly testified that Brigade has purchased approximately \$300 million in loans for the Acis CLOs.<sup>93</sup> The Chapter 11 Trustee and Mr. Terry both credibly testified that the build-up of cash in the Acis CLOs while Highland was sub-advisor, rather than the loans acquired by Brigade, left the Acis CLOs without sufficient interest income to make a distribution to the equity holders.<sup>94</sup> Certain contradictory testimony of Hunter Covitz was not convincing that: (a) there were very few conforming loans available to be purchased for the Acis CLOs in the approximately four months that elapsed between the entry of the Order for Relief and the time when Highland was terminated as sub-advisor;<sup>95</sup> and (b) it made more sense to accumulate cash to pay down the AAA notes rather than invest in new loans.<sup>96</sup> The court found more convincing the testimony of Mr. Terry: (a) that there was \$310 billion of performing loans rated above CCC in the S&P loan index in May of 2018 available for purchase in CLO-6 that would have satisfied the weighted average life test;<sup>97</sup> (b) that Highland purchased loans for CLO-7 that would have satisfied the weighted average life constraints in the Debtor-Acis's CLO-4, CLO-5, and CLO-6;<sup>98</sup> and (c)

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<sup>92</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 100.

<sup>93</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 70, 94.

<sup>94</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 67-69; Transcript 12/11/18 (PM) [DE # 790], at pp. 70-71; Transcript 12/12/18 (AM) [DE # 791] at pp. 34-37.

<sup>95</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 12-13.

<sup>96</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 13-16.

<sup>97</sup> Transcript 12/18/18 [DE # 804], at p. 87.

<sup>98</sup> Transcript 12/18/18 [DE # 804], at pp. 87-88.

that, although there was no change in market conditions, Highland essentially stopped buying collateral for the Acis CLOs<sup>99</sup> after the entry of the Orders for Relief.<sup>100</sup>

4. Resets—Non-impairment of Anyone’s Rights.

The Plan only contemplates *consensual* resets of the Acis CLOs—in other words, only if HCLOF Guernsey requests resets.<sup>101</sup> Messrs. Worman and Terry both credibly testified that they believed the Reorganized Acis and Brigade could perform a consensual reset of the Acis CLOs.<sup>102</sup> Mr. Terry credibly testified that other asset managers have been able to issue or reset CLOs after a bankruptcy proceeding.<sup>103</sup> Mr. Terry also credibly testified that he wants to come to a resolution with HCLOF Guernsey and consensually reset the Acis CLOs.<sup>104</sup>

HCLOF Guernsey has taken the position that it and its new Passive Investor (new as of mid-November 2017—just before the Bankruptcy Cases) only want to be involved with CLOs that are managed by Highland or Highland affiliates. Is the Plan impairing their rights—to the extent the Plan (and any subsequent re-sets) brings in Brigade as the sub-advisor to the Reorganized Debtor (whereas Highland was in that sub-advisor role before)? It appears no. The

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<sup>99</sup> Transcript 12/18/18 [DE # 804], at pp. 88-89.

<sup>100</sup> Highland has also argued that the Plan is not feasible because the administrative expense claims are extremely high (to which the Chapter 11 Trustee responds, it is of Highland’s making, since Highland has objected to literally every action proposed by the Chapter 11 Trustee). The court does not believe there is a legitimate feasibility problem here. Not only has the court not ruled yet on final professional fee applications, but the Chapter 11 Trustee represented that certain professionals have agreed to defer their fees (beyond payment in full on the Effective Date) as necessary.

<sup>101</sup> See Plan § 6.08.

<sup>102</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 86-90, 176-178; Transcript 12/12/18 (AM) [DE # 793], at pp. 16-18.

<sup>103</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 179-180.

<sup>104</sup> Transcript 12/18/18 [DE # 804], at p. 74.

Offering Memorandum between HCLOF Guernsey and the Passive Investor, dated November 15, 2017, pursuant to which the Passive Investor agreed to invest in HCLOF Guernsey, provided that there may be a change in circumstances following the date of the Offering Memorandum and that any forward-looking statements in the Offering Memorandum involved risks and uncertainties “because they relate to events and depend on circumstances that may or may not occur in the future.”<sup>105</sup> Heather Bestwick, one of the HCLOF Guernsey directors, testified that the Offering Memorandum does not require HCLOF Guernsey to invest only in Highland-managed funds<sup>106</sup> and instead expressly provides that HCLOF Guernsey will invest in “CLOs managed by other asset managers.”<sup>107</sup> Another witness, Mr. McGuffin, testified that the HCLOF Guernsey directors’ fiduciary duties require them to act independently and objectively in the best interests of HCLOF Guernsey, and also require them to consider a change in circumstances.<sup>108</sup> HCLOF Guernsey’s counsel, HCLOF Guernsey’s director, and the Passive Investor have all testified that they would consider doing a reset with the Reorganized Acis in the event the Plan is confirmed.<sup>109</sup>

Mr. Terry credibly testified that a reset of the Acis CLOs can occur after the expiration of the reinvestment periods of the Acis CLOs.<sup>110</sup> The Plan is feasible regardless of whether a reset of the Acis CLOs is requested by HCLOF Guernsey. Messrs. Phelan and Terry both credibly

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<sup>105</sup> See Exh. 90, HCLOF Guernsey Offering Memorandum, at pp. 4-5.

<sup>106</sup> See Exh. 719, Bestwick Depo., at pp. 109, 118-121.

<sup>107</sup> See Exh. 90, HCLOF Offering Memorandum, at p. 12.

<sup>108</sup> Transcript 12/13/18 (PM) [DE # 794], at pp. 142-145.

<sup>109</sup> See Exh. 602, p. 12 of 70 (statement by HCLOF Guernsey’s Counsel); Exh. 719 at pp. 166-167 (Heather Bestwick); Exh. 720, p. 72.

<sup>110</sup> Transcript 12/18/18 [DE # 804], at pp. 82-83.

testified that the Reorganized Debtor will have cash flow from multiple potential sources—including the revenues from the CLO PMAs with the Acis CLOs, potential new business developed by the Reorganized Acis, and the outcome of any potential litigation claims.<sup>111</sup>

## **VI. General Credibility Assessments.**

In ruling in a contested matter such as confirmation, and weighing the preponderance of the evidence, the credibility of witnesses and contradictions in their testimony naturally can be significant. Here, there were some noteworthy problems and contradictions with some of the testimony provided by the Objectors' witnesses. They are summarized below.

### **1. Scott Ellington: A Seemingly Manufactured Narrative to Justify Prior Actions.**

Scott Ellington testified on February 7, 2018 at the trial on the involuntary petitions, and the court was asked to consider his testimony again in connection with confirmation (he did not attend the confirmation hearing). He is the General Counsel, Chief Legal Officer, and a Partner at Highland. Mr. Ellington testified that the Debtor-Acis's name is "toxic" in the market place and that, due to the litigation with Mr. Terry and allegations in that litigation, "nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO."<sup>112</sup> Mr. Ellington elaborated that it had been determined in late 2016 or 2017 that re-sets or re-financings of the Acis CLOs were a prudent thing to pursue (in fact, there was indeed a trend of refinancings and resets for this vintage of CLOs in the market place) and, in connection with that, the Debtor-Acis's contracts and assets needed to be diverted to different, newly created entities because: (a) the "Acis" name was toxic and underwriters and investors were not going to

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<sup>111</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 72, 88-90; Transcript 12/12/18 (AM) [DE # 791], at p. 53.

<sup>112</sup> Exh. 23, p. 55 (line 17) through p. 56 (line 7); p. 98 (lines 8-12).

be interested in re-financings or resets for CLOs managed by the Debtor-Acis;<sup>113</sup> and (b) the new Passive Investor wanted the Debtor-Acis out of the picture.<sup>114</sup> Mr. Ellington further elaborated: “The equity, you know, calls the tune, so to speak, in terms of the CLO . . .”<sup>115</sup> In summary, an overarching theme of Mr. Ellington’s testimony was that the Debtor-Acis was tainted or toxic in the marketplace and the Passive Investor wanted the Debtor-Acis out of the picture—thus, this was the motivation for the prepetition transactions orchestrated by Highland prior to the Bankruptcy Cases. The problems with the Scott Ellington testimony were at least two-fold. First, there is no credible evidence that the Debtor-Acis is/was toxic in the market place. In fact, in April 2017 (well after the litigation with Mr. Terry commenced), the Debtor-Acis issued a new CLO (CLO-7). And in market publications as recently as August 21, 2017, Highland was touting the *Acis* structure stating “our vehicle will allow us to issue between six and 12 CLOs over the next few years.”<sup>116</sup> Second, the Passive Investor denies demanding that the Debtor-Acis be removed as the CLO manager. Term sheets as recent as August 21, 2017 contemplated the Debtor-Acis as the continuing portfolio manager of CLOs, with apparently no protestations by the Passive Investor.<sup>117</sup>

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<sup>113</sup> *E.g., Id.* at p. 177 (line 21) though p. 178 (line 12); p. 184 (lines 13-17) (“The underwriters in this case, Mizuho, Goldman, et al., the equity, they said we want every possible relation to anything that could be legacy Acis or Acis-related affiliates to be severed”).

<sup>114</sup> *Id.* at p. 202 (lines 11-13) (“we have third-party investors that said we don’t want to be involved in this brand; and their equity is one of the reasons that new CLOs can be launched”); p. 203 (lines 7-8) (“It was call the deal and terminate the CMAs or transfer the CMAs”); p. 223 (lines 8-12) (“Because if the involuntary remains, and I’m just – I’m just being frank – we’ve already been told by equity holders, including the separate account, BBK, that you may have seen on some of the exhibits, they’re pulling everything.”).

<sup>115</sup> *Id.* at p. 74 (lines 3-6).

<sup>116</sup> Exh. 801, pp. 3 & 5.

<sup>117</sup> Exh. 802, p.1.

2. Michael Pugatch: The Passive Investor Made Into a Scapegoat.

The reality is that Highland, indeed, started working on the concept of doing resets of some of the older vintage Acis CLOs in at least early 2017 (and perhaps late 2016). Highland, in fact, completed a reset of one Acis CLO in April 2017 (with the Debtor-Acis still in place as the portfolio manager for that reset in April 2017). As part of that process of implementing resets for the Acis CLOs, Highland worked on bringing in a new investor or investors to have a share of the equity tranche of the Acis CLOs. Highland finally obtained the commitment of the Passive Investor in November 2017, after starting initial discussions with them in the second quarter of 2017.<sup>118</sup> A representative for the Passive Investor referred to itself as “passive” in a deposition.<sup>119</sup> Concepts and documentation for the Passive Investor’s investment in the Acis CLOs were discussed for a while during 2017. As recently as August 2017, the negotiations with the Passive Investor appeared to contemplate the Debtor-Acis still as the portfolio manager for the CLOs.<sup>120</sup> Then the arbitration trial with Mr. Terry began in September 2017 and the Terry Arbitration Award was issued on October 20, 2017. Suddenly, it appears that the dismantling of the Debtor-Acis began with all deliberate speed. The court believes, based on the totality of the evidence, that it was Highland who did not want the Debtor-Acis as CLO manager going forward, so that Highland could keep reaping the benefits of the reset CLOs. Specifically, when deposed on the topic, a representative for the Passive Investor, Mr. Pugatch, denied the accuracy of Mr. Ellington’s testimony, stating that the Passive Investor “viewed Acis and Highland as interchangeable from the perspective of the—you know, the actual investment

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<sup>118</sup> See Exh. 720, Pugatch Deposition Transcript dated November 27, 2018, p. 18, lines 14-20.

<sup>119</sup> *Id.* at p. 22 (lines 2-3) (“we’re you know, 49 percent sort of passive minority investor”).

<sup>120</sup> Exh. 802, p. 1.

opportunity.”<sup>121</sup> When asked, “Are you aware that Scott Ellington, general counsel for HCM, testified that [the Passive Investor] said with absolute certainty that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO?” Mr. Pugatch testified that he had read that testimony and that the statement was not true.<sup>122</sup> He further stated that “the ultimate sort of name change did not come from [the Passive Investor].”<sup>123</sup> In fact, when further asked whether the Passive Investor knew why Acis CLO Funding Limited changed its name to Highland CLO Funding Limited (*i.e.*, HCLOF Guernsey), Mr. Pugatch testified, “We were told that it was a change in the brand or the name, as requested by Highland.”<sup>124</sup> And when asked “Did [the Passive Investor] request that the name be changed?” he answered “No.”<sup>125</sup> When asked whether the Passive Investor considered “Acis toxic in the industry?” Mr. Pugatch answered: “No. What I would say is, when the suggested name change did occur, there were commercial reasons given to us as to why that would be beneficial in terms of the ongoing management of those CLOs and the intended investment thesis around the investment that we had made, which seemed to make commercial sense.”<sup>126</sup> When Mr. Pugatch was asked, “Those reasons were given by Highland, correct?” he replied “Correct” and confirmed that they were not demanded by the Passive Investor.<sup>127</sup> Mr. Pugatch was emphatic that the Passive Investor was

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<sup>121</sup> *Id.* at p. 30 (lines 19-20).

<sup>122</sup> *Id.* at p. 31 (lines 6-19).

<sup>123</sup> *Id.* (lines 24-25).

<sup>124</sup> *Id.* at p. 27 (lines 24-25).

<sup>125</sup> *Id.* at p. 28 (lines 1-3).

<sup>126</sup> *Id.* at p. 32 (lines 1-8).

<sup>127</sup> *Id.* at p. 32 (lines 9-12).

just that—a passive investor—that did not have the ability to “start calling the shots” and dictate the terms of any reset transactions.<sup>128</sup> When asked if the Passive Investor was concerned about the Terry Arbitration Award, Mr. Pugatch replied: “The award itself, no. I think the only thing we were concerned about or focused on was that vis-à-vis our equity investment in Highland CLO Funding Limited and, in turn, the equity that that vehicle held in the various CLOs was appropriately, you know, ring-fenced or not exposed to any potential damages or economic loss in value as a result of that arbitration award.”<sup>129</sup>

The Passive Investor further testified that Brigade has “a fine reputation in the market” but that it had no interaction with them historically.<sup>130</sup> The Passive Investor also testified that it was concerned about the cash buildups that had happened recently due to actions while Highland had still been the sub-advisor on the Acis CLOs.<sup>131</sup>

### 3. The Seemingly Rehearsed Testimony of the Two HCLOF Guernsey Witnesses.

The court was presented with video depositions of HCLOF Guernsey’s two non-executive directors (*i.e.*, its only directors): Mr. William Scott<sup>132</sup> and Ms. Heather Bestwick.<sup>133</sup> It was very apparent to the court that HCLOF Guernsey is controlled by Highland in every way. Putting things in the kindest way possible, Mr. Scott and Ms. Bestwick appear to be nominal figureheads who are paid to act like they are in charge, while they are not. They are both

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<sup>128</sup> *Id.* at p. 32 (lines 16-17); pp. 33-35.

<sup>129</sup> *Id.* at p. 43 (lines 3-9); p. 89.

<sup>130</sup> *Id.* at p. 68 (lines 11-13).

<sup>131</sup> *Id.* at p. 82, lines 9-24.

<sup>132</sup> *See* Exh. 721.

<sup>133</sup> *See* Exh. 719.

basically professional directors-for-hire, for companies that choose to form/organize in the nation of Guernsey.

Ms. Bestwick testified that she is a nonexecutive director for six companies in Guernsey (none of the others are in the CLO business).<sup>134</sup> She testified that she earned £35,000 per year to serve as a director of HCLOF Guernsey.<sup>135</sup> She testified that she was selected by Highland<sup>136</sup> and that Highland also made the decision to hire HCLOF Guernsey's law firm in the Bankruptcy Cases.<sup>137</sup> Ms. Bestwick, when questioned as to why the Equity/ALF PMA it had with the Debtor-Acis was terminated shortly after the Terry Arbitration Award was issued, testified that she was told it was "a condition precedent to the new Passive Investor" coming in and that she was told this by Highland.<sup>138</sup> She also testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey)<sup>139</sup> or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey).<sup>140</sup> She reiterated that she only talks to Highland employees. She also was under the impression that terminating the Equity/ALF PMA would improve marketability of the CLOs going forward but that it was the same people and "business as usual for us."<sup>141</sup> She testified that she learned of the Terry

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<sup>134</sup> *Id.* at pp. 7-8; p. 21 (line 5) through p. 22 (line 20); p. 26 (lines 10-12).

<sup>135</sup> *Id.* at p. 43 (lines 18-19).

<sup>136</sup> *Id.* at p. 42 (lines 17-25).

<sup>137</sup> *Id.* at p. 53 (lines 7-20).

<sup>138</sup> *Id.* at p. 16 (line 13) through p. 17 (line 23); p. 58 (line 21) through p. 60 (line 17).

<sup>139</sup> *Id.* at p. 188 (lines 12-15).

<sup>140</sup> *Id.* at p. 188 (line 19) through p. 189 (line 9).

<sup>141</sup> *Id.* at p. 189 (lines 12-15); p. 200 (line 22).

Arbitration Award in mid-April 2018 (some six months after the fact)<sup>142</sup> and “[y]ou’d have to ask Highland”<sup>143</sup> why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were “heavily reliant on our service providers, and that means Highland.”<sup>144</sup> With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.

Mr. Scott, the other HCLOF Guernsey director, is a “professional director” for 10-15 Guernsey companies<sup>145</sup>—all of which are “paying assignments.”<sup>146</sup> He became rather incensed when testifying, at the suggestion that he and Ms. Bestwick were not in control of HCLOF Guernsey, stating that board minutes and other documents would show that they took a great level of interest in running the company.<sup>147</sup> He testified that he earned £40,000 per year to serve as a director of HCLOF Guernsey and that, due to the extra work of the Bankruptcy Cases, he also was charging another £350 per hour, after the first 35 hours<sup>148</sup> (the court notes, anecdotally, that it required participation in court hearings by a director of HCLOF Guernsey each time that HCLOF Guernsey took a position in court). Mr. Scott confirmed that he was not aware of the litigation with Mr. Terry nor the Acis Bankruptcy Cases until April 2018.<sup>149</sup> He also testified

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<sup>142</sup> *Id.* at p. 61 (lines 3-19); p. 130 (line 14) through p. 136 (line 2).

<sup>143</sup> *Id.* at p. 137 (line 21).

<sup>144</sup> *Id.* at p. 152 (lines 18-19).

<sup>145</sup> *See* Exh. 721 at p 8 (line 9) through p. 9 (line 5); p. 79 (lines 20-25).

<sup>146</sup> *Id.* at p. 80 (lines 3-5).

<sup>147</sup> *Id.* at p. 13 (lines 1-12); p. 22 (line 23) through p. 23 (line 12).

<sup>148</sup> *Id.* at p. 80 (lines 6-18).

<sup>149</sup> *Id.* at p. 132 (line 20) through p. 135 (line 10).

that Highland had proposed the legal counsel HCLOF Guernsey used in the Bankruptcy Cases and that he had never disagreed with Highland’s advice.<sup>150</sup> He confirmed that all investment decisions were made by Highland and that he and Ms. Bestwick’s role was to “police” service providers.<sup>151</sup> Like Ms. Bestwick, Mr. Scott testified that they were told that the Passive Investor had made it a condition precedent to their investment in HCLOF Guernsey that “Acis depart.”<sup>152</sup> But he had not talked to the Passive Investor.<sup>153</sup> As if all this deference to Highland were not enough, HCLOF Guernsey’s lender is NexBank (an affiliate of Highland—which is based in Dallas, not Guernsey) and HCLOF Guernsey has given its actual equity notes to NexBank as security for its loans from NexBank.<sup>154</sup> Also, interestingly, when asked about the adversary proceeding that HCLOF Guernsey filed against the Chapter 11 Trustee a few months ago in the Bankruptcy Cases (*i.e.*, the Highland Entities Adversary Proceeding—it was originally commenced by Highland and HCLOF Guernsey as Plaintiffs), Mr. Scott testified that “we haven’t sued the trustee, he has sued us” but later acknowledged his mistake when corrected by counsel.

This court is not naïve—it realizes that so-called “fiduciary services firms” are apparently a typical thing in the world of off-shore jurisdictions that are large financial centers.<sup>155</sup> Maybe

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<sup>150</sup> See generally *id.* at pp. 277-280.

<sup>151</sup> *Id.* at p. 106 (lines 1-7).

<sup>152</sup> *Id.* at p. 254 (line 20) through p. 260.

<sup>153</sup> *Id.* at p. 155 (lines 2-25).

<sup>154</sup> See Exh. 719 at p. 213 (line 2-22); Exh. 721 at p. 129 (line 10) through p. 130 (line 13).

<sup>155</sup> During the testimony of both Ms. Bestwick and Mr. Scott, the court was reminded of an old TV commercial in which an actor states, “I am not a doctor, but I play one on TV.” The court could not help but conclude that these were not real directors but were playing them (when legally necessary).

the system works, for the most part and in many business contexts. But not when trying to convince a bankruptcy court of the bona fides of transactions that look like attempts to denude another party of value and/or to thwart creditors. And not when accusations are made that you are the alter ego of the party (Highland) who orchestrated the company's creation. The evidence was overwhelming that: (a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey's behalf.

In summary, the testimony of these two HCLOF Guernsey Directors was of little or no value in convincing the court that the Objector, HCLOF Guernsey, has valid concerns of its own (separate from Highland's) with regard to the bona fides of the Plan.

## **VII. Conclusion.**

This Bench Ruling and Memorandum Opinion is intended to address some of the most pertinent facts and issues raised in connection with confirmation of the Plan. Among other things, the court believed it was necessary to stress, in a separate ruling: (a) *the unique status of the Objectors* (they are "insiders" as defined in the Bankruptcy Code whose prepetition actions suggest unclean hands—this seems highly relevant to consider, when there are no non-insider creditors or other relevant parties objecting to the Plan); (b) *the appropriateness and legality of the proposed Plan Injunction* that would temporarily prevent nonconsensual redemptions/liquidations (it is in all ways justified given the allegations in the Highland Entities Adversary Proceeding and under the traditional four-prong test for preliminary injunctions); and

(c) *the feasibility of the Plan* (Mr. Terry and Brigade are well qualified to perform their contemplated roles).

The court will separately sign the Findings of Fact, Conclusions of Law and Order Confirming Plan submitted by the Chapter 11 Trustee to address all other relevant issues.

**#### End of Bench Ruling and Memorandum Opinion ####**

**EXHIBIT J**

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

In re  ACIS CAPITAL MANAGEMENT, L.P.  Alleged Debtor.	Chapter 7  Case No. 18-30264-SGJ7
In re  ACIS CAPITAL MANAGEMENT GP, LLC  Alleged Debtor.	Chapter 7  Case No. 18-30265-SGJ7

**JOINT OBJECTION OF ALLEGED DEBTORS TO  
EMERGENCY MOTION OF PETITIONING CREDITOR TO ABROGATE OR  
MODIFY 11 U.S.C. § 303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE,  
*INTER ALIA*, 11 U.S.C. § 363**

**TO THE HONORABLE STACEY G. C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Acis Capital Management, L.P. ("**Acis LP**") and Acis Capital Management GP, LLC ("**Acis GP**" and together with Acis LP, "**Acis**"), the alleged debtors in the above-captioned cases, hereby submit this Joint Objection (the "**Objection**") to the *Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and*

*Impose, inter alia, 11 U.S.C. 363* [Case No. 18-30264-SGJ7, Docket No. 3; Case No. 18-30265-SGJ7, Docket No. 3] (the “**303(f) Motion**”) filed by Joshua Terry (“**Terry**”). In support of this Objection, Acis respectfully states as follows:

## **I.** **INTRODUCTION**

1. Terry holds a state-court judgment against Acis and is one of 18 creditors of Acis. Terry initiated these involuntary chapter 7 cases—acting alone as opposed to in concert with other creditors as required by Section 303(b)(1) of Title 11 of the United States Code (the “**Bankruptcy Code**”) - as a bad-faith litigation tactic and attempt at forum shopping in the context of his longstanding dispute with Acis. Terry filed his involuntary petition against Acis LP at 11:57 p.m. on January 30 and against Acis GP on January 31 at 12:00 a.m. (the “**Involuntary Petitions**”). On January 31, Acis filed a Joint Motion to Dismiss the Involuntary Petitions (the “**Motion to Dismiss**”) and a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(d) (the “**Creditor List**”). Acis’s Motion to Dismiss establishes that the Involuntary Petitions are fatally defective because Acis has more than 12 creditors, thereby requiring a minimum of 3 creditors to join in the filing of the Involuntary Petitions. Yet, Terry was the sole creditor to file.

2. The filing of the Involuntary Petitions filings was a transparent attempt to derail two imminent events. The first was a temporary injunction hearing that was scheduled to be heard in Dallas state court on January 31 (the “**Temporary Injunction Hearing**”). The second was the closing of a \$420 million transaction involving the reissuance of CLO-3 (as detailed and defined below) (the “**\$420 Million CLO-3 Reissue Transaction**” or “**Transaction**”) that has been in the making since May 2017 and that was scheduled to close on February 1.

3. Terry sought a state-court injunction to prevent Acis from transferring a management contract (the “**Collateral Management Agreement**” or “**CMA**”) from Acis to a Highland entity as part of the Transaction. As will be explained, this CMA is central to Terry’s 303(f) Motion. The transfer of the CMA is a ministerial task that Acis is contractually required to perform and is the last remaining condition to close the \$420 Million CLO-3 Reissue Transaction. Terry has falsely and without any basis claimed that this CMA is worth multiple millions of dollars and that Acis is attempting to fraudulently transfer the CMA in order to avoid paying an \$8 million judgment (that will be appealed) that Terry recently obtained against Acis. But, as set forth below, the facts are the opposite.

4. First, contrary to Terry’s unsupported assertions, the CMA has no value. Acis has no employees, and has never had any employees. Acis has always performed the management services required of it by the CMA by subcontracting those obligations to certain Highland entities (“**Highland Servicers**”). Thus, Acis receives management fees (the “cash inflows”) but then pays fees to the Highland Servicers (the “cash outflows”) under contracts that have been in place for years. Presently, *the cash outflows under the CMA exceed the cash inflows that results in negative cash flow, and thereby rendering the CMA worthless.*

5. Second, and a point that cannot be overstated, the very relief that Terry previously sought in state court, and now seeks in this Court, would cause the CMA to be terminated pursuant to its terms and thereby also render the CMA worthless. On January 29, Terry filed an application with the state court seeking the appointment of a receiver over Acis. In this Court, Terry has filed Involuntary Petitions against Acis. However, *under paragraph 15 of the CMA, [1] the appointment of a receiver and [2] an involuntary bankruptcy petition that “remain[s] undismissed for 60 days and result[s] in an adjudication of bankruptcy or insolvency” are*

*grounds for the CMA to be terminated and for Acis to be removed “for cause” as the collateral manager upon 30 days’ notice.* On the one hand, Terry argues that the CMA is worth millions of dollars and asks this Court to preserve its value by preventing the CMA from being transferred as part of the \$420 Million CLO-3 Reissue Transaction. On the other hand, if Terry succeeds in his effort to throw Acis into bankruptcy, the CMA will be terminated and will cease to have any value. These undisputed facts expose Terry’s bad faith motive behind his state-court and bankruptcy-court filings. Ironically, the very relief requested by Terry in state court and in Bankruptcy Court regarding the CMA would itself destroy any value associated with the CMA by causing the CMA to be terminated.

6. So, why is Terry engaging in this act of self-immolation that will guarantee the CMA will be terminated and any value associated with it to be extinguished? The answer: to try to hold hostage the \$420 Million CLO-3 Reissue Transaction and extort a settlement. Terry’s motive is not to preserve the CMA as part of Acis’s assets that would be available to satisfy his judgment. As discussed herein, the CMA has no value and is going away *regardless* of whether or not the Transaction closes.

7. To fully understand the context of the 303(f) Motion, it is important to understand what transpired in the underlying litigation that resulted in the judgment that Terry obtained against Acis, which judgment Terry is now using as a pretext to throw Acis into bankruptcy and block the \$420 Million CLO-3 Reissue Transaction. Terry was an employee of Highland who was integrally involved in the formation and management of Highland’s CLO business, including CLO-3. In 2016, Highland fired Terry for cause for various acts of misconduct. Terry is *persona non grata* in the CLO industry because he secretly tape recorded his Highland

colleagues, and no one in the CLO industry wants anything to do with Terry or Acis, and the Acis name is now toxic as a result of Terry's actions.

8. Upon being terminated by Highland, Terry filed arbitration claims against six parties: Acis LP; Acis GP; Highland; Highland's two founders (James Dondero and Mark Okada); and Dugaboy Investment Trust ("Dugaboy"). Terry asserted a claim for more than \$200 million and received an \$8 million award against Acis. Terry's claims against Highland, Dondero, Okada, and Dugaboy were all dismissed. Also, Terry's claim that the promissory note transaction between Highland and Acis (the "**Promissory Note**") (the same note referenced at paragraphs 2 and 6 of the 303(f) Motion) was a fraudulent transfer, but the arbitration panel likewise rejected this claim.

9. As a result of losing on all his claims against the deep-pocketed defendants in the arbitration and losing on his fraudulent transfer claim, Terry is left with a pyrrhic victory—a largely uncollectible judgment against Acis. If that fact was not already apparent to Terry, it became so on January 29 when, pursuant to Texas state law, Acis filed a motion to post a supersedeas bond in the amount of \$495,070.50, which is equal to 50 percent of Acis's net worth as of January 29. Terry thus realized that even if he ultimately prevailed on Acis's appeal of the \$8 million judgment, Terry was never going to recover more than the approximately \$500,000 bond amount.

10. Thus, Terry has been flailing about trying to create as much mayhem as possible to see if he can succeed in a shakedown by attempting to block the \$420 Million CLO-3 Reissue Transaction from closing. Terry's filings are made in complete disregard of Terry's own self-interest (the request for a receiver and the Involuntary Petitions) and in complete disregard for

the investors in the \$420 Million CLO-3 Transaction who stand to lose tens of millions of dollars if the Transaction does not close.

11. According to Terry’s fanciful allegations, the Transaction is itself a fraudulent transfer that Highland and Acis allegedly orchestrated to deprive him of the ability to satisfy his judgment against Acis. But, as will be explained, there are numerous reissues or refinances that have taken place, and are scheduled to take place, throughout the CLO industry as a result of changing market forces—specifically, declining interest rates from the time the CLOs were first issued.

12. In fact, Highland has been engaged in efforts to restructure the Acis CLOs long before the arbitration award was issued in October 2017. Highland closed on a restructure of CLO-2 on April 10, 2017 and it began work on the restructure of CLO-3 (the CLO at issue) as far back as May 2017. Thus, contrary to Terry’s wild assertions, the \$420 Million CLO-3 Reissue Transaction is being driven by legitimate business purposes in the ordinary course of business and not by some Machiavellian scheme by Acis to “dismantle their business to the great detriment of their single largest creditor, Mr. Terry” as Terry falsely claims.

13. Another important point for the Court to consider is that Terry’s 303(f) Motion is long on hyperbole and name-calling but short on facts regarding alleged past fraudulent transfers and future fraudulent transfers. But, here are the facts. To date, there has been a single fraudulent-transfer claim that has been litigated and that is Terry’s claim in the arbitration involving the October 2016 transaction giving rise to the Promissory Note in which Highland agreed to pay \$12.6 million to Acis in return for Acis transferring to Highland the right to certain future cash flows was a fraudulent transfer.<sup>1</sup> The arbitration panel roundly rejected Terry’s

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<sup>1</sup> In his 303(f) Motion regarding a subsequent November 2017 transaction involving this same promissory note (the “**Note Transfer**”), Terry alleges that “[u]pon information and belief, Acis did not receive *sufficient consideration*

fraudulent-transfer claims, holding that “[t]he transactional documents recite business purpose and reasonable consideration for the sale.” Final Award, at 17, Exhibit No. 1, hereto.<sup>2</sup> Moreover, “Terry offer[ed] no evidence that ACIS did not receive reasonable equivalent value in the transaction or that ACIS made the transfer with ‘actual intent to hinder delay or defraud.’” *Id.* With respect to the fraudulent-transfer allegations that are littered throughout the 303(f) Motion, this Court should take such allegations with a heavy dose of salt given Terry’s prior, unsuccessful claims of fraudulent transfers.

14. To bring things full circle, given that the same relief that Terry now seeks in his 303(f) Motion—blocking the \$420 Million CLO-3 Reissuance Transaction—was scheduled to be heard by the state court judge at the Temporary Injunction Hearing on January 31, that begs the following question: Why did Terry simply not go forward with the January 31 Temporary Injunction Hearing in state court and instead file the Involuntary Petitions against Acis and file an emergency 303(f) Motion? The answer is clear: Terry knew that the handwriting was on the wall and that the state court was not going to enjoin the \$420 Million CLO-3 Reissuance Transaction from closing the next day and then Terry would lose all leverage to try to block the Transaction. Terry’s machinations did succeed in causing the closing of the Transaction to be rescheduled from February 1 to February 13. However, as the evidence will show, if this

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for the Note Transfer.” This assertion is in sharp contrast to a sworn declaration that Terry signed on January 23 in support of a temporary restraining order in which he falsely claimed based upon his “*personal knowledge*” that the November 2017 Note Transfer was for “*no consideration*.” Terry Decl. ¶11, Exhibit No.2. At a TRO hearing in state court on January 24, Acis’s counsel pointed out that this statement in Terry’s declaration was false because, among other consideration, the Note Transfer reflected a commitment by a Highland entity to pay Acis upon demand up to \$2 million in legal expenses and an additional \$1 million in administrative expenses. Thus, in his 303(f) Motion, Terry has been forced to change his tune that the Note Transfer was a fraudulent transfer based upon his “*personal knowledge*” that Acis received “*no consideration*” for the transfer to a statement that “*upon information and belief*” Acis did not receive “*sufficient consideration*” for the transfer. The sworn statement in Terry’s January 23 declaration is just one of many misleading and false statements that Terry has made and Acis intends to bring to light in its cross-examination of him at the hearing on his 303(f) Motion.

<sup>2</sup> Each Exhibit referenced herein is incorporated herein by such reference.

Transaction does not close on February 13, it will never close and will cause innocent third party investors to lose tens of millions of dollars.

15. As is detailed herein, Acis's interest in the Transaction is limited to the ministerial assignment of the CMA and not a transfer of millions of dollars of assets of Acis—as Terry suggests is happening. Moreover, Terry's requested relief is an exercise in futility because whether or not the Transaction closes Terry will be in same position. Either the Transaction goes forward or CLO-3 will liquidate. In either case, Acis no longer will manager CLO-3 and the CMA will have no value. However, if CLO-3 liquidates, the third-party investors to whom Acis owes a fiduciary duty stand to lose tens of millions of dollars. Preventing the Transaction therefore would create no additional value for Acis, while creating substantial damages for the investors and risk of claims by them against Acis (and Terry).

16. Because Section 303(f) of the Bankruptcy Code would have allowed Acis to complete the closing of the \$420 Million CLO-3 Reissue Transaction, notwithstanding the Involuntary Petitions, Terry compounded his ill-conceived litigation strategy in filing the Involuntary Petitions by filing the 303(f) Motion, which seeks to impose (before an order for relief is entered and on the strength of Involuntary Petitions which are deficient on their face) the requirements of Section 363 of the Bankruptcy Code. For the reasons set forth below, the 303(f) Motion should be denied.

## II. HISTORICAL BACKGROUND<sup>3</sup>

### A. Acis, Highland, and the CLO Structure

17. Highland is in the business of putting together and managing collateralized loan obligations (“CLOs”). It is one of the primary players in the CLO industry. A CLO is a legal entity that owns a basket of loans, which are managed by a collateral manager (the “Collateral Manager”). The Collateral Manager buys loans into, or sells them out of, the basket. The CLO has its own bondholders (lenders to the CLO) (“Bondholders”), and its own equity holders (“Equity Holders”).

18. Acis LP is the Collateral Manager for CLO-3 as well as four other distinct CLOs. Acis has absolutely no economic interest in any of the CLOs, which includes CLO-3 and the \$420 million in loans that CLO-3 holds. Rather, Acis, as Collateral Manager, provides services to the CLO and is compensated for its services in accordance with the Collateral Management Agreement or CMA. Exhibit No. 3, hereto. The duties and obligations Acis owes CLO-3, in its capacity as Collateral Manager, are governed by the CMA. Among other things, Acis’s duties as Collateral Manager include: supervising and directing the investment and reinvestment of CLO assets; monitoring the CLO assets and providing to the Issuer (the CLO) certain reports, schedules, and other data; and directing an optional redemption under the Indenture on behalf of the Issuer. CMA § 3. Additionally, Acis is obligated to “use commercially reasonable efforts to ensure that no action is taken by it” that would materially and adversely affect the Issuer.” CMA § 8.

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<sup>3</sup> The facts and statements herein will be supported by testimony and evidence presented at the hearing on the 303(f) Motion.

19. Because Acis has no employees it does not and cannot provide any services directly to the CLOs as required by the CMAs. However, the CMA allows Acis to contract with third parties to provide these services, which Acis has done. Specifically, Acis has entered into several agreements with other Highland affiliates to provide the required services. In one such agreement, a Highland affiliate provides “front-office” services that include the buying and selling of the loans that comprise the CLO (the “**Sub-Advisory Agreement**”). Pursuant to the Sub-Advisory Agreement, Highland provides to Acis, among other things, the following services: “mak[ing] recommendations to [Acis] . . . as to the general composition and allocation of the Portfolio . . . including recommendations as to the specific loans and other assets to be purchased, retained or sold”; “plac[ing] orders with respect to, and arrang[ing] for, any investment by or on behalf of [an] Account”; “identify[ing], evaluat[ing], recommend[ing] to [Acis] . . . the structure and/or terms of investment opportunities within the specific investment strategy of [Acis]”; “provid[ing] information to [Acis] . . . regarding any investments to facilitate the monitoring and servicing of such investments”; and “assist[ing] and advis[ing] [Acis] . . . with respect to credit functions including, but not limited to, credit analysis and market research and analysis.” Sub-Advisory Agreement § 1(b). Exhibit No. 4, hereto. The Sub-Advisory Agreement “shall terminate automatically with respect to any Management Agreement on the date on which (i) such Management Agreement has been terminated . . . or (ii) [Acis] is no longer acting as portfolio manager . . . whether due to removal, resignation or assignment.” *Id.* § 6(b).

20. In another agreement, a Highland affiliate provides “back-office” services that include the accounting, legal, and other administrative functions necessary in servicing the loans (the “**Shared Services Agreement**”). Under the Shared Services Agreement, Highland provides

to Acis essential services, including: “[a]ssistance and advice with respect to back- and middle-office functions including, but not limited to, accounting, payments, operations, technology and finance”; “[a]ssistance and advice with respect to legal issues, compliance support and implementation and general risk analysis”; “access to marketing team representatives to assist with the marketing of [Acis]”; “[a]ssistance relating to any reporting [Acis] is required to make”; and “[t]he provision of office space, information technology services and equipment, infrastructure and other related services requested or utilized by [Acis].” Shared Services Agreement § 2.02. Exhibit No. 5. Though these services are essential to Acis’s capacity to serve as Collateral Manager, “[e]ither party may terminate [the Shared Services] Agreement *at any time* upon at least thirty (30) days’ written notice to the other.” *Id.* § 7.01 (emphasis added).

21. The Highland affiliates have notified Acis that they no longer intend to provide services to Acis pursuant either to the Sub-Advisory Agreement or Shared Services Agreement for CLO-3. Thus, even if the Transaction did not close, that would leave Acis unable to provide the services it is required to provide as Collateral Manager, which failure constitutes a basis for removing Acis as collateral manager and terminating the CMA on 30 days’ notice. *See* CMA § 15(g) (CMA may be terminated and Acis may be removed as Collateral Manager upon 30 days’ notice due to “the inability of [Acis] to perform its duties hereunder in accordance with the standard of care specified herein due to the termination of the Service Agreements [defined as the Shared Services Agreement and Sub-Advisory Agreement].” Exhibit No. 3.

22. Terry was an employee of Highland from 2005 until June 2016 when Highland terminated Terry for cause. Terry was integrally involved in the Acis CLOs, having launched the CLOs, set up their structure, and serving as portfolio manager for several years.

23. Highland helped put together six CLOs bearing the Acis name from 2013 until 2015. These are named Acis CLO-I through Acis CLO-6. These CLOs had loan portfolios ranging in value from around \$300 million to \$550 million at the time they were initiated.

### **B. CLO Reissuances Prompted by Falling Interest Rates**

24. The loans held by the CLO pay cash when the borrowers from the CLO pay interest and principal on the loans. The borrowers send their payments to the CLO Trustee's<sup>4</sup> collections account. Each quarter, the Trustee pays out the cash in the collections account. The quarterly payments, also called the "waterfall," are made according to the priority set out in the CLO's indenture (the CLO's governing document). First, the CLO's Collateral Manager receives a fee. Second, the Bondholders are paid in order of priority: the AAA bondholders are paid first, the AA bondholders are paid, etc., until the most-junior bondholders are paid. Third, the Equity Holders—the last group to be paid in a CLO structure—receive what is left from the collections account after all the management expenses and Bondholders are paid. If there is enough cash left at the bottom of the waterfall, the Equity Holders receive a good return. If there is not enough cash, the Equity Holders may get no money for that quarter.

25. The amount of money paid to the Equity Holders in a given quarter will depend on the amount of cash paid *into* the CLO by the borrowers, less the amount that has to be paid *out* to the CLO's Bondholders for that quarter. When loan interest rates are high in the market, the borrowers pay more cash into the CLO and the Equity Holders receive a good return each quarter. CLOs created in calendar year 2014, including CLO-3, were issued when interest rates were higher than they are today. Given these lower interest rates Borrowers have refinanced their

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<sup>4</sup> The CLO Trustee is a third party, in this instance Bank of New York, which oversees the collection of loan payments from the borrowers, among other responsibilities.

loans to lower interest rates. (This is no different than a homeowner taking advantage of lower interest rates to refinance their home, which would result in the lender receiving reduced principal and interest payments). As a result, the borrowers pay less cash into the CLO each quarter than the prior quarter. This is what is currently happening with CLO-3.

26. However, the amount owed to the Bondholders does not change with interest rates. Rather, it is fixed by the indenture (the agreement under which the Bondholders loan money to the CLO), so that amount paid to the Bondholders remains constant. Therefore, as interest rates fall, there is less, and potentially no money left for the Equity Holders at the end of each quarter. The CLO industry has solved this problem by restructuring currently-existing CLOs, called a “reissue.” The reissued CLO will pay lower interest rates to the CLO’s Bondholders. This reduces the cash the CLO must pay *out* each quarter to the Bondholders, leaving more cash available to pay to the Equity Holders. As loan interest rates fall, a CLO must reissue or its Equity Holders will get no more return on their CLO equity-holdings. Last year, 125 CLOs reissued for a total of \$62 billion.<sup>5</sup> One such transaction involved Acis CLO-2 refinancing \$192 million of its loans in April 2017. This reissue or refinancing trend has continued in 2018 with 19 CLOs reissuing for a total of \$10 billion in transactions. *Id.*

27. In addition to doing a reissuance of the CLO, another option available to Equity Holders who are dissatisfied with reduced payments that they are receiving in an era of lower interest rates is to *shut down* the CLO. Pursuant to the CLO’s indenture, the Equity Holders have the right to “call” the CLO, which means to demand that the CLO sell its basket of loans into the market, distribute the remaining proceeds in one, final waterfall, and then cease operations. When a CLO is called, the loans must be liquidated on the open market within a set

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<sup>5</sup> Exhibit No. 6, is an excerpt from JP Morgan 2017-2018 CLO Weekly New Issue Datasheet dated January 29, 2018, showing the CLO market’s reissuance and refinancing activity for 2017 and 2018.

period of time, usually between one and four weeks. Though the Equity Holders often realize a substantial loss in this process, it is better than leaving their money in an investment that pays little or no returns for years to come. (Each CLO has a finite life after which it automatically terminates. In the case of CLO-3, it terminates in 2026). Acis CLO-2014-C Indenture at §1.1, Def. Payment Date, p44, and §2.7(e) re: Final Payment Date, and §9.5, re: surrender of Notes. Exhibit 7.

28. A Collateral Manager only receives management fees for as long as the CLO operates. The Collateral Manager has no control over when a CLO is reissued or called. Instead, the Collateral Manager must follow the directions of the Bondholders and the Equity Holders to whom it owes a fiduciary duty. Once the decision to either reissue or call a CLO has been made, the Collateral Manager is duty-bound to undertake all necessary actions to effectuate the directed outcome. After a CLO is called, the Collateral Manager no longer will get any management fees. Moreover, regardless of whether a CLO is reissued or called, the Collateral Manager does not receive any compensation relating to the reissuance.

### **C. The Planned Reissuance of CLO-3**

29. CLO-3 (Acis CLO 2014-3, Ltd.) was created on February 1, 2014 and terminates on February 1, 2026. CLO-3 owns a basket of loans valued at \$420 million, including loans to Delta Airlines, Dunkin Donuts, and Tribune Media. CLO-3's Bondholders and Equity Holders own the economic interest in this \$420 million basket of loans. CLO-3's Bondholders include public pension funds, insurance companies, and banks. The Equity Holder of CLO-3 is Acis

Loan Funding, Ltd. (“ALF”),<sup>6</sup> which in turn is owned by two entities: a charitable foundation and a third-party private firm (collectively, the “**CLO-3 Equity Holders**”).

30. When CLO-3 was created, its basket of loans had an average interest rate of 4.59%, resulting in a quarterly waterfall payment of approximately \$2 million to the CLO-3 Equity Holders. However, in recent years, the borrowers on these loans have been refinancing to a lower average interest rate (3.21%). This has resulted in falling distributions to the CLO-3 Equity Holders for each quarter. The returns to the CLO-3 Equity Holders have been as follows: \$1.4 million in the first quarter of 2017, \$1.36 million in the second quarter, \$875,000 in the third quarter, and \$1.1 million in the last quarter of 2017. The quarterly payment for the first quarter of 2018 is \$470,000, and the CLO-3 Equity Holders are expected to receive no distributions by the next waterfall, scheduled for May 2018. Like other similarly-situated CLOs, CLO-3 either needed to be reissued or called to protect the CLO-3 Equity Holders’ interests.<sup>7</sup>

31. Starting in May 2017, CLO-3 started the reissuance process on behalf of its Equity Holders. Typically, the most difficult investors to sign up are the equity holders. As previously explained, the equity is the riskiest investment because it is last in line for payment under the CLO waterfall and faces the prospect of receiving reduced or no payments (which is expected to happen with the May 2018 quarterly payment). In May 2017, a private equity firm

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<sup>6</sup> Acis Loan Funding, Ltd. recently changed its name to Highland CLO Funding, Ltd.

<sup>7</sup> Exhibit No. 8, is a copy of The Loan Syndications and Trading Association’s *2017 CLO Review, 2018 Preview: Necessity is the Mother of Invention* article (also found at <https://www.lsta.org/news-and-resources/news/2017-clo-review-2018-preview-necessity-is-the-mother-of-invention>), which makes the following relevant observations: (a) “When they weren’t doing new deals, managers were busy reducing CLO liability costs via refis or resets.” (b) “Of course, the reason that CLOs were repricing and/or resetting was because i) they could and ii) falling loan spreads meant they needed to reduce liabilities costs to keep the arbitrage working. Wells calculated that the weighted average CLO spread dropped 31 bps during 2017. Without refinancings (which simply reduce spread) and resets (which reduce spread, extend tenor and can reset tests), economics on existing CLOs simply might not work.” (c) Reissuances will become industry standard: “Ultimately, Wells concluded that we may be seeing the development of a new lifecycle for CLOs: i) issuance, ii) refinancing after the non-call expires and then iii) a reset as the end of reinvestment nears.”

expressed an interest in making a \$150 million investment in ALF (the “**\$150 Million Equity Investor**”). ALF was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by the \$150 Million Equity Investor in making its investment was that ALF would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. ALF issued this instruction requested by the \$150 Million Equity Investor on October 6, 2017 (two weeks *prior* to the arbitration award).<sup>8</sup>

32. An investment bank was required to be engaged in connection with the contemplated reissuance transaction. The investment bank’s responsibilities included securing new equity investors and new bondholders. Goldman Sachs was the first investment bank that was approached in connection with the reissue of CLO-3. Goldman Sachs recommended that all the CLOs be “called” and that the CLOs start with a fresh slate. Goldman Sachs also unambiguously communicated that Acis could not be the Collateral Manager following the reissuance of the CLOs because of Acis’ now toxic public image after the Terry dispute had so damaged the Acis brand. CLO-3’s Equity Holders agreed. As part of the reissuance, the CMA for CLO-3 would have to be assigned to a new Collateral Manager, in this instance, Highland CLO Management, LLC (the “**New Collateral Manager**”), another Highland affiliate.

33. Goldman Sachs ultimately dropped out due to the “noise” associated with Terry and the Acis brand. Thereafter, in November 2017, CLO-3 engaged a new investment bank, Mizuho, to undertake the efforts to reissue CLO-3. Mizuho worked to find new Bondholders to

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<sup>8</sup> On October 6, 2017, and again on dates subsequent thereto, ALF (on behalf of the CLO-3 Equity Holders, issued the following instruction: *In accordance with Sections 9.2 and 14.3 of the Indenture, ALF hereby directs the Issuer, the Trustee and the Portfolio Manager [Acis] to (i) effect an optional redemption on the 45<sup>th</sup> day following the date of this direction letter, and (ii) redeem each Class of Secured Notes in whole from Refinancing Proceeds, in each case, on the terms and subject to the conditions set forth in the Indenture.* Exhibit Nos. 9 - 12.

invest in the reissued CLO-3. It completed that process on January 26, 2018. On or about January 29, the Bondholders of the reissued CLO-3 agreed to purchase approximately \$375 million of new bonds issued by the reissued CLO-3. The \$375 million from the purchase of the new bonds would in turn be used to pay-off the old Bondholders in the original CLO-3. Collectively the foregoing process is referred to as the “Reissuance of CLO-3”.

34. *At this point in time, the transfer of the CMA from ACIS, LP to the New Collateral Manager, is the sole remaining formality before closing of the Reissuance of CLO-3 can occur.*<sup>9</sup> This is the transaction that Terry argues should require compliance with Section 363 of the Bankruptcy Code, and not be completed by Acis LP in accordance with Section 303(f) of the Bankruptcy Code.

35. But, based on Acis’ fiduciary duty to CLO-3’s Equity Holders, it must execute the transfer.<sup>10</sup> To do otherwise would be to put its interests before those of the CLO-3 Equity Holders. Acis has been instructed to execute the transfer of the CLO-3 Management Agreement to the New Collateral Manager. Holding-up the assignment of the CLO-3 Management Agreement will not result in Acis receiving any more value or funds. Rather, failing to act in the best interest of the CLO subjects Acis to liability to CLO-3, its Bondholders, and its Equity Holders.

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<sup>9</sup> The CMA may be assigned by either Acis or CLO-3 if certain requirements are met. Specifically, Acis may not assign any of the management agreements “without the written consent of the Issuer, at least a Majority of the Subordinated Notes . . . and at least a Majority of the Controlling Class.” CMA § 14(a). Likewise, the Issuer may not assign a management agreement “without the prior written consent of [Acis].” *Id.* § 14(c).

<sup>10</sup> As a registered investment advisor, Acis is bound to act in accordance with the Investment Advisors Act of 1940 (the “IAA”). Under the IAA, it is “unlawful for any investment advisor . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” IAA § 206. Section 206 has since been interpreted as establishing “a statutory fiduciary duty for investment advisers to act for the benefit of their clients, requiring advisers to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients.” *S.E.C. v. Treadway*, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006) (internal quotations omitted).

#### D. Terry's bad-faith litigation gamesmanship to block the Reissuance of CLO-3

36. Terry completely understands the foregoing reissue process, why it is necessary, and the devastating consequences of the reissuance not closing. Terry launched CLO-3, set up its structure, and managed its portfolio for several years. Moreover, never in the history of the CLO industry has a CLO reissuance progressed to the point of funding, and then not closed. The new Bondholders already have committed to buy \$375 million in bonds, the old Bondholders already have been assured they will be paid off, and the CLO-3 Equity Holders already have been assured that their investment will not face liquidation.

37. Knowing this, Terry sought to leverage the situation. On January 24, he filed an application for a TRO to, among other things, prevent Acis from assigning the CMA. The TRO was supported by a declaration from Terry that contained materially misleading statements and omissions, and outright falsehoods. The state court conducted a hearing that resulted in Acis and Terry reaching a short-term agreement that would remain in place until the temporary injunction that was scheduled to be heard within the week. Specifically, Acis agreed in the state court to not transfer the CMAs or remove Acis as manager until the temporary injunction hearing. Acis also informed the state court that the Reissuance of CLO-3 was in progress and, therefore, it was important to have the temporary injunction heard as soon as possible. The temporary injunction hearing was originally scheduled for February 1.

38. On January 29, Terry filed a supplemental TRO, also supported by a declaration from Terry, that Acis "*had transferred*" management of CLO-3 to a Highland entity. The TRO and Terry's supporting declaration, once again, were false. Acis had *not* transferred management of CLO-3 to a Highland entity as Acis had agreed not to transfer such rights until the temporary injunction hearing and had honored that agreement.

39. Also, on January 29, Terry filed an application for a turnover order and for appointment of a receiver (the “**Application for Receiver**”). In the Application for Receiver, Terry made false and unsubstantiated allegations that Acis had fraudulently transferred more than \$16 million in assets to affiliated entities after entry of the arbitration award in October 2016. As noted in the Introduction, under paragraph 15 of the CMA, *the appointment of a receiver would cause the CMA to be terminated and Acis to be removed as the Collateral Manager, thereby rendering the CMA worthless*. Yet, Terry inexplicably asked for the appointment of a receiver as just another litigation tactic designed to sow confusion regardless of the fatal consequences to Terry’s claims, i.e. his supposed attempts to preserve the value of the CMA.

40. At the January 29 hearing, the Court did not make any substantive rulings. Rather, at the request of Acis’s counsel and in light of the scheduled closing of the Reissuance of CLO-3 on February 1, the state court moved the temporary injunction hearing up from February 1 to January 31 to ensure that the hearing would take place prior to the scheduled February 1 closing. Also, the Court reconfirmed its prior orders that Terry would supply an expert report by noon on January 30 and that both Terry and his expert would appear for deposition for up to two hours’ each prior to the temporary injunction hearing that had been rescheduled for January 31 at 2:00 p.m.

41. On January 30, Terry provided his expert report as ordered. Later that day, Terry withdrew his expert, which resulted in the expert deposition being called off. However, Terry’s deposition remained scheduled to take place at 10:00 a.m. on January 31, the day of the temporary injunction hearing. Then, out of the blue and with no advance notice, Terry filed his Involuntary Petitions against Acis at midnight on January 30 and filed a “suggestion of

bankruptcy” with the state court. Terry’s counsel advised that in light of the bankruptcy filings that Terry would not appear for his court-ordered deposition on January 31 and would not appear at the temporary injunction hearing. In response, on January 31, Acis filed a motion to vacate the agreed order that the parties had entered on January 24 and advised Terry that Acis intended to present the motion to vacate to the state court at the 2:00 p.m. hearing.

42. The parties appeared at the 2:00 p.m. hearing on January 31. During the middle of argument, Judge Goldstein announced that Judge Jernigan was on the phone, which resulted in a recess of about one hour as Judge Goldstein took Judge Jernigan’s call. When Judge Goldstein returned to the bench after that call, she announced her view that the filing of the Involuntary Petitions deprived her of jurisdiction to make any further rulings pending action by the Bankruptcy Court.

#### **E. Closing of the Transaction is rescheduled from February 1 to February 13**

43. CLO-3 has been able to move the closing date for the Transaction from February 1 to February 13. However, this is a short-term fix that demands a permanent solution. The very pendency of these involuntary cases severely impacts CLO-3’s ability to ensure that all of the constituent parties remain committed to the transaction. Each day that passes creates greater risk for this \$420 million transaction. The new Bondholders will grow nervous about the unprecedented delay. The ratings agencies, law firms offering opinion letters, and various trustees have refused to act in the shadow of a potential bankruptcy stay. Indeed, for the Transaction to go forward on February 13, it must “price” five business days in advance, on February 8; and the pendency of these Involuntary cases likely will prevent pricing – which will likely quash the Transaction before the February 13<sup>th</sup> closing date. And the longer the

Transaction waits, the more likely that changing market conditions, such last Friday's precipitous stock market fall, will cause parties to reconsider if they want to enter into the Transaction at the previously negotiated prices. Absent the denial of the 303(f) Motion and the granting of the Motions to Dismiss,<sup>11</sup> the Reissuance of CLO-3 may never close,<sup>12</sup> to the detriment of the CLO-3 Equity Holders and Bondholders to whom Acis owes a fiduciary duty.<sup>13</sup> However, it is beyond question if the assignment of the CMA is not executed prior to February 13, CLO-3 will be called, its basket of loans liquidated, and the CLO-3 Equity Holders and other parties will incur tens of millions of dollars in losses.

44. The CLO-3 Indenture provides that the Equity Holders may "call"—*i.e.*, force the liquidation of—CLO-3 through an optional redemption of the outstanding notes. Specifically, a majority of the Equity Holders may initiate an optional redemption "on any Business Day after the Non-Call Period." CLO-3 Indenture § 9.2(a). Exhibit No. 7. The Non-Call Period for CLO-3 ended in February 2016. CLO-3 Indenture § 1.1. Exhibit No. 7. After being notified of an optional redemption, "the Portfolio Manager [Acis] in its sole discretion shall direct the sale (and the manner thereof) of all or part of the Collateral Obligations and other Assets." *Id.* § 9.2(b).

45. Even if Acis subsequently escapes bankruptcy and the appointment of a receiver, the Equity Holders in CLO-3 will nonetheless issue an optional redemption, thereby liquidating

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<sup>11</sup> In connection with the Motions to Expedite the Hearing on the Motions to Dismiss (which will be considered by the Court current with the 303(f) Motion), Acis is filing a Supplemental Brief, in support of the expedited consideration. As noted therein, it is not enough to simply deny the 303(f) Motion, thus permitting Acis to continue operations, unrestricted by Section 363 of the Bankruptcy Code, until an Order for Relief is entered or the Involuntary Cases are dismissed, as, and most important, the mere existence of the Involuntary Petitions against Acis is interfering with and causing damage to all of the CLO's managed by Acis.

<sup>12</sup> As noted in Paragraph 43, a failure to close the Reissuance of CLO-3 does not result in the continued operations as Collateral Manager by Acis. Rather, Acis is done and CLO-3 is liquidated. Thus, the *hold-up* by Terry of the Reissuance of CLO-3 has no utility for Acis, Terry or any other creditor of Acis.

<sup>13</sup> Each week the transaction is delayed costs the Equity Holders between \$50,000 and \$100,000.

all CLO-3 assets. Under such a scenario, the CMA will automatically terminate upon “the liquidation of the Assets and the final distribution of the proceeds of such liquidation to the Holders.” CMA § 13(a)(ii).

46. What appears to be lost on Terry is that regardless of whether the Reissuance of CLO-3 occurs, Acis’s fate is sealed. In short order, Acis will no longer be the Collateral Manager for CLO-3. Either the Collateral Management Agreement will be transferred pursuant to a reissuance or it will expire when CLO-3 is called and liquidated.

47. Furthermore, and as previously discussed, even if Acis is prohibited from transferring the Collateral Management Agreement, Acis will nonetheless be terminated as Collateral Manager due to (1) the bankruptcy filing, (2) a receivership requested by Terry in state court, or (3) Acis’s inability to provide management services as a result of the Highland Servicers exercising their contractual right to refuse to continue to provide services to Acis under the Sub-Advisory Agreement and Shares Services Agreement. The delay or even prevention of the assignment of the CMA to the New Collateral Manager will not result in more assets owned by Acis, and, in fact, will increase the claims against Acis (not to mention the forthcoming claims against Terry) for its breach of fiduciary duties owed to CLO-3, its Bondholders and the CLO-3 Equity Holders.

### **III.** **OBJECTIONS TO THE 303(f) MOTION**

48. The relief Terry seeks in the 303(f) Motion has no basis in law or fact and is nothing more than the latest maneuver in his scheme to exert pressure on Acis (and Highland) by jeopardizing the closing of the Reissuance of CLO-3.

49. As set forth in the Motions to Dismiss, Terry has improperly invoked the jurisdiction of this Court and did so in bad faith. Allowing Terry to compound those abuses by imposing on Acis the requirements of Section 363 of the Bankruptcy Code would not only be inequitable, but also has the potential to cause millions of dollars of damage to multiple parties, including creditors of Acis or affiliates thereof. Moreover, it would be inappropriate for this Court to condone such abuses by modifying Section 303(f) before this Court has considered the propriety of Acis being subject to Title 11 cases.

**A. Section 303(f) Permits the Alleged Debtors to Operate Unencumbered During the Gap Period**

50. Section 303(f) provides:

“Notwithstanding Section 363 of [the Bankruptcy Code,] except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.”

51. In the *Texas Rangers* case the Court confirmed the scope and rationale of Section 303(f) by quoting from *Consolidated Partners Inv. Co. v. Lake*, 152 B.R. 485, 490 (Bankr. N.D. Ohio 1993):

By virtue of § 303(f), during the gap period, the Debtor was authorized to continue such operations until an order for relief was entered as though no involuntary petition had been filed. The rationale for allowing the debtor to operate during the involuntary gap period is that prior to the entry of an order for relief, the subject of an involuntary petition should not be adversely affected by the case.”

*In re Texas Rangers Baseball Partners*, 434 B.R. 393 ( Bankr. N.D. Tex. 2010).

52. In the 303(f) Motion, Terry cites two cases for the proposition that “courts have imposed restrictions on an involuntary gap debtor’s operations to preserve and protect assets;

especially where there is a concern that a debtor may dispose of assets for less than fair value or dismantle a business for the private gain of its principals.” 303(f) Motion, at ¶¶ 18-19; *In re Tex. Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010); *Wilson v. Davis (In re Wilson)*, 62 B.R. 42 (E.D. Tenn. 1985).

53. Terry’s characterization and attempts to analogize the facts of those cases is unavailing. First, in the *Wilson* case, the court did not modify Section 303(f), but simply observed that because Section 303 permits an involuntary debtor to use, acquire, or dispose of property through the time the order for relief is entered (as opposed to through the date of the involuntary filing, which the appellee had argued), that the proper date for determining the scope of an involuntary debtor’s exempt property was the date on which an order for relief was entered. *Id.* at 45-46.

54. In *Texas Rangers* the Court abrogated Section 303(f), but, the main reason for doing so was that the alleged debtors’ sole asset was *itself* a debtor in a *voluntary* chapter 11 case and that it was appropriate to impose on the involuntary debtors the same fiduciary duties as a debtor in possession because of such ownership structure. 434 B.R. at 404-405. Indeed, the Court acknowledged that section 303(f) generally permits an involuntary debtor to “proceed without court oversight[,] . . . so long as [its] conduct can be justified under the business judgment rule.” *Id.* at 405. Moreover, as acknowledged by Terry, the Court’s conclusion was very much “based on the facts and circumstances of the case.” 303(f) Motion, at ¶ 19.

55. The *Texas Rangers* Court was further concerned that the alleged debtors were not operating consistent with the fiduciary duties of a debtor-in-possession in the gap period. Thus, the Court imposed the obligations of Section 363 of the Bankruptcy Code on the alleged debtors.

Terry makes no comparison of the facts of that case to the facts of this matter in support of his 303(f) Motion – and he cannot.

56. Here, Acis is operating consistent with both Acis’s fiduciary duties and the industry trend of almost 140 CLO reissuances. As noted above, blocking the Transaction benefits neither Acis nor its creditors. In fact, the liabilities undertaken from a failure to comply will surely injure Acis, and its creditors. Further, to cause the assertion of claims against Acis is contrary to its fiduciary duties to its creditors and third parties.

57. In connection with the assignment of the CMA as part and parcel of the Reissuance of CLO-3, there is no evidence to suggest that Acis is not acting in a fashion consistent with the fiduciary responsibilities of a debtor-in-possession (were Acis to become debtors-in-possession at a later date). Rather, the unsupported allegations by Terry of pre-petition transactions undertaken by Acis fail to demonstrate in any regard that the assignment of the CMA to complete the Reissuance of CLO-3 is inappropriate.

58. As demonstrated above, Acis is, by assigning the CMA to the New Collateral Manager, performing exactly as is required of it and is complying with its fiduciary duties to CLO-3. To do otherwise would be a breach of its fiduciary duties as well as cause significant damage to innocent third parties, all of which may assert claims against Acis. Thus, by complying with its fiduciary duties to CLO-3, Acis is also complying with its fiduciary duties to its creditors (if Acis were to become debtors-in-possession).

59. The drastic remedy of imposing upon Acis obligations to comply with Section 363 during the gap period makes no sense when what is being undertaken by Acis is exactly what is in the best interests of all interested parties.

**B. Terry’s “Fraudulent Transfer” Argument is Based on an Incorrect Understanding of the CMA and the Law**

60. Boiled down to its essence, Terry’s “fraudulent transfer” argument asserts the following positions: (i) the CMA (the management agreement by which Acis manages CLO-3) is a valuable asset of Acis; (ii) Acis proposes to transfer that valuable asset to the New Collateral Manager; and (iii) the New Collateral Manager is not providing anything to Acis in exchange for the transfer of the CMA. Thus, Terry argues, the transfer of the CMA eliminates a valuable asset of Acis for no consideration.

61. The flaws in Terry’s “fraudulent transfer” argument, however, are fatal. First, the CMA has no value, as Acis’s operation thereunder results in a loss to Acis (see ¶ 4, *infra*). Second, the contractual arrangement between Acis and CLO-3 (i.e., the CMA), which has been in place since 2014, provides, among other things, that Acis will perform various services, be compensated for those services, and, most relevant here, undertake actions as instructed by CLO-3, including, in this instance, assign the contract (the CMA). Simply put, the provisions of the CMA requiring the Collateral Manager (Acis) to perform as instructed – in this instance *to transfer the CMA*, is a negotiated contractual obligation among Acis and CLO-3 that has nothing to do with the transferee (i.e., the New Collateral Manager). From the outset of the relationship among Acis and CLO-3, Acis has performed in accordance with its fiduciary duties to the CLO, its Equity Holders and its Bondholders; and has been compensated all along by CLO-3 for such performance. It is not being instructed to make the assignment – which it must do consistent with its fiduciary duties.

62. The four year long relationship among Acis and CLO-3 has included performance of the *back and forth* obligations of the parties, which has resulted in consideration flowing to and among the parties. Thus, Acis has already been compensated in anticipation of performing

its instructed obligations including assigning the CMA in further of the Transactions. There is no consideration or value flowing from Acis to the New Collateral Manager. Rather, Acis continues to perform under the terms of its existing contract (i.e., the CMA) by making the assignment as instructed CLO-3.

63. Accordingly, Terry's suggestion that the New Collateral Manager is receiving a fraudulent transfer, and that Acis is making a fraudulent transfer, is not correct. Rather, Acis simply is performing in accordance with a contractual obligation, long-ago entered into, and for which it has been, and continues to be, compensated. The transfer is not anything more than Acis's compliance with the terms of a contract – the CMA. The foregoing analysis debunks any assertion that the assignment of the CMA, a ministerial act to be performed by Acis as part and of the Reissuance of CLO-3, is a fraudulent transfer.

### **C. The Involuntary Petitions are Factually Defective**

64. As described in detail in the Motions to Dismiss, the Involuntary Petitions are subject to dismissal because they are not supported by the requisite number of creditors needed to commence an involuntary chapter 7 case under Section 303 of the Bankruptcy Code. Section 303(b)(1) of the Bankruptcy Code states, in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724 (a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . . .

11 U.S.C. § 303(b).

65. Section 303(b) contains “very specific requirements concerning the number of entities that are necessary to commence an involuntary filing.” 2 COLLIER ON BANKRUPTCY ¶ 303.14 (16th rev. ed. 2013). Those requirements are based on the policy of preventing one or more “recalcitrant creditors” from filing an involuntary case to harass a debtor. Id.

66. Perhaps the most basic of all requirements is that section 303(b)(1) requires that when a debtor has twelve or more creditors, an involuntary case may be commenced only by three or more entities. *See In re Tichy Elec. Co., Inc.*, 332 B.R. 364, 372-73 (Bankr. N.D. Iowa 2005) (citations omitted); *Sipple v. Atwood (In re Atwood)*, 124 B.R. 402, 406 (S.D. Ga. 1991) (“If there are twelve or more qualifying claims, excluding voidable claims, the debtor cannot be forced into involuntary bankruptcy by fewer than three of the qualifying creditors.”). Where a debtor has twelve or more creditors and there are less than three petitioning creditors, the case must be dismissed—section 303(b)(1) leaves no room for Court discretion.

67. Terry has the burden of demonstrating that he has satisfied the numerosity requirement under section 303(b) of the Bankruptcy Code. *Pleas Doyle & Assocs. v. James Plaza Joint Venture (In re James Plaza Joint Venture)*, 67 B.R. 445, 448 (Bankr. S.D. Tex. 1986) (“It is plaintiffs’ burden to demonstrate the number of creditors of [the] debtor’s estate.”); *In re Charon*, 94 B.R. 403, 405-06 (Bankr. E.D. Va. 1988) (petitioner has “burden of proving that it satisfied the jurisdictional requirements of § 303(b)”; 2 COLLIER ON BANKRUPTCY ¶ 303.15, at 76 (15th ed. 1988) (“When fewer than three creditors file an involuntary petition, the

alleged debtor has the burden to raise the issue that it has 12 or more creditors by filing a list pursuant to Bankruptcy Rule 1003(b). The petitioning creditor then has the burden to show that the alleged debtor actually has fewer than 12.”). *Terry cannot do so.*

68. Here, it is beyond dispute that Acis has twelve or more creditors. Ironically, substantially all of Acis’s creditors became creditors because of the pending state court action between Terry and Acis. Specifically, Acis’s creditors include numerous law firms, professionals, and experts, which are creditors of Acis LP and also creditors of Acis GP due to its role as the general partner. Acis has filed with this Court a statement pursuant to Bankruptcy Rule 1003(b) listing such creditors. *See* Case No. 18-30264-SGJ7, Docket No. 7; Case No. 18-30265-SGJ7, Docket No. 7. Exhibit No. 13. Thus, Acis has more than twelve creditors, making clear that three creditors are required to force Acis into bankruptcy pursuant to section 303(b)(1).<sup>14</sup>

69. Based on the foregoing, the Involuntary Petitions lack the statutorily required number of petitioning creditors and therefore are subject to dismissal because they are factually defective.

70. The significance of the Motion to Dismiss cannot be over emphasized. As the fatal flaw in the Involuntary Petitions – only one creditor filed the Involuntary Petitions – is so obvious, this Court should not consider the 303(f) Motion, until and unless consideration has been given to the Dismissal Motion.<sup>15</sup>

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<sup>14</sup> In addition to filing the 1003(b) Notice, Acis has provided to Terry copies of the invoices, statements and other documents evidencing and supporting each of the creditors’ asserted claims. In addition, Acis also offered to present a witness to provide a deposition (including the offer of a deposition to be conducted over the just-concluded weekend) to testify to the creditors and their claims. Terry failed to respond to this offer.

<sup>15</sup> While the Motion to Expedite the Court’s consideration of the Motions to Dismiss is being considered concurrently with the Court’s consideration of the 303(f) Motion, Acis asserts that Dismissal of the Involuntary Petitions should be heard in *advance* of the 303(f) Motion. Were the blatant disagreed and failure to comply with Section 303(b) not as obvious as it is, this Court might consider the 303(f) Motion in advance of the Motions to

**D. The 303(f) Motion is a Blatant Attempt to Pressure Acis by Threatening the Reissuance of CLO-3, in Contravention of the Intent Underlying the Bankruptcy Code’s Involuntary Provisions.**

71. Terry’s bad faith litigation strategy is clear—he intends to exert pressure on Acis (and Highland) by jeopardizing the Reissuance of CLO-3. In furtherance of that ill-conceived objective, Terry filed the 303(f) Motion, which seeks to impose the requirements of Section 363 of the Bankruptcy Code before there has been an adjudication on the merits of the propriety or validity of the Involuntary Petitions. Granting the relief requested would run completely counter to the balance Congress attempted to strike in the Bankruptcy Code’s involuntary bankruptcy provisions.

72. The filing of an involuntary petition is a drastic remedy. *See Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014). In recognition of this fact, “Congress limited the circumstances in which creditors may force a debtor into such a proceeding.” *Id.* (citing, *inter alia*, 30 Cong. Rec. S7618 (daily ed. June 19, 1984)); *see In re Landmark Distributions, Inc.*, 189 B.R. 290, 306 (Bankr. D.N.J. 1995) (“The filing of an involuntary petition by a creditor must be carefully scrutinized by the Court because such an action is extreme in nature and carries with it serious consequences to the alleged debtor, examples of which include loss of credit standing, interference with general business affairs and public embarrassment.”) (citations omitted). Congress created the Bankruptcy Code to serve “as a shield for debtors, not a sword for creditors,” *In re R.N. Salem Corp.*, 29 B.R. 424, 429 (S.D. Ohio 1983), and even the good-faith filing of an involuntary petition creates onerous circumstances for an alleged debtor. *Schmid v.*

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Dismiss. However, the immediately apparent flaw in the Involuntary Petitions warrants consideration of the Motions to Dismiss first.

*Yorke (In re Reid)*, 773 F.2d 945, 946 (7th Cir. 1985) (the filing of an involuntary petition is “an extreme remedy with serious consequences to the alleged debtor”) (citations omitted).

73. Balancing the harshness of the possibility of an entity being put into bankruptcy against its will is the protection afforded by Section 303(f) of the Bankruptcy Code. Recognizing that an alleged debtor should be afforded due process and its day in Court before being required to abide the restrictions the Bankruptcy Code imposes on its operations, Section 303(f) allows an alleged debtor to operate free of those restrictions pending an adjudication of the involuntary petition. The presumption that an alleged debtor should be free to operate its business without restriction pending adjudication of an order for relief is even more critical when the petitioning creditor, like Terry here, has acted alone in an attempt to gain an improper tactical advantage in a longstanding two-party dispute in state court.

74. As set forth in the Motion to Dismiss, the Involuntary Petitions are blatant examples of forum shopping. Terry filed the Involuntary Petitions literally on the eve on an evidentiary hearing in the state court that Terry knew would have resulted in Acis being free to close the Reissuance of CLO-3. Rather than participate in that hearing (and sit for the deposition that was to precede that hearing), Terry attempted a “Hail Mary pass” and precipitously attempted to transfer the venue of his dispute with Acis to this Court. Having done so, Terry should be forced to await the adjudication of the merits of the Involuntary Petitions (already the subject of the Motions to Dismiss, filed less than 24 hours after the Involuntary Petitions themselves) before being granted relief that is akin to a pre-determination that the Acis entities should be adjudicated debtors. To hold otherwise would offend the balancing Congress built into Section 303 and would offend notions of equity and due process.<sup>16</sup>

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<sup>16</sup> As the Motions to Dismiss demonstrate, Acis asserts that the Involuntary Petitions suffer from fatal flaws, both because the numerosity requirement of Section 303(b)(1) is not met and because the filings were made in

**IV.  
CONCLUSION**

WHEREFORE, for the reasons set forth herein, Acis respectfully requests that the Court enter an Order denying the Motion and granting such other relief as the Court deems just and proper.

Dated: February 5, 2018

Respectfully submitted,

By: /s/ Michael D. Warner

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*Attorneys for Acis Capital Management,  
L.P. and Acis Capital Management GP, LLC*

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bad faith. At a minimum, the relief Terry seeks in the 303(f) Motion should await this Court's adjudication of the Motions to Dismiss. At most, the 303(f) Motion should be denied, without prejudice to Terry's right to seek the same relief if these involuntary cases proceed beyond Acis' Motions to Dismiss.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing *Joint Objection of Alleged Debtors to Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Impose, inter alia, 11 U.S.C. 363* was served upon all parties that are registered to receive electronic service through the court's ECF notice system in the above cases.

By: /s/ Michael D. Warner  
Michael D. Warner

**EXHIBIT K**

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 18-30264-sgj7
	)	Dallas, Texas
ACIS CAPITAL MANAGEMENT, L.P.,	)	
	)	
Alleged Debtor.	)	February 7, 2018
	)	9:36 a.m.
-----	)	
	)	
ACIS CAPITAL MANAGEMENT GP, LLC,	)	Case No. 18-30265-7-sgj7
	)	
Alleged Debtor.	)	
	)	
-----	)	

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL  
MANAGEMENT, L.P. (9)

AS TO CASE NO. 18-30265-7-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL MANAGEMENT  
GP, LLC (9)

BEFORE THE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT

Transcription Services:	eScribers, LLC
	352 Seventh Avenue
	Suite #604
	New York, NY 10001
	(973) 406-2250

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.  
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19

20 Also Present:

JOSHUA TERRY  
Petitioning Creditor

21

22

SCOTT B. ELLINGTON, ESQ.  
General Counsel of Highland  
Capital Management

23

24

25

Colloquy

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1 MS. PATEL: -- I haven't put on --

2 THE COURT: You may have a witness on that if it --

3 MS. PATEL: I don't know what their evidence --

4 THE COURT: Okay.

5 MS. PATEL: -- is going to be, so I may very well,  
6 yes.

7 THE COURT: All right. Well, then let's go to the  
8 other side. To expedite things, I think I made clear but  
9 maybe I didn't make clear, Mr. Cruciani, your witness can be  
10 combined testimony in response to the 303(f) as well in  
11 support of your motion to expedite. And so --

12 MR. CRUCIANI: Okay. Thank you, Your Honor. So Mr.  
13 Ellington will testify to both.

14 THE COURT: Okay.

15 MR. CRUCIANI: As relates to the motion to expedite,  
16 the actual substantive testimony on our motion to dismiss will  
17 be primarily Mr. Leventon; I understand that was kind of the  
18 next step, but that's not something we'll be doing for this  
19 particular motion, right?

20 THE COURT: Correct.

21 MR. CRUCIANI: Okay.

22 THE COURT: Um-hum.

23 MR. CRUCIANI: Yes, ma'am.

24 THE COURT: All right. So it's Mr. Ellington? Okay,  
25 welcome. If you could approach the witness stand.

Scott Ellington - Direct

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1 All right, please raise your right hand.

2 (Witness sworn)

3 THE COURT: All right, please take a seat.

4 THE WITNESS: Thank you.

5 THE CLERK: I will get them and come back here.

6 MR. CRUCIANI: Okay.

7 THE CLERK: It's very directional.

8 MR. CRUCIANI: Okay. Thank you, ma'am.

9 DIRECT EXAMINATION

10 BY MR. CRUCIANI:

11 Q. Please state your name for the record.

12 A. Scott Ellington.

13 Q. What is your position, Mr. Ellington?

14 A. I am the general counsel, chief legal officer, and  
15 partner at Highland Capital Management, L.P.

16 Q. Okay. I'd like to start with just a few things we just  
17 heard from Mr. Terry.

18 A. Okay.

19 MR. CRUCIANI: Let's put up, Omar, slide 4, please.

20 Q. Recall Mr. Terry just testified that the reason Acis is  
21 in this structure was due to the toxic brand name of Highland  
22 back in the 2012 time period?

23 A. Yes, I do.

24 Q. Now, fast-forward; today. What is, based on your  
25 dealings with the marketplace, the nature of the Acis brand

1 today --

2 MR. SHAW: Your Honor, I'm going to object on  
3 foundation. If he's going to testify that his knowledge  
4 regarding the perception is based upon hearsay, people are  
5 telling him what the perception of Acis is, it's rank hearsay.  
6 So if the basis is what others are telling him, it's hearsay  
7 and it's not admissible; there's no exception to that. So --

8 MR. CRUCIANI: It's not offered to prove the truth of  
9 the matter asserted. Doesn't matter whether they in their  
10 heart of hearts believe it. It's just what's been  
11 communicated and how they respond to that.

12 THE COURT: Okay --

13 MR. SHAW: It's --

14 THE COURT: -- overruled.

15 MR. CRUCIANI: Okay.

16 THE COURT: I'll allow it.

17 Q. Do you deal with market participants in the CLO industry?

18 A. Yes.

19 Q. Give us a general overview of the nature of those  
20 dealings

21 A. Especially around these transactions, I've dealt directly  
22 with two investment banks and with the equity holders.

23 Q. Okay. And has the subject of the Acis brand name come up  
24 in those discussions?

25 A. Countless times.

1 Q. What has been communicated to you?

2 A. That it is so toxic that it's impossible to sell the  
3 bonds with Acis as the manager, that you would not be able to  
4 raise the equity and, due to this litigation and allegations  
5 that've been in the litigations and the press, by Mr. Terry's  
6 actions, that nothing can be associated with the Acis brand  
7 and be managed as a CLO or marketed as a CLO.

8 Q. Who has communicated that to you?

9 A. Goldman Sachs, equity holders, large law firms that do  
10 structured products, CLO work for a living, and Mizuho.

11 Q. What role was Goldman Sachs slated to have in this case?

12 A. They were the investment banker that was going to  
13 refinance these CLOs.

14 Q. Who is the current investment banker?

15 A. Mizuho.

16 Q. Why is Goldman Sachs not the investment banker?

17 A. They dropped out because of the Acis name and dealing  
18 with these Acis transactions.

19 Q. How did what you were hearing about the Acis name impact  
20 the decision of whether or not Acis would continue as the  
21 collateral manager in these ventures?

22 A. The bondholders, the -- and -- existing and purchasing,  
23 and the equity holders, existing and new equity holders, said  
24 categorically, with absolute certainty, if there's any  
25 relation to Acis, the Acis brand, the Acis structure, we have

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1 no interest in doing business with you at all.

2 Q. How were these -- how was this new reissue transaction  
3 marketed? What was the document that was sent to the  
4 investors?

5 A. Was called a circular, and it lays out -- it's  
6 essentially a term sheet of how the deal will look.

7 Q. Was there any discussion in the circular about who the  
8 collateral manager would be in the new deal?

9 A. Yes.

10 Q. Who was it?

11 A. Highland Capital Loan -- it's that HCLOM -- sorry,  
12 there's just so many names; I'd have to look at the chart.

13 Q. A Highland entity?

14 A. A Highland affiliate, correct, yes.

15 Q. Not Acis?

16 A. Correct.

17 Q. Is it important that these offering circulars be  
18 accurate?

19 A. They have to be.

20 Q. What are the penalties if they're not?

21 A. Securities fraud, negligent misrep., fraud in the  
22 inducement. I mean, it's severe.

23 Q. Okay. And so the information that the investors had --  
24 what information did they have at the time they're making  
25 their investment? What were they told as to who that

1 investment manager would be?

2 A. It would be a new entity per their request.

3 Q. What would be -- would it be of any concern to you -- and  
4 if so, how -- if they changed that after the investment  
5 decision was made in part (indiscernible)?

6 A. We'd have to go and redo the circular, go out and  
7 resolicit the bond and equity tranches. It -- it would  
8 essentially be a recasting of the entire deal, and then it  
9 looks like you don't have your ducks in a row. They're more  
10 likely to not fix.

11 Q. And then what rights would the new investors have to say,  
12 well -- say, now you're telling me there's a new -- Acis is  
13 back in the play, what rights would they have in terms of  
14 going forward or not?

15 A. Rescission, various breaches, you know, lost  
16 relationship, goodwill, brand again. I mean, it's -- it's a  
17 whole host of things, probably a lot that I couldn't even  
18 think of at the top of my head.

19 Q. Okay. Another thing -- let's go to Exhibit 7, the  
20 indenture, paragraph 8.3(e), which is page 164. This is what  
21 Mr. Terry and I just got done discussing. He pointed me to  
22 this in response to my question whether there was anything in  
23 the documents that gave the collateral manager effectively a  
24 veto right over the (indiscernible) transaction. Recall that  
25 discussion?

1 A. Correct.

2 Q. Bloomberg issued some media publications as well, right?

3 A. Correct.

4 Q. There was a Dealbreaker internet post about the dispute,  
5 right?

6 A. I remember that, yes.

7 Q. Right. And this issue with Mr. Terry having recorded  
8 while he was an employee of Highland was well known to the  
9 market, right?

10 A. I would assume so.

11 Q. So despite the fact that this is common knowledge that  
12 Mr. Terry did this, you have Mr. Covitz, who's running Acis in  
13 August of 2017, well after all this stuff comes out, saying  
14 that Acis still intends to issue new CLOs, right?

15 A. Yes, that was the plan.

16 Q. And Acis is risk-retention-compliant, right?

17 A. Yes.

18 Q. And Acis has been risk-retention-compliant?

19 A. As far as I understand, yes.

20 Q. Yet now, fast forward to October or November of 2017 into  
21 the new year in 2018, all of a sudden, this noise about Mr.  
22 Terry recording is what creates the toxic nature of the Acis  
23 brand; is that right?

24 A. No, I don't think that's -- the timing is right. I think  
25 the toxicity was there, but I think the effectuation was

1 actually around this mechanism.

2 Q. You're familiar with the news article that came out in  
3 The Wall Street Journal after the award was made public, when  
4 Mr. Terry went to confirm that award, right?

5 A. Yes, I do.

6 Q. But one of the things that's changed since Mr. Covitz  
7 makes this representation in this document that's posted on  
8 Highland's website about Acis' intent to issue new CLOs as  
9 Acis and now, is that we've got an arbitration award and we've  
10 got a judgment, right?

11 A. And we have third-party investors that said we don't want  
12 to be involved in this brand; and their equity is one of the  
13 reasons that new CLOs can be launched.

14 Q. I want to follow up on that. Those third-party  
15 investors, they never told Highland or Mr. Dondero or you or  
16 Mr. Covitz that in order for them to invest that they were  
17 going to bar this new entity -- this Highland Cayman entity or  
18 the Delaware new Highland CLO entity -- from paying for the  
19 transfer of these CMAs, right?

20 A. What do you mean by "paying for the transfers"?

21 Q. Paying some amount of consideration for Acis to transfer  
22 the management contract?

23 A. No, they just said we want things to be structured in  
24 this way or we're not investing.

25 Q. Right. They didn't say hey, we'll do the deal, but as a

1 condition of doing the deal, we want you to transfer these  
2 assets -- this collateral-management agreement from Acis to  
3 Acis Cayman; and we don't want you to pay -- we don't want  
4 Acis Cayman to pay a dollar for the transfer of that CMA?

5 A. Well, I think there's two questions. I'll try to address  
6 them both.

7 It was call the deal and terminate the CMAs or transfer  
8 the CMAs. That's question one. So yes, they not only  
9 necessitated, they demanded it.

10 How we paid consideration for those transfers to Acis,  
11 they didn't have any involvement in it.

12 Q. Right. I mean, again, I may be belaboring the point, but  
13 I think it's an important one. These investors' involvement  
14 is not an impediment to Acis receiving value in exchange for  
15 the transfer of the CMAs?

16 A. I disagree.

17 Q. Tell me why?

18 A. If they do not become investors or you cannot reset or  
19 refi, the deals will be called and therefore Acis' CMAs don't  
20 have any value.

21 Q. No, no, no. What I'm saying is, everything is the same,  
22 right? The transaction that's going forward on the 13th is  
23 the same. Everything. Right?

24 A. Wrong.

25 Q. No, no. This is -- a hypothetical, what I'm saying.

1 A. Oh, I'm sorry. Okay, I misunderstood.

2 Q. All right. Everything is going forward as is, right?

3 It's going to close on the 13th. There's going to be a  
4 transfer of the collateral-management agreement. There's  
5 going to be a reset. All these things are going to happen,  
6 right, just like you planned. The one variable that's changed  
7 is that instead of Acis receiving nothing for the transfer of  
8 the collateral-management agreement, is that Acis receives  
9 something for the transfer of the collateral-management  
10 agreement to a Highland affiliate.

11 A. Correct. But they weren't going to receive anything from  
12 a refi or a reset or a call anyway.

13 Q. I understand that.

14 A. Okay.

15 Q. But there's nothing that the investors are saying that  
16 stops Highland Cayman or Highland or anybody else giving Acis  
17 value for the CMAs.

18 A. As a directive from the investors; is that what you're  
19 asking me?

20 Q. Right.

21 A. No, they have not given that directive. Their only  
22 directive was call and get rid of Acis or get rid of Acis or  
23 we're not doing the deal through a reset.

24 Q. All right, so you said that when Acis was set up that --  
25 in 2011, that that was directly analogous to what this new

1 transaction that you're doing or that Highland and its  
2 affiliates are doing with regard to the reset and the  
3 transfers of the collateral-management agreement. Do you  
4 remember that?

5 A. Yeah, the idea of Acis and -- yes.

6 Q. Right.

7 A. Correct.

8 Q. Now, when --

9 A. A new brand.

10 Q. Right. Now, when Acis was set up, Highland had existing  
11 CLOs that it managed, right?

12 A. Correct.

13 Q. None of those existing collateral-management agreements  
14 from Highland were transferred as a part of the formation of  
15 Acis to Acis, right?

16 A. I don't recall, but I think Mr. Terry earlier said one  
17 CLO was taken over and managed by Acis. I just don't remember  
18 how it was effectuated, and I didn't remember that till he  
19 said it.

20 Q. But you don't know if that CLO was originally managed by  
21 Highland or if it was managed by some other third party?

22 A. I believe he said it was managed by Highland. But  
23 again --

24 Q. I --

25 A. -- Mr. Terry would know more than me. I just can't

1 bankers didn't want to be involved with the name.

2 THE COURT: All right, late '16 or early 2017. All  
3 right. Well, how then, were you all able to do the refi on  
4 CLO 2?

5 THE WITNESS: Well, because I think CLO 2 was before  
6 things got to the point where people would say no, because  
7 there was successive articles as things developed in the  
8 litigation.

9 THE COURT: Okay. When was CLO 2, the refi closed?

10 THE WITNESS: I believe it was closed on April, but  
11 they usually take several months to effectuate. So that  
12 was -- call it -- and these are just generalizations. But  
13 let's say you start on January 2017, you'll close March or  
14 April of '17. And that process is already ongoing, just like  
15 in these resets, things were ongoing.

16 THE COURT: Well, the name got toxic late 2016 or  
17 early 2017.

18 THE WITNESS: Correct. So you had a bank willing to  
19 do it, and then it got to the point to where they didn't want  
20 to be involved in ongoing litigation. The snowball just got  
21 larger.

22 THE COURT: Well, but April 2017, there was a refi  
23 with Acis as the portfolio manager on CLO 2.

24 THE WITNESS: Correct.

25 THE COURT: I'm trying to understand why was

1 everything fine and rosy in April 2002 (sic) to have Acis in  
2 there, even though its name had gotten toxic in late 2016 or  
3 early 2017, and now just no go, no one will touch it?

4 THE WITNESS: I don't think it was rosy. I think it  
5 was tolerable. And then as things got worse and there was  
6 more mud that was slung, it became intolerable.

7 And you also have the addition of the third-party  
8 investor coming in who gets to start calling the shots.

9 THE COURT: Okay. When was the decision made to do  
10 this refi on CLO 3?

11 THE WITNESS: That began back in the May/June time  
12 frame on that particular CLO, because that's when I got  
13 involved on the due diligence calls with the third-party  
14 investor. And it wasn't just about 3; it was about resetting  
15 them all.

16 THE COURT: All. All the others.

17 THE WITNESS: And then the actual structure, Your  
18 Honor, is what dictates why they were taken out of order, just  
19 the way they economically worked.

20 THE COURT: Okay. Um-hum. Um-hum.

21 So May/June of 2017, discussion of doing a refi on  
22 all of the five remaining?

23 THE WITNESS: Yes, with the new equity investor.  
24 Then they were able to dictate this is what we want the world  
25 to look like that we'll be sticking our 150 million dollars.

1 THE COURT: Okay. When did the offering circular go  
2 out for the one you want to close February 13th?

3 THE WITNESS: I don't know the exact date, but it was  
4 sometime last fall-ish. It may have been after that. I just  
5 don't recall. Because they would be drafted; they would be  
6 changed; you had Goldman doing some; then it got changed. If  
7 anyone knows the date -- I simply don't know the date.

8 THE COURT: Okay. This is a really big deal.

9 THE WITNESS: No, I know.

10 THE COURT: And you don't know the date?

11 THE WITNESS: That's -- I know. I just don't have  
12 this memorized. Does anybody know when the offer circular  
13 went out on 3?

14 THE COURT: You don't know?

15 THE WITNESS: I can't remember now.

16 THE COURT: It wasn't -- you don't know if it was  
17 before or after October 20th, 2017?

18 THE WITNESS: Oh, I think it was after. The circular  
19 goes out when everything else is finished in terms of this is  
20 what we're going to do; this is what the terms are going to  
21 look like; this is what the structure's going to look like.

22 THE COURT: Well, it had to be after this Exhibit 22,  
23 when Goldman is saying --

24 THE WITNESS: Oh, yes, it was after --

25 THE COURT: -- we're not going to do it.

**EXHIBIT L**

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IN THE UNITED STATES BANKRUPTCY COURT  
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	)	
Alleged Debtor.	)	March 23, 2018
	)	9:36 a.m.
-----	)	
	)	
ACIS CAPITAL MANAGEMENT GP, LLC,	)	Case No. 18-30265-sgj7
	)	
Alleged Debtor.	)	
	)	
-----	)	

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:  
[#80] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CLO HOLDCO, LTD., HIGHLAND CLO FUNDING, LTD., NEUTRA, LTD.;

[#81] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #80 MOTION TO INTERVENE) FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD.) FILED BY PETITIONING CREDITOR JOSHUA TERRY

[#87] OBJECTION TO (RELATED DOCUMENT(S): #80 EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD., #81 MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS, #80 MOTION TO INTERVENE) FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD.) FILED BY PETITIONING CREDITOR JOSHUA TERRY

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AS TO CASE NO. 18-30265-sgj7:  
[#77] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CLO FUNDING, LTD., HIGHLAND CLO FUNDING, LTD., NEUTRA, LTD.;

[#78] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY CLO FUNDING, LTD., HIGHLAND CLO FUNDING, LTD., NEUTRA, LTD.;

[#83] OBJECTION TO (RELATED DOCUMENT(S): #77 EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO FUNDING, LTD., #78 MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO FUNDING, LTD.) FILED BY PETITIONING CREDITOR JOSHUA TERRY

BEFORE THE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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1 November 3, 2017. And you'll see at the beginning paragraph  
2 the parties are Acis, Highland, and then an entity called  
3 Highland CLO Management, Ltd. with a acronym "HCLOM". Do you  
4 know the function or purpose of HCLOM?

5 A. Not -- not specifically.

6 Q. And there are a lot of acronyms here, so let me maybe  
7 help you out on this one if I may. I believe this was the  
8 entity designed to be the successor portfolio manager to Acis.  
9 Does that perhaps refresh your memory on it?

10 (Sneeze)

11 A. Bless you. Yes, okay.

12 Q. Okay, and let's go back to the signature page here. And  
13 there's your signature on behalf of Highland and on behalf of  
14 Acis. And then there's actually another signature here on  
15 behalf of Highland CLO Management, Ltd. I'm not sure if you  
16 can make out that signature or not. Do you know who's  
17 actually signing that? Can you tell?

18 A. No. I imagine it's one of the board members of that  
19 entity.

20 Q. And why is it that this Cayman entity has a -- is a -- is  
21 signing this agreement; do you know?

22 A. I believe -- I would -- I'm guessing it's a -- a  
23 requisite for a Cayman Island entity to have approval of the  
24 board member -- or a board member.

25 Q. Okay, and I see this is on behalf of the director, this

1 signature you see there at the bottom?

2 A. Yes.

3 Q. All right, now, this timing wise was entered about two  
4 weeks after the arbitration award. So first question is did  
5 you have any role in negotiating Exhibit 16?

6 A. No.

7 Q. What role, if any, did you play in connection with  
8 Exhibit 16?

9 A. Just final approval.

10 Q. Do you know -- do you have any understanding about what  
11 group of people would have been responsible for putting  
12 together the document -- for putting together the document?

13 A. Sure. Yeah, I mean, the general context is we'd been  
14 negotiating for months with a large institutional investor out  
15 of Boston to come in for approximately fifty percent of the  
16 ALF. And the investor came into fifty percent of the ALF  
17 based on a schedule of refining -- refining and redoing of the  
18 various different Acis transactions.

19 The refi -- the refining the whole operation of the ALF  
20 post the investor coming in from Boston was all dependent upon  
21 getting as far away from Acis and a new collateral manager as  
22 possible. And so this was part of that as far as I  
23 understand.

24 Q. To your understanding, was that institutional investor  
25 willing to invest if Acis remained as collateral manager?

1 A. No, the way it was described to me, which I believe and  
2 have no reason to disbelieve even at this point, is no  
3 investor or no underwriter wanted to have any legacy or  
4 reputational exposure to Acis, period.

5 Q. And again, this is sort of coming full circle. Highland  
6 had this problem '08, '09 period and now it's Acis having this  
7 brand period.

8 A. Yeah, I would describe it as different. I mean, Highland  
9 back in the day was performance related to real estate. You  
10 know, the Acis problem is terrorism around a former employee  
11 trying to reputationally tarnish in the press as much as  
12 possible a brand.

13 Q. Okay. Let's look at a couple of the whereas clauses here  
14 if we may, on the first page. The third whereas clause says,  
15 "Highland has notified Acis that Highland is unwilling to  
16 continue to provide support personnel and other critical  
17 services to Acis with respect to the CLOs." Did Highland have  
18 that right to do that?

19 A. Yes.

20 Q. And why was that Highland's position?

21 A. It -- it's under no obli -- it's under no obligation. As  
22 a matter of fact, the -- the only reason why it was at this  
23 point was to just facilitate the refinancings, you know, but  
24 it -- but it's under no obligation to provide services to a  
25 shell.

**EXHIBIT M**

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**COUNSEL FOR  
THE CHAPTER 11 TRUSTEE**

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**

§  
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§  
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§

**CHAPTER 11 CASES**

**Case No. No. 18-30264-SGJ-11)  
(Jointly Administered)**

**Expedited Hearing Requested**

**MOTION FOR 2004 EXAMINATION OF INVESTOR IN HIGHLAND CLO FUNDING,  
LTD. AND CERTAIN AFFILIATES THEREOF**

**TO THE HONORABLE STACEY G.C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Robin Phelan (the "Trustee"), the Chapter 11 Trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, the "Debtors" or "Acis"), the Debtors in the above-styled and numbered bankruptcy cases (the "Cases"), files this *Motion for 2004 Examination of Investor in Highland CLO Funding, Ltd. and Certain Affiliates Thereof* (the "2004 Motion"), and respectfully states the following:

## BACKGROUND

1. Acis LP is portfolio manager for certain collateralized loan obligations (“CLOs”) including: (i) Acis CLO 2013-1 LTD. (“CLO-1”), (ii) Acis CLO 2014-3 (“CLO-3”), (iii) Acis CLO 2014-4 LTD. (“CLO-4”), (iv) Acis CLO 2014-5 LTD. (“CLO-5”), and (v) Acis CLO 2015-6 LTD. (“CLO-6”). CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6 are collectively referred to herein as the “Acis CLOs.”

2. Acis LP manages the Acis CLOs through: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the “CLO-1 PMA”); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the “CLO-3 PMA”); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the “CLO-4 PMA”); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the “CLO-5 PMA”); and that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the “CLO-6 PMA”). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the “PMAs.” Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs.<sup>1</sup>

3. Highland CLO Funding, Ltd. (“HCLOF”), formerly known as Acis Loan Funding (“ALF”), is the holder of either all or the majority of the subordinated notes in each of the Acis CLOs, except for CLO-1, in which it possesses a blocking position.

4. HCLOF has taken many positions throughout the course of this case that appear to be economically irrational, contrary to the best interests of HCLOF and its investors, and

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<sup>1</sup> See *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the “Opinion”) at page 13.

instead designed to ensure the destruction of the Acis CLOs so that creditors of Acis, and Joshua Terry in particular, receive nothing or as little as possible from the Acis bankruptcy estate. Recently,<sup>2</sup> William Scott, the director of HCLOF, testified that he wants to “reset” the Acis CLOs to bring them in line with current market interest rates and that the inability to do the reset is causing damage to HCLOF in the amount of approximately \$295,000 per week.<sup>3</sup> Likewise, J.P. Sevilla, in-house counsel for Highland Capital Management, LP (“HCM,” and together with its affiliates, including HCLOF, the “Highlands”), recently swore in an affidavit filed in Guernsey that a reset transaction, which involves changing the interest rate, reinvestment terms and non-call period in the Acis CLOs, would be extremely beneficial to HCLOF because it would “create greater cash at the end of the payment waterfall for the holder of the sub-notes,” and was cheaper and easier to accomplish than creating a new CLO or doing a refinancing transaction because the existing collateral pool stays the same, a new issuer is not required, and the legal expenses are much lower.<sup>4</sup> Mark Okada, a principal and 25% owner of HCM, testified that not doing a reset was “a bad thing” and that “we don’t want that.”<sup>5</sup> Finally, counsel for Acis (while it was receiving shared services and sub-advisory services from HCM) likewise concurred that it “makes no sense” for an equity investor to just sit back and watch its dividend diminish without requesting a reset transaction.<sup>6</sup>

5. To address HCLOF’s request, the Trustee’s Second Amended Joint Plan (the “Plan”) [Docket No. 612] provides for such a reset to be performed by the Reorganized Acis and

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<sup>2</sup> As the Court will recall, HCLOF previously requested a liquidation of the Acis CLOs after the entry of the order for relief, which the Court enjoined, but then vigorously contested the Trustee’s original plan which would have resulted in HCLOF receiving mid-NAV plus 25 basis points, an amount well in excess of the liquidation value of the subordinated notes.

<sup>3</sup> Transcript, July 6, 2018, p. 136.

<sup>4</sup> Affidavit of J.P. Sevilla, p. 6.

<sup>5</sup> See Transcript, Involuntary Trial, March 23, 2018 at pp. 38-39.

<sup>6</sup> See Transcript, Involuntary Trial, February 21, 2018, pp 74-75.

its sub-advisor, Brigade Capital Management, LP (“Brigade”). Although Mr. Scott, Mr. Sevilla, and all of the experts in this case have testified that pursuing a reset transaction would make the Acis CLOs more profitable to HCLOF, HCLOF has indicated that it will not reset the Acis CLOs with the Reorganized Acis and Brigade under the Plan. Instead, despite the substantial potential losses to HCLOF and its investors, it appears that HCLOF will wind-down the Acis CLOs by declining to reset them prior to the expiration of their respective reinvestment periods which, at least for Acis CLO-3, will expire in a few short months, on February 1, 2019.

6. Such a decision by HCLOF would “make no sense” and be contrary to its own best interests. Although HCLOF/ALF was at one time wholly-owned by an affiliate of Highland, it did an offering memorandum in November 2017 and, as a result, is now owned 49.985% by certain affiliates of a large investor and manager of private equity funds (“Investor”),<sup>7</sup> and 50.015% by affiliates (49.0153%) and employees (0.9997%) of Highland. Despite its large ownership percentage in HCLOF and the alleged millions in losses that will result if the Acis CLOs are not reset to make them consistent with prevailing market conditions, the Investor has not yet appeared in this case or taken any position in this bankruptcy case. Further, the Trustee does not have any information as to whether the Investor would be amenable to pursuing a reset with Reorganized Acis and Brigade following confirmation of the Plan. Because time is short if CLO-3 is to be reset before the end of its reinvestment period, the Trustee needs to obtain information from the Investor immediately.

7. During the involuntary trial, a number of representations were made to the Court by counsel for Acis (while HCM was its shared services provider and sub-advisor) that the Investor only invested in HCLOF on the condition that Acis would not have anything to do with

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<sup>7</sup> Although the identity of the Investor and the amount of its investment in HCLOF has previously been disclosed on the record in this case, the Trustee is taking an ultra-conservative approach in this Motion because certain of the documents reflecting the identity of the Investor in HCLOF were marked as “confidential” in discovery.

the Acis CLOs going forward, and that the Investor would demand its money back if a reset transaction was done with Acis.<sup>8</sup> Likewise, Scott Ellington, general counsel for HCM, testified that the new equity holders (Investor) said, with absolute certainty, that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO.<sup>9</sup> Mr. Ellington also testified that, because it would be putting in additional capital in connection with any reset CLOs, the Investor had the ability to “start calling the shots” and dictate the terms of any reset transactions.<sup>10</sup> Finally, Mr. Okada testified that a reset transaction could not be performed by Acis because the market would not accept Acis as a portfolio manager and Acis was no longer risk-retention compliant.<sup>11</sup>

8. However, circumstances have changed dramatically in the six months since the conclusion of the involuntary trial, and the harbingers of doom predicted by the Highlands have not come to fruition. For example, the Court found that the Highlands’ self-serving allegations regarding the Acis brand being toxic were not credible or convincing because Acis CLO 2017-7, Ltd. closed in April 2017 with Acis as the portfolio manager.<sup>12</sup> Further, the operations of Acis LP have stabilized in bankruptcy and Acis LP, with the assistance of Brigade, has not only continued to perform its duties under the PMAs, but improved the condition of the CLOs through the acquisition of additional loans. In addition, although the Highlands took actions that rendered Acis non-complaint with certain risk-retention requirements,<sup>13</sup> such requirements were

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<sup>8</sup> See Transcript, Involuntary Trial, February 6, 2018 at p. 46.

<sup>9</sup> See Transcript, Involuntary Trial, February 7, 2018 at pp. 56-57.

<sup>10</sup> See Transcript, Involuntary Trial, February 7, 2018 at p. 226.

<sup>11</sup> See Transcript, Involuntary Trial, March 23, 2018 at p. 53.

<sup>12</sup> See Findings of Fact and Conclusions of Law, Docket No. 118, at p. 18.

<sup>13</sup> Id.

determined to be inapplicable to CLO managers and such decision was not appealed by regulators to the Supreme Court.<sup>14</sup> As a result, there are neither reputational issues nor any other impediments to the ability of the Reorganized Acis, with the assistance of Brigade, to both perform the resets and continue to serve as the portfolio manager of any reset Acis CLOs. Finally, Brigade has explored the market and believes that the Reorganized Acis and Brigade will be able to reset the Acis CLOs on terms that improve the economics of the Acis CLOs if a reset is requested by HCLOF in a timely fashion.

9. The Trustee needs information from the Investor regarding whether its purported refusal to doing a reset with Acis was based on the erroneous assumptions articulated during the involuntary trial that Acis would not be able to perform the resets due to risk-retention issues, unsubstantiated reputational issues, or an alleged inability to accomplish the resets without the assistance of the Highlands. None of these purported concerns exist to impair the ability of the Reorganized Acis and Brigade to perform a reset. Further, although these matters were alleged by the Highlands, no one from the Investor ever testified during the involuntary trial. As a result, the Trustee needs to examine the Investor to determine whether the Investor ever actually had such concerns regarding proceeding with Acis. The Trustee also needs information regarding whether the Investor presently has any concerns about pursuing reset transactions with the Reorganized Acis and Brigade under the Plan now that Acis has been able to successfully serve as the portfolio manager for the Acis CLOs on a post-petition basis and there are no impediments to the ability of the Reorganized Acis and Brigade to pursue a reset on the Acis CLOs. This is particularly necessary given Mr. Ellington's previous sworn testimony that the Investor is the party calling the shots for HCLOF with respect to any reset transactions. Time is also of the essence as the reinvestment period for Acis CLO-3 will expire on February 1, 2019.

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<sup>14</sup> *Loan Syndications & Trading Ass'n v. SEC*, 882 F.3d 220, 229 (D.C. Cir. 2018).

10. Finally, although the Highlands have represented to the Court that the Investor is an unrelated and independent third party, a decision by an unrelated and independent third party to refuse the opportunity to reset the Acis CLOs with the Reorganized Acis and Brigade “makes no sense” and would appear to be economically irrational given that Brigade has at least as good of a track record (if not a better track record) than does Highland in relation to its CLO business. As a result, the Trustee seeks information regarding the relationship, if any, between the Investor and the Highlands.

### **RELIEF SOUGHT AND GROUNDS THEREFOR**

11. The Trustee requests entry of an Order, pursuant to Section 105(a) of the Bankruptcy Code and Rule 2004, authorizing and directing (i) the production of documents by the Investor in response to the document requests attached as **Exhibit A**; and (ii) testimony by one or more corporate representatives of the Investor through depositions, including testimony relating to the matters set forth in **Exhibit B** attached hereto. A copy of the Trustee’s proposed order granting the relief requested herein is attached as **Exhibit C** hereto.<sup>15</sup>

12. The Rule 2004 information requested in this 2004 Motion will provide Debtor with information it needs to understand (i) the Investor’s intentions at the time it invested in HCLOF, (ii) the Investor’s position regarding doing the reset transactions with Acis prior to the entry of the order for relief on April 13, 2018, (iii) the Investor’s current position regarding whether HCLOF should do a reset with the Reorganized Acis and Brigade, (iv) whether and to what extent the Investor is “calling the shots” for HCLOF, and (v) the relationship, if any, between the Investor and the Highlands.

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<sup>15</sup> Again, out of an abundance of caution, the identity of the Investor is not disclosed in the proposed order. At the hearing on the Motion, the Trustee will ask the Court to determine whether any order on the Motion should either identify the Investor, identify but redact the name of the Investor, or be entered under seal.

13. Bankruptcy Rule 2004 allows a party in interest, including the Trustee, to examine any entity regarding matters that may affect the administration of the Debtors' estate. *See, e.g., In re Summit Corp.*, 891 F. 2d 1, 5 (1st Cir. 1989). Bankruptcy Rule 2004 also allows the Court to order parties-in-interest to produce documents. *See In re Correra*, No. 16-30728-SGJ-7, 2018 Bankr. LEXIS 2498, \*14 (Bankr. N.D. Tex. 2018).

14. It is well settled that a Rule 2004 examination is broad in scope. *See, e.g., In re Washington Mutual, Inc.*, 408 B.R. 45, 49 (Bankr. D. Del. 2009) ("[t]he scope of a Rule 2004 examination is unfettered and broad.") (internal quotation marks omitted). "Third parties are subject to examination pursuant to Rule 2004 if they have knowledge of the debtor's affairs." *Correra*, 2018 Bankr. LEXIS 2498 at \*60 (citing *In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983)). "Courts tend to be reluctant to allow 'escape from a Rule 2004 examination unless the party can show that the examination' would be 'oppressive or burdensome.'" *Id.* at \*60 (citing 9 Collier On Bankruptcy ¶ 2004.01[8] (Richard Levin et al. eds. 16th ed.)).

15. The Trustee does not propose to use the examination for any improper purpose, such as to annoy, embarrass or oppress the party being examined. *See In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991).

16. The requested information in **Exhibit A**, and the deposition topics reflected on the attached **Exhibit B**, relates to, among other things, the Investor's intentions at the time it invested in HCLOF, the Investor's prior position regarding pursuing a reset of the Acis CLOs with Acis as the portfolio manager, the Investor's current position regarding pursuing a reset transaction with the Reorganized Acis and Brigade under the Plan, whether the Investor is actually calling the shots for HCLOF, and the relationship between the Investor and the

Highlands. The requested information is within the scope of Bankruptcy Rule 2004 because it relates to the Plan and the administration of this bankruptcy case.

**WHEREFORE, PREMISES CONSIDERED**, the Trustee respectfully requests that the Court: (i) grant the 2004 Motion; (ii) enter the proposed order attached hereto as **Exhibit C**, (iii) order the requested examination under oath of one or more corporate representatives of the Investor under Federal Rule of Bankruptcy Procedure 2004; (iv) order Investor, within thirty (30) days of entry of an order approving the 2004 Motion, to produce the records requested in **Exhibit A**; (v) order the attorneys for the Trustee be authorized to execute and serve any and all subpoenas that are necessary for the requested production of documents; and (vi) grant the Trustee such further relief, whether in law or in equity, to which he may be justly entitled.

**DATED: OCTOBER 10, 2018**

Respectfully submitted,

By: /s/Jeff P. Prostok

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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Bankruptcy Rule 2004-1(a), I hereby certify that the undersigned counsel for the Trustee has conferred with Craig A. Bruens, counsel for the Investor, regarding the relief requested by the 2004 Motion. A conference was held and no agreement regarding the date, time, and place of examination could be reach and the 2004 Motion is presented to the Bankruptcy Court for determination.

*/s/ Jeff P. Prostok*

\_\_\_\_\_  
Jeff P. Prostok

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2018, notice of this document will be (i) electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Court Filing (ECF) Procedures in this District, (ii) emailed and mailed to counsel for the Investor at the address below, and (iii) served by first class U.S. mail, postage prepaid, on any parties on the attached Service List that do not receive the Court's ECF notifications.

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/s/ Suzanne K. Rosen  
Suzanne K. Rosen

## **EXHIBIT A**

### **DOCUMENTS TO BE PRODUCED BY INVESTOR**

## **TRUSTEE'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

### **I. DEFINITIONS**

1. "Document" or "Documents" is defined broadly to include: (a) all originals and all non-identical copies of all written, typed, printed, or recorded matter of any kind, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, including, without limitation, all letters, correspondence, e-mails, facsimiles, telegrams, telexes, memoranda, notes, marginal notations, summaries or other records of personal or telephonic conversations, summaries or other records of meetings or conferences, summaries or other records of negotiations or discussions of any kind, diaries, diary entries, calendars, appointment books, time records, visitor records, work records, telephone bills and records, expense records, travel and entertainment records, inspections, estimates, reports, offers, counter-offers, proposals, counter-proposals, drafts, revisions, rejections, acceptances, repudiations, agreements, contracts, understandings, articles of incorporation and all amendments thereto, by-laws and all amendments thereto, notices, waivers, consents, proxies, minutes, motions, votes, resolutions, orders, directives, policy statements, organization charts, partnership agreements and all amendments thereto, partnership certificates and all amendments thereto, stock or share certificates, transfer books or ledgers, voting lists, progress reports, completion agreements, purchase orders, invoices, financial records, financial statements, balance sheets, income statements, financial summaries, journals, journal entries, ledgers, ledger entries, worksheets, work papers, accounting records, bank records, bank statements, canceled checks, check stubs, checkbooks, deposit receipts, employee records, payroll records, drafts, promissory notes, letters of credit, bills of lading, bills of sale, cash receipts, revolving credit agreements, deeds, deeds of trust, security agreements, mortgages, liens, guaranty agreements, UCC filings, insurance agreements or policies, reports, opinions, evaluations, appraisals, feasibility studies, analyses, recommendations, bills, invoices, fee statements, books, articles, magazines, circulars, trade letters, press clippings, surveys, statistical data, punch cards, programs, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing; (b) graphic or aural records or representations of any kind including, without limitation, graphs, maps, charts, pamphlets, speeches, transcripts, transcripts of hearings, transcripts of testimony, microfilm, microfiche, voice recordings, video recordings, tape or disc recordings, film, photographs, electronic recordings, and any other data compilations from which information can be obtained or translated; and, (c) electronic, mechanical or electric records or representations of any kind, including, without limitation, e-mails, tapes, cassettes, disks, discs, recordings, and all transcriptions, in whole or in part, of any of the foregoing.

For purposes of electronically stored information ("ESI"), "Document" also includes but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file or files (readily accessible by one or more computer applications or forensics software); and "deleted" but recoverable electronic files on such media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during normal operations of a computer [RAM slack] or residual data left on the hard drive after new data has been overwritten some but not all of previously stored data).

2. "Person" as used herein shall mean and include any natural person, governmental agency, corporate entity, proprietorship, partnership, corporation, board, committee, or any other form of organization, association, or legal entity of any type, whether public or private.

3. "Identify" means, when referring to a document, to give to the extent known, the following information:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the authors, addressees, and recipients of the document;
- (e) the location of the document;
- (f) the identity of the person who has custody of the document; and
- (g) whether the document has been destroyed, and if so
  - (i) the date of its destruction,
  - (j) the reason for its destruction, and
  - (k) the identity of the person who destroyed it.

4. "Identify" means, when referring to a person, to give to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify" means, as applied to a location or place, the full street address, including the city, state and zip code or postal code of the location, as well as the person whose place of business is located there or who uses or occupies such location.

6. "Identify" means, as applied to a Communication, the identity of the Person or Persons making the Communication, and the identity of the Person or Persons who was the recipient of the Communication, as well as the subject matter and contents of the Communication.

7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and includes without limitation, any document, email, electronic transmission, oral statement, meeting or conference, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind was transmitted, received, or stored in any matter whatsoever.

8. "Pertaining to" is defined as relating to, referring to, relevant to, constituting, depicting, showing, describing, identifying, indicating, summarizing, analyzing, explaining, evaluating, appraising, justifying, supporting, contradicting, establishing, refuting, tending to establish the truth or falsity of or tending to establish the existence or non-existence of.

9. The use of the singular form of any word includes the plural and vice versa.

10. The following terms shall have the meaning set forth below:
- (i) “Acis CLOs” refers to CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6.
  - (ii) “Acis GP” refers to Acis Capital Management GP, LLC;
  - (iii) “Acis LP” refers to Acis Capital Management, L.P.;
  - (iv) “Acis PMAs” refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
  - (v) “Affiliates” has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code;
  - (vi) “Bankruptcy Court” refers to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division;
  - (vii) “Bankruptcy Cases” refers to the Debtors’ chapter 11 bankruptcy cases, which are being jointly-administered under Case No. 18-30264-sgj-11;
  - (viii) “Bankruptcy Code” refers to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.;
  - (ix) “Brigade” refers to Brigade Capital Management, L.P.;
  - (x) “CLO-1” refers to Acis CLO 2013-1 Ltd.;
  - (xi) “CLO-1 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013;
  - (xii) “CLO-3” refers to Acis CLO 2014-3 Ltd.;
  - (xiii) “CLO-3 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014;
  - (xiv) “CLO-4” refers to Acis CLO 2014-4 Ltd.;
  - (xv) “CLO-4 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014;
  - (xvi) “CLO-5” refers to Acis CLO 2014-5 Ltd.;
  - (xvii) “CLO-5 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014;
  - (xviii) “CLO-6” refers to Acis CLO 2015-6 Ltd.;
  - (xix) “CLO-6 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015;

- (xx) "Debtors" refer individually or collectively to Acis LP and Acis GP;
- (xxi) "HCLOF" refers to Highland CLO Funding, Ltd.;
- (xxii) "HCM" refers to Highland Capital Management, L.P.;
- (xxiii) "Highlands" refers to HCM, HCLOF, and any Affiliates of HCM or HCLOF;
- (xxiv) "Investor," "You," or "Your" refers to the Investor, its Affiliates, and any successors in interest thereto;
- (xxv) "Petition Date" refers to the date of the filing of the involuntary Chapter 11 petitions against the Debtors on January 30, 2018;
- (xxvi) "Plan" refers to any plan proposed by the Trustee in the Bankruptcy Cases;
- (xxvii) "PMAs" refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
- (xxviii) "Reorganized Acis" refers collectively to the reorganized Acis LP and Acis GP following the effective date of the Trustee's Plan; and
- (xxix) "Trustee" refers to Robin Phelan, the Chapter 11 Trustee for the Debtors.

## **II. INSTRUCTIONS**

1. Unless otherwise indicated, the use herein of the name of a party, business organization, entity or other person shall specifically include all employees, agents, representatives, members, officers, directors, partners, parent, subsidiaries, affiliates, and attorneys of the party, business organization, entity or other person.

2. In accordance with Rule 34 of the Federal Rules of Civil Procedure, as made applicable by Rule 7034, you are required to produce all responsive documents and tangible things within your possession, custody and control within such time as may be specified in Rule 34, agreed to by the parties or as may be fixed by the Bankruptcy Court. Possession, custody and control include constructive possession, and include all responsive documents in the possession or control of your employees, agents, attorneys or representatives. You need not have actual physical possession of such documents or tangible things. So long as you have a superior right to compel production from a third party (including any employee, agent, attorney or representative), you have possession, custody or control of the documents and tangible things.

2. With regard to the production of ESI, pursuant to Rule 34(E) of the Federal Rules of Civil Procedure, the Debtor requests that all ESI be produced in the form in which it is ordinarily maintained (native format) with all original metadata intact.

3. In accordance with Rule 26(e) of the Federal Rules of Civil Procedure, these requests are continuing in nature. If you obtain information upon the basis of which you know that a response was incorrect or incomplete when made, or such that though correct and complete when made, a response is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading, then supplementation of your responses is required.

### **III. REQUESTS FOR PRODUCTION**

1. All documents and communications pertaining to the Investor's decision to invest in HCLOF.
2. All documents and communications pertaining to the Investor's investment in HCLOF.
3. All documents and communications pertaining to any reset or proposed reset of one or more of the Acis CLOs.
4. All documents and communications pertaining to the Debtors.
5. All documents and communications pertaining to the PMAs.
6. All documents and communications pertaining to the portfolio manager of the Acis CLOs or any reset Acis CLOs.
7. All documents and communications pertaining to the Bankruptcy Cases.
8. All documents and communications pertaining to the Plan.
9. All documents and communications pertaining to the Reorganized Acis or Brigade.
10. All documents and communications reflecting the governance or decision-making processes of HCLOF.
11. All documents and communications pertaining to or reflecting any relationship between the Investor and any of the Highlands.
12. All documents and communications pertaining to or reflecting any equity ownership by any of the Highlands in the Investor, or by the Investor in any of the Highlands.

## **EXHIBIT B**

### **DEPOSITION TOPICS FOR A CORPORATE REPRESENTATIVE OF INVESTOR**

## **TRUSTEE'S DEPOSITION TOPICS FOR INVESTOR**

### **I. DEFINITIONS**

1. "Document" or "Documents" is defined broadly to include: (a) all originals and all non-identical copies of all written, typed, printed, or recorded matter of any kind, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, including, without limitation, all letters, correspondence, e-mails, facsimiles, telegrams, telexes, memoranda, notes, marginal notations, summaries or other records of personal or telephonic conversations, summaries or other records of meetings or conferences, summaries or other records of negotiations or discussions of any kind, diaries, diary entries, calendars, appointment books, time records, visitor records, work records, telephone bills and records, expense records, travel and entertainment records, inspections, estimates, reports, offers, counter-offers, proposals, counter-proposals, drafts, revisions, rejections, acceptances, repudiations, agreements, contracts, understandings, articles of incorporation and all amendments thereto, by-laws and all amendments thereto, notices, waivers, consents, proxies, minutes, motions, votes, resolutions, orders, directives, policy statements, organization charts, partnership agreements and all amendments thereto, partnership certificates and all amendments thereto, stock or share certificates, transfer books or ledgers, voting lists, progress reports, completion agreements, purchase orders, invoices, financial records, financial statements, balance sheets, income statements, financial summaries, journals, journal entries, ledgers, ledger entries, worksheets, work papers, accounting records, bank records, bank statements, canceled checks, check stubs, checkbooks, deposit receipts, employee records, payroll records, drafts, promissory notes, letters of credit, bills of lading, bills of sale, cash receipts, revolving credit agreements, deeds, deeds of trust, security agreements, mortgages, liens, guaranty agreements, UCC filings, insurance agreements or policies, reports, opinions, evaluations, appraisals, feasibility studies, analyses, recommendations, bills, invoices, fee statements, books, articles, magazines, circulars, trade letters, press clippings, surveys, statistical data, punch cards, programs, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing; (b) graphic or aural records or representations of any kind including, without limitation, graphs, maps, charts, pamphlets, speeches, transcripts, transcripts of hearings, transcripts of testimony, microfilm, microfiche, voice recordings, video recordings, tape or disc recordings, film, photographs, electronic recordings, and any other data compilations from which information can be obtained or translated; and, (c) electronic, mechanical or electric records or representations of any kind, including, without limitation, e-mails, tapes, cassettes, disks, discs, recordings, and all transcriptions, in whole or in part, of any of the foregoing.

For purposes of electronically stored information ("ESI"), "Document" also includes but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file or files (readily accessible by one or more computer applications or forensics software); and "deleted" but recoverable electronic files on such media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during normal operations of a computer [RAM slack] or residual data left on the hard drive after new data has been overwritten some but not all of previously stored data).

2. "Person" as used herein shall mean and include any natural person, governmental agency, corporate entity, proprietorship, partnership, corporation, board, committee, or any other form of organization, association, or legal entity of any type, whether public or private.

3. "Identify" means, when referring to a document, to give to the extent known, the following information:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the authors, addressees, and recipients of the document;
- (e) the location of the document;
- (f) the identity of the person who has custody of the document; and
- (g) whether the document has been destroyed, and if so
  - (i) the date of its destruction,
  - (j) the reason for its destruction, and
  - (k) the identity of the person who destroyed it.

4. "Identify" means, when referring to a person, to give to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify" means, as applied to a location or place, the full street address, including the city, state and zip code or postal code of the location, as well as the person whose place of business is located there or who uses or occupies such location.

6. "Identify" means, as applied to a Communication, the identity of the Person or Persons making the Communication, and the identity of the Person or Persons who was the recipient of the Communication, as well as the subject matter and contents of the Communication.

7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and includes without limitation, any document, email, electronic transmission, oral statement, meeting or conference, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind was transmitted, received, or stored in any matter whatsoever.

8. "Pertaining to" is defined as relating to, referring to, relevant to, constituting, depicting, showing, describing, identifying, indicating, summarizing, analyzing, explaining, evaluating, appraising, justifying, supporting, contradicting, establishing, refuting, tending to establish the truth or falsity of or tending to establish the existence or non-existence of.

9. The use of the singular form of any word includes the plural and vice versa.

10. The following terms shall have the meaning set forth below:
- (i) “Acis CLOs” refers to CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6.
  - (ii) “Acis GP” refers to Acis Capital Management GP, LLC;
  - (iii) “Acis LP” refers to Acis Capital Management, L.P.;
  - (iv) “Acis PMAs” refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
  - (v) “Affiliates” has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code;
  - (vi) “Bankruptcy Court” refers to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division;
  - (vii) “Bankruptcy Cases” refers to the Debtors’ chapter 11 bankruptcy cases, which are being jointly-administered under Case No. 18-30264-sgj-11;
  - (viii) “Bankruptcy Code” refers to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.;
  - (ix) “Brigade” refers to Brigade Capital Management, L.P.;
  - (x) “CLO-1” refers to Acis CLO 2013-1 Ltd.;
  - (xi) “CLO-1 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013;
  - (xii) “CLO-3” refers to Acis CLO 2014-3 Ltd.;
  - (xiii) “CLO-3 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014;
  - (xiv) “CLO-4” refers to Acis CLO 2014-4 Ltd.;
  - (xv) “CLO-4 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014;
  - (xvi) “CLO-5” refers to Acis CLO 2014-5 Ltd.;
  - (xvii) “CLO-5 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014;
  - (xviii) “CLO-6” refers to Acis CLO 2015-6 Ltd.;
  - (xix) “CLO-6 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015;

- (xx) "Debtors" refer individually or collectively to Acis LP and Acis GP;
- (xxi) "HCLOF" refers to Highland CLO Funding, Ltd.;
- (xxii) "HCM" refers to Highland Capital Management, L.P.;
- (xxiii) "Highlands" refers to HCM, HCLOF, and any Affiliates of HCM or HCLOF;
- (xxiv) "Investor," "You," or "Your" refers to Investor, its Affiliates, and any successors in interest thereto;
- (xxv) "Petition Date" refers to the date of the filing of the involuntary Chapter 11 petitions against the Debtors on January 30, 2018;
- (xxvi) "Plan" refers to any plan proposed by the Trustee in the Bankruptcy Cases;
- (xxvii) "PMAs" refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
- (xxviii) "Reorganized Acis" refers collectively to the reorganized Acis LP and Acis GP following the effective date of the Trustee's Plan; and
- (xxix) "Trustee" refers to Robin Phelan, the Chapter 11 Trustee for the Debtors.

### **III. DEPOSITION TOPICS**

1. The decision of the Investor to invest in HCLOF including, but not limited to, whether its decision to invest in HCLOF was conditioned upon the removal of Acis LP as the portfolio manager for the Acis CLOs.
2. The position taken by the Investor from 2017 to the present regarding Acis LP's or the Reorganized Acis' role as the portfolio manager for the Acis CLOs or any reset Acis CLOs.
3. The current position of the Investor pertaining to the reset of one or more of the Acis CLOs by the Reorganized Debtor and Brigade.
4. The governance and decision-making processes of HCLOF.
5. The relationship, if any, between Investor and the Highlands.
6. Any equity ownership by any of the Highlands in the Investor, or by the Investor in any of the Highlands.

## **EXHIBIT C**

## **PROPOSED ORDER**

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**

§  
§  
§  
§  
§  
§  
§  
§

**Case No. 18-30264-SGJ-11  
Case No. 18-30265-SGJ-11**

**(Jointly Administered Under Case  
No. 18-30264-SGJ-11)**

**Chapter 11**

**ORDER GRANTING MOTION FOR 2004 EXAMINATION OF [INVESTOR] AND  
CERTAIN AFFILIATES THEREOF**

Upon the Motion for 2004 Examination of [Investor] and Certain Affiliates Thereof (the "2004 Motion")<sup>1</sup> filed by Robin Phelan (the "Trustee"), the Chapter 11 Trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with

---

<sup>1</sup> Unless otherwise indicated, capitalized terms used in this Order shall have the meanings ascribed to them in the 2004 Motion.

Acis LP, the "Debtors" or "Acis"), the Debtors in the above-styled and numbered bankruptcy cases (the "Cases"), and the Court having jurisdiction to consider the 2004 Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the 2004 Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the 2004 Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing,

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The 2004 Motion is **GRANTED**, as set forth herein;
2. The examination of [Investor] is **ORDERED** as set forth herein;
3. [Investor] shall produce the documents requested in **Exhibit "A"** to the 2004 Motion, within thirty (30) days of entry of this Order;
4. [Investor] shall present one or more corporate representatives for deposition by the Trustee regarding the matters set forth in **Exhibit "B"** to the Motion; and
5. The attorneys for the Trustee are authorized to execute and serve any and all subpoenas that are necessary for the requested production of documents and the depositions of one or more corporate representatives of [Investor]

**### END OF ORDER ###**

Submitted by:

Jeff P. Prostok  
State Bar No. 16352500  
J. Robert Forshey  
State Bar No. 07264200  
Suzanne K. Rosen  
State Bar No. 00798518  
Matthias Kleinsasser  
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**COUNSEL FOR THE CHAPTER 11 TRUSTEE**

-and-

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**SPECIAL COUNSEL FOR ROBIN PHELAN, CHAPTER 11 TRUSTEE**

**EXHIBIT N**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	)	
In re:	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-12239 (CSS)
Debtor.	)	<b>Ref. Docket No.: 86</b>
	)	

**ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES  
BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS**

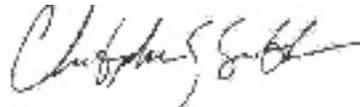
Upon the motion (the “Motion”)<sup>2</sup> of the Committee requesting entry of an order (this “Order”) transferring the venue of the above-captioned chapter 11 case to the United States Bankruptcy Court for the Northern District of Texas; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of, and the

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

opportunity for a hearing on, the Motion having been given; and for the reasons stated on the record, it is HEREBY ORDERED THAT:

1. Effective as of the date of this Order, the above-captioned chapter 11 case shall be transferred to the Dallas Bankruptcy Court pursuant to 28 U.S.C. § 1412.



**EXHIBIT O**

**From:** Brad Eden <BEden@HighlandCapital.com>  
**To:** Willard, Dustin  
**CC:** Thomas Surgent  
**Sent:** 8/15/2017 6:10:27 PM  
**Subject:** Legal summary  
**Attachments:** HarbourVest Legal Summaries.pdf

Dustin, attached is the legal summary. Of course, Thomas is available to answer any follow-up questions.

Best,  
Brad

H. Bradley Eden, J.D. | Managing Director, Global Head of Marketing & IR



300 Crescent Court | Suite 700  
Dallas, Texas 75201  
D: 972.628.4195 | M: 817.995.5944  
[beden@highlandcapital.com](mailto:beden@highlandcapital.com)  
[www.highlandcapital.com](http://www.highlandcapital.com)



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**EXHIBIT P**

### **SEC Financial Crisis Matter**

As discussed, the SEC has undertaken an unprecedented level of audits and field office referrals to enforcement following the financial crisis. In connection therewith, on September 25, 2014, Highland Capital Management, L.P. ("Highland") entered into a settlement with the Securities and Exchange Commission ("SEC") resulting in the SEC issuing an order. This order involves certain principal and cross transactions that occurred between 2007 and 2009 that were generally executed in an effort to generate or maintain liquidity for the advised accounts during the financial crisis. Highland did ultimately receive client consent for many of the transactions; however, this consent was received after the transactions had settled, and therefore did not comply with the requirements of Advisers Act Section 206(3). In addition, the order also cited Highland for a books and records violation and required Highland to pay a civil monetary penalty of \$225,000.

In connection with the settlement, we engaged a third party compliance consultant to review our policies and procedures and a full year of recent trading activity. While no violations were identified, as one would expect for an engagement of this nature the consultant did recommend some minor procedural enhancements, all of which we promptly implemented. The consultant issued its final report in March 2016 in which it acknowledged all recommendations were implemented and no further recommendations were required. In June 2016, Highland submitted its final certification and written narrative demonstrating compliance with all undertakings of the settlement to the SEC. No further undertakings are required under the settlement.

For additional context, this matter spanned over 5 years, involved over one million pages of document production, and resulted in only the modest findings and \$225k financial settlement set forth in the order. Some summary points of note include:

- There are no fraud-based violations, disgorgement, or findings against any individuals.
- The cross transactions referenced in the order primarily occurred during the height of the financial crisis in 2008 and 2009. Most of the Trades were executed in an effort to generate or maintain liquidity for advised accounts.
- Most of the Trades took place during September and October 2008 when, with the onset of the financial crisis, asset values were dropping across the market, the market for credit products was essentially frozen, and margin calls were being made on Highland's accounts.
- Highland did ultimately receive client consent for many of the Trades; however, this consent was received after the trade had occurred.
- The matter also involves a books and records charge, which we believe was substantially related to records issues with our former institutional administrator, which we have since replaced.
- We have since implemented numerous policy and procedure enhancements, and believe we maintain a world class compliance program.

### **Crusader**

In July 2016, the Redeemer Committee of the Highland Crusader Fund filed a lawsuit against Highland Capital Management, L.P. related to the liquidation of the Crusader Fund. The Committee's allegations stem from a contract dispute over a plan of liquidation related to the fund that has been in wind-down since 2008.

Rather than liquidating the fund in the midst of the financial crisis for pennies on the dollar, through Highland's unwavering efforts it was able to develop a liquidation plan to maximize investor recoveries. Notably, a super-majority of investors of all classes approved the plan. Through July 2016, Highland had distributed to Crusader Fund investors \$1.55 billion of the target distribution amount of \$1.70 billion, as per the liquidation plan approved by the majority of the Fund's investors. Cash distributions to date are more than \$600 million above the Crusader Fund's net asset value of \$900 million at the 2009 market trough.

What should otherwise be hailed as a remarkable success story of Highland navigating a levered hedge fund liquidation through the financial crisis has unfortunately taken a skewed narrative due to the impact of a separate court order that halted the fund's liquidation and distribution activities for 36 months. In addition to resuming those activities once the court order was lifted, Highland received its previously earned, fully vested and unforfeitable fees following consultation with outside counsel. While the Crusader Fund Redeemer Committee's attorneys disagree with this determination, Highland continues to believe that its actions were legally permissible and disputes the allegations in the complaint.

In conjunction with the lawsuit, the Crusader Fund Redeemer Committee elected to replace Highland as investment manager for the remainder of the liquidation—a right Highland voluntarily provided to the Redeemer Committee in 2011 under the original liquidation plan. As such, we cooperated in transitioning management and, as investors ourselves, have a shared interest in the subsequent manager's success.

#### **Terry**

Mr. Terry was a senior member of Highland's structured products team. In June 2016, Mr. Terry was terminated for cause for various misconduct, including with respect to certain violations of Highland's internal compliance policies. Mr. Terry filed a counterclaim for calculation of his separation compensation. When Highland refused to meet Mr. Terry's demand for separation compensation to which he was not entitled, Mr. Terry made numerous allegations against Highland unrelated to the circumstances of his termination or the calculation of his alleged compensation. Among these, Mr. Terry alleged that Highland violated its duties in connection with the purchase of an asset in Brazil. However, the facts of the transaction are as follows:

- Highland's legal and compliance team was involved with the transaction from inception to ensure that it was handled appropriately.
- Accordingly, the completion of the transaction was made subject to prior receipt of all necessary approvals after full disclosure of all material facts.
- The narrative of material facts disclosure was prepared by Highland's legal and compliance department with involvement by all relevant personnel.
- Prior approval of such transaction was received by the independent directors of the portfolio company involved, together with the independent directors of each of the client accounts with an interest in such company.
- The transaction was also unanimously approved in advance by Highland's internal Conflicts Committee, of which Josh Terry himself was a member and affirmatively approved the transaction.
- Outside legal counsel was consulted with respect to such transaction and provided written legal advice as to the appropriateness of the transaction.

- The transaction was separately reviewed by Highland's independent auditors following Mr. Terry's allegations, which auditors identified no misconduct in connection with such transaction.

All further proceedings on this matter has been referred to arbitration subject to confidentiality.

### **Daugherty**

A Court ruled in 2012 that Mr. Daugherty, a former employee, breached his fiduciary duty to Highland, owed damages to Highland, and ordered Mr. Daugherty to cease using or disclosing Highland's confidential information. Additionally, an award was entered in favor of Mr. Daugherty against a separate incentive compensation entity for an interest that was already escrowed in his name prior to trial and in which he was already vested. The dispute over the amount of his vested interest is on-going. Additionally, Highland from time to time must take action to enforce the permanent injunction against Mr. Daugherty's continuing improper disclosures of Highland's confidential information.

### **UBS**

Highland and certain affiliated investment vehicles are defendants in a complaint filed on February 24, 2009 New York state court by UBS Securities LLC and UBS AG, London Branch relating to a CLO warehouse facility with respect to which UBS is attempting to extend liability beyond the two entities that bore sole risk of loss under the governing documents. On February 19, 2010, the court dismissed all claims against Highland Capital Management. UBS since has filed additional claims against Highland Capital Management and certain additional investment vehicles. On July 21, 2011, the First Appellate Division again dismissed two of UBS's four claims against Highland Capital, severely limiting the remaining two claims. Certain of UBS's remaining claims currently are being reviewed by the Appellate Division.

**EXHIBIT Q**

**From:** Hunter Covitz <HCovitz@HighlandCapital.com>  
**To:** Willard, Dustin; Pugatch, Michael; Bellisario, Nick  
**CC:** Trey Parker; Brad Eden  
**Sent:** 11/29/2017 5:33:02 PM  
**Subject:** RE: Wall Street Journal Article  
**Attachments:** Highland Capital Management Letter to the Wall Street Journal \_November ....pdf

Dustin/Mike/Nick,

We write to provide an additional update and more extensive response to the recent Wall Street Journal article and the inaccuracies it contained. The article is the result of a reporter with an agenda, fueled by a lack of oversight and intervention on behalf of the Journal that enabled that agenda to make its way into print to the detriment of Highland and, in turn, our investors.

We hope you can understand that we cannot let this agenda-driven reporting be what defines our firm in the public realm, especially when the reporting challenges the quality of our people, the strength of our culture and the regard we have toward our fundamental responsibility to our clients. For the sake of our employees and our investors, which together are what truly defines Highland, we feel we must correct these inaccuracies and refute the accusations against us. To do so we have contacted Wall Street Journal editor-in-chief Gerard Baker to make him aware of the situation and provide him with the facts that the reporter responsible and his editors received from Highland in advance of the article, yet deemed irrelevant. Attached is the letter we shared last night.

We also will be making public a response that addresses the inaccuracies of the article and the situation we encountered at the Journal. While our response is substantial, we believe a full account of the background here was required given the severity of the claims made in the article. Our brand and reputation as strong investors and fiduciaries for our clients' capital is sacrosanct. Therefore, as unfortunate as it is to have to publicly defend ourselves and create more noise for our firm and our investors, we felt it was acutely necessary to stand up for ourselves and what is right under these circumstances.

As always, please let us know if you have any questions or there is anything additional we can provide.

Thank you,  
Hunter

Hunter Covitz  
972-628-4124

**From:** Hunter Covitz  
**Sent:** Monday, November 27, 2017 3:56 PM  
**To:** 'Willard, Dustin' <dwillard@harbourvest.com>; Pugatch, Michael <mpugatch@harbourvest.com>; Bellisario, Nick <nbellisario@harbourvest.com>  
**Cc:** Trey Parker <TParker@HighlandCapital.com>; Brad Eden <BEden@HighlandCapital.com>  
**Subject:** Wall Street Journal Article

Hello, as you may be aware, the Wall Street Journal published an article (attached) which ran online yesterday and in print this morning on the ongoing compensation dispute between Highland and a former employee, Josh Terry, who was terminated in 2016. Specifically, the article addresses the recently completed arbitration, which resulted in additional compensation awarded to Mr. Terry related to his position in Acis, the structured products affiliate.

Despite our willingness to provide the *Wall Street Journal* with the relevant facts, the article that was published severely mischaracterizes the situation and provides a misleading account of this and other activities.

000917<sup>352,359</sup>

Case 19-34054-sqj11 Doc 1735 Filed 01/13/21 Entered 01/13/21 16:53:00 Page 356 of 359  
Case 3:21-cv-00261-L Document 11-4 Filed 04/13/21 Page 136 of 241 PageID 1293  
Outside of the compensation award, there were no findings by the arbitrators against Acis. Further, Mr. Terry lost all of his claims against Highland. The firm did not ask Mr. Terry to breach his fiduciary duty, nor did it breach any duty to its investors, and these facts were confirmed by the arbitrators' findings.

Highland has a number of outstanding claims against Mr. Terry, including contract and fiduciary breaches, the malicious taping of co-workers and counter parties for over a year, and other misconduct that contributed to Mr. Terry's termination from Highland. Since Highland's claims were not subject to the arbitration and were stayed pending the completion of the arbitration, they were not addressed by the arbitrators. Now, Highland will have the opportunity to adjudicate these claims in court, which are likely to be substantially larger than the arbitration award.

This situation, while contentious, highlights the strength of our compliance process and culture of accountability, both areas of the firm in which we take great pride. Mr. Terry was found in violation of our compliance standards and Highland took swift action to address that and other misconduct that was uncovered. Thanks to this response, Mr. Terry's misconduct did not affect investors, and Highland took every step to ensure clients' interests were first and foremost protected.

While the dispute has no impact on our investment activities, as always, we welcome any questions you may have. In the meantime, we are so extremely excited about the opportunity to work together with Harbourvest and we are fully committed to managing our clients' money with the highest standards of ethics and execution.

Thank you,  
Hunter

HUNTER COVITZ | MANAGING DIRECTOR



300 Crescent Court | Suite 700 | Dallas, Texas 75201  
O: 972.628.4124 | C: 214.394.5510  
[hcovitz@highlandcapital.com](mailto:hcovitz@highlandcapital.com) | [www.hcmlp.com](http://www.hcmlp.com)

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000918

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

**EXHIBIT R**

**[TO BE OFFERED UNDER SEAL]**

**EXHIBIT S**

**[TO BE OFFERED UNDER SEAL]**

**EXHIBIT T**

**[TO BE OFFERED UNDER SEAL]**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

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

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In re: )  
 ) Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> )  
 ) Case No. 19-34054-sgj11  
 )  
Debtor. )  
 )  
 )

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**DEBTOR’S EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING  
THE FILING UNDER SEAL OF EXHIBITS TO DEBTOR’S OMNIBUS REPLY IN  
SUPPORT OF DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154),  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

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

Highland Capital Management, L.P., the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (the “Bankruptcy Case”), respectfully submits this motion (the “Motion to Seal”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing the Debtor to file under seal Exhibit A, Exhibit B, and Exhibit C (collectively, the “Confidential Exhibits”) to its *Omnibus Reply in Support of Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1731] (the “Reply”) filed in support of its *Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Settlement Motion”).<sup>2</sup> In further support of the Motion to Seal, the Debtor respectfully states as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and other bases for the relief requested herein are 11 U.S.C. §§ 105(a) and 107(b), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9077-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

### **FACTUAL BACKGROUND**

3. On October 16, 2019, the Debtor commenced this Bankruptcy Case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings ascribed to them in the Settlement Motion.

“Bankruptcy Code”) in the Bankruptcy Court for the District of Delaware (the “Delaware Court”).

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s Bankruptcy Case to this Court [Docket No. 186].<sup>3</sup>

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On December 23, 2020, the Debtor filed the Settlement Motion seeking the Court’s approval of the Settlement Agreement between the Debtor and HarbourVest.

8. Subsequently, (i) James Dondero, (ii) The Dugaboy Investment Trust and Get Good Trust, and (iii) CLO Holdco, Ltd. (collectively, the “Objecting Parties”) all filed objections (collectively, the “Objections”) to the Settlement Motion asking the Court to deny approval of the Settlement Agreement.

9. On January 13, 2021, the Debtor filed its Reply to the Objections. In its Reply, the Debtor made reference to the Confidential Exhibits, but it did not attach the Confidential Exhibits to the Reply due to the confidential nature of the information contained therein. Furthermore, the Debtor redacted specific information quoted from the Confidential Exhibits and contained in the Reply in order to preserve the confidentiality of the information.

10. On January 22, 2020, the Court entered the *Agreed Protective Order* [Docket No. 382] (the “Protective Order”) which “governs any document, information, or other thing that has

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.

been or will be produced or received by a Party . . . in the [Bankruptcy Case.]” Protective Order at 1.

11. Pursuant to the terms of the Protective Order, information designated as “Highly Confidential” may only be disclosed to the Court if the information is filed under seal pursuant to the procedures set forth in Local Rule 9077-1. *See* Protective Order ¶ 4.

12. Certain arguments contained in the Objections refer to documents that other parties have requested be kept confidential. The Debtor requests that the Court grant this Motion to Seal so that the Debtor can present the Confidential Exhibits to the Court and address the arguments set forth in the Objections at the hearing on the Settlement Motion.

13. Specifically, the Debtor’s Reply references the Confidential Exhibits, and these documents have been designated as “Confidential” and/or “Highly Confidential” pursuant to the Protective Order. The Confidential Exhibits are comprised of the following:

- Exhibit A—November 15, 2017 Members Agreement between Highland CLO Funding, Ltd., the Members party thereto, and Highland HCF Advisor, Ltd.
- Exhibit B—Articles of Incorporation of Highland CLO Funding, Ltd., Registered on March 30, 2015 and adopted by special resolution passed on November 15, 2017.
- Exhibit C—November 15, 2017 Highland CLO Funding, Ltd. Offering Memorandum.

### **ARGUMENT AND AUTHORITIES**

14. The Bankruptcy Code, Bankruptcy Rules, and Local Rules authorize the Court to limit the disclosure of confidential information. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall ... (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b)(1). Section 105(a) of the Bankruptcy Code codifies the Court’s inherent

equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

15. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under 11 U.S.C. § 107(b), providing that:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

FED. R. BANKR. P. 9018. Furthermore, Local Rule 9077-1(a) provides, in relevant part, that “[a] party may file under seal any document that a statute or rule requires or permits to be so filed.”

LOCAL BANKR. R. N.D. TEX. 9077-1(a).

16. Based on the foregoing authority, and consistent with the terms of the Protective Order, the Debtor requests that the Court enter the Proposed Order permitting the Debtor to file the Confidential Exhibits under seal to protect the confidentiality of the information contained therein.

### **NOTICE**

17. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor’s principal secured parties; (e) counsel to the Committee; (f) counsel for the Objecting Parties; and (g) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully requests that the Court (i) grant the relief requested in this Motion to Seal, (ii) enter an order, substantially in the

form of the Proposed Order, authorizing the filing of the Confidential Exhibits under seal, and  
(iii) grant the Debtor such further and additional relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: January 13, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717) (*pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*pro hac vice*)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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Zachery Z. Annable  
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*Counsel for the Debtor and Debtor-in-Possession*

**Exhibit A**

**Proposed Order**

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
Debtor.	§	

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING THE FILING UNDER SEAL OF EXHIBITS TO DEBTOR’S  
OMNIBUS REPLY IN SUPPORT OF DEBTOR’S MOTION FOR ENTRY OF AN  
ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147,  
149, 150, 153, 154), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Having considered the motion (the “Motion to Seal”)<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the “Debtor”) seeking entry of an order (this “Order”) pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9077-1 authorizing the Debtor to file under seal the Confidential Exhibits; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Motion to Seal.

that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court may issue a final order consistent with Article III of the United States Constitution; and venue of the Motion to Seal being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion to Seal having been given under the circumstances; and the Court having reviewed and considered the Motion to Seal and any objections thereto; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion to Seal is **GRANTED**.
2. The Debtor is authorized to file the Confidential Exhibits under seal.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.
5. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**###END OF ORDER###**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

**United States Bankruptcy Judge**

Signed January 13, 2021

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Debtor.

§  
§  
§  
§  
§  
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF EXHIBITS TO DEBTOR'S OMNIBUS REPLY IN SUPPORT OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154), AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

Having considered the motion (the "Motion to Seal")<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the "Debtor") seeking entry of an order (this "Order") pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9077-1 authorizing the Debtor to file under seal the Confidential Exhibits; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Motion to Seal.

that this is a core proceeding pursuant to 28 U.S.C. § 157(b) and that this Court may issue a final order consistent with Article III of the United States Constitution; and venue of the Motion to Seal being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion to Seal having been given under the circumstances; and the Court having reviewed and considered the Motion to Seal and any objections thereto; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion to Seal is **GRANTED**.
2. The Debtor is authorized to file the Confidential Exhibits under seal.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.
5. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

**###END OF ORDER###**

**SEALED document regarding: Exhibit A--  
Members Agreement per court order** filed  
by Debtor Highland Capital Management,  
L.P. (RE: related document(s) [1737](#) Order on  
motion to seal).

1738

**SEALED document regarding: Exhibit B--  
Articles of Incorporation per court  
order** filed by Debtor Highland Capital  
Management, L.P. (RE: related  
document(s)[1737](#) Order on motion to seal).

1739

**SEALED document regarding: Exhibit C--  
Offering Memorandum per court  
order** filed by Debtor Highland Capital  
Management, L.P. (RE: related  
document(s)[1737](#) Order on motion to seal).

1740

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
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(817) 405-6902 facsimile

ATTORNEYS FOR JAMES DONDERO

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

**IN RE:** §  
§  
**HIGHLAND CAPITAL MANAGEMENT,** § **Case No. 19-34054**  
**L.P.,** §  
§  
**Debtor.** § **Chapter 11**

**JAMES DONDERO’S SUPPLEMENTAL EXHIBIT LIST**

James Dondero (“Dondero”) hereby files this Supplemental Exhibit List in connection with the hearing to consider *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154)* [Docket No. 1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”), which occurred on January 14, 2021 at 9:30 a.m. During the hearing, the Court admitted Dondero’s Exhibit N in certain respects and directed undersigned to file the exhibit on the docket for its inclusion into the record. Accordingly, Dondero files this supplemental exhibit list.

**A. Documents that Dondero may use as exhibits:**

<b>Dondero Exhibit No.</b>	<b>Description</b>	<b>Offered</b>	<b>Objection</b>	<b>Admitted by Agreement</b>	<b>Admitted</b>
N.	Email chain between James Seery and Lucy Bannon regarding HarbourVest claims, dated September 15, 2020				

Dated: January 14, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
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Email: john.wilson@bondsellis.com  
Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 14, 2021, true and correct copies of the foregoing document and all identified exhibits were served via the Court's CM/ECF system on all parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

## For Review - Creditflux Statement/Background



Lucy Bannon

Tue 9/15/2020, 9:29 PM

James Seery <jpseeryjr@gmail.com>

Reply all

Sent Items



Enterprise Vault



Jim -Let me know what you think of the below. (And again, the first would be on the record; the second would be sent for information purposes to ensure accuracy, not for attribution.)

### **STATEMENT (ON THE RECORD, ATTRIBUTED TO "A SPOKESPERSON FOR HCMLP" OR SOMETHING ALONG THOSE LINES)**

"HCMLP continues to advance the reorganization process toward with the objective of reaching a consensual reorganization with creditors. Given that goal, we are pleased to reach the stage of the process where, after assessing all potential claims, we can identify those that are legitimate and incorporate them accordingly into a final plan.

"While we dispute the allegations made in the filing and believe the underlying claims are invalid, our focus is on assessing the claims—along with any others outstanding—in a transparent, orderly manner that helps move HCMLP's reorganization process forward toward a resolution."

### **BACKGROUND/CLARIFICATION (NOT FOR ATTRIBUTION)**

Given the complex history and background here (which is likely challenging to capture concisely in this format), we want to ensure that the various parties involved are characterized accurately. In particular, it's important to note the scale and sophistication of HarbourVest in any summary of their position here. (It's a \$70B global investment firm that operates across asset classes and fund/investment structures. And it serves a client base largely comprised of institutional investors, which often means structuring complex, customized investment solutions.) Then it's important to note the background of HarbourVest's involvement here, in that it not only invested in HCLOF, but was an active participant throughout the Acis bankruptcy proceedings, and played a material role in various outcomes related to that case.

---

LUCY BANNON | DIRECTOR OF PUBLIC RELATIONS & COMMUNICATIONS



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.6272 | C: 224.436.3266

[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

Dondero Ex. N

000942

Re: For Review - Creditflux Statement/Background



Lucy Bannon

Tue 9/15/2020, 11:02 PM

Jim Seery ✉

Reply all | v

Sent Items



Enterprise Vault



Good w all these. Will clean up and send shortly and fwd to you once I do.

Thanks for the quick turnaround.

Sent from my iPhone

On Sep 15, 2020, at 10:33 PM, James Seery <jpseeryjr@gmail.com> wrote:

Lucy. Some thought below.

Good to submit with your final edits/revisions. Please send me a blind/forward copy of the email you send to the reporter.

Thanks Jim

Best. Jim

Jim Seery  
631-804-2049  
jpseeryjr@gmail.com

---

**From:** Lucy Bannon <LBannon@HighlandCapital.com>

**Date:** Tuesday, September 15, 2020 at 10:29 PM

**To:** Jim Seery <jpseeryjr@gmail.com>

**Subject:** For Review - Creditflux Statement/Background

Jim -Let me know what you think of the below. (And again, the first would be on the record; the second would be sent for information purposes to ensure accuracy, not for attribution.)

**STATEMENT (ON THE RECORD, ATTRIBUTED TO "A SPOKESPERSON FOR HCMLP" OR SOMETHING ALONG THOSE LINES)**

process where, after assessing all potential claims, we can identify those that are legitimate and incorporate them accordingly into a final plan.

"We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be treating all valid claims in a transparent, orderly, and equitable manner and vigorously disputing meritless in the court. That focus will assure that HCMLP's reorganization progresses toward an efficient and equitable resolution."

**BACKGROUND/CLARIFICATION (NOT FOR ATTRIBUTION)**

Given the complex history and background here (which is likely challenging to capture concisely in this format), we want to ensure that the various parties involved are characterized accurately. In particular, it's important to note the scale and sophistication of HarbourVest in any summary of their position. (It's a \$70B global investment firm that operates across asset classes and fund/investment structures. And it serves a client base largely comprised of institutional investors, which often means structuring complex, customized investment solutions.) Then it's important to note the background of HarbourVest's active and deep involvement in the investment of which it now complains. HarbourVest was not simply invested in HCLOF as an ignorant, unsophisticated passive investor, but it was an active and informed participant from the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF. We believe that neither the facts nor the law support HarbourVest's "we were too lazy to know" allegations.

—

LUCY BANNON | DIRECTOR OF PUBLIC RELATIONS & COMMUNICATIONS

<image001.jpg>

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## FW: Creditflux article: HarbourVest litigation



Lucy Bannon

Wed 9/16/2020, 1:54 AM

James Seery

Reply all

Sent Items



Enterprise Vault



See below for responses sent to Creditflux. Will follow up w/ the story when it runs or w/ any other updates.

Lucy Bannon | Director of Public Relations & Communications

O: 972.419.6272 | C: 224.436.3266

[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com)

**From:** Lucy Bannon

**Sent:** Wednesday, September 16, 2020 1:51 AM

**To:** 'Sayed Kadiri' <sayed.kadiri@acuris.com>

**Subject:** RE: Creditflux article: HarbourVest litigation

Hi Sayed, See below for a statement you can use on the record regarding the filings from Friday that you mentioned. (You can attribute the statement to "a spokesperson for Highland Capital Management, L.P.")

Then I also included some additional information that is not for any kind of attribution. I'm including that to help avoid confusion and prevent any misleading characterization of the parties here, given the complexity of the relationships and involvement in prior legal situations. (I know you've covered those, but they may not be as easy to follow for someone who hasn't been closely involved.)

Please let me know if you have any questions or need any additional information here. And since the filing you referenced is extensive, please let me know if there's anything you plan to include in the story that we may want to address. I tried to make the statement and background broadly applicable, but can revisit if there's anything significant that this doesn't cover.

And thank you again for the flexibility on the timing here.

Lucy

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### **STATEMENT ON THE FILING**

***(NOTE: This can be used on the record and attributed to "a spokesperson for Highland Capital Management, L.P. or something similar)***

"HCMLP continues to advance the reorganization process forward with the objective of reaching a consensual reorganization with valid creditors. Given that goal, we are pleased to reach the stage of the process where, after

"We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be on treating all valid claims in a transparent, orderly, and equitable manner, while disputing those that are meritless through the appropriate channels in the court. That focus will assure that HCMLP's reorganization progresses toward an efficient and equitable resolution."

**ADDITIONAL INFORMATION FOR BACKGROUND/CLARIFICATION**

***(NOTE: This is intended for informational purposes only to ensure accuracy; it is not intended for any kind of attribution)***

Given the complex history and background here—which is likely difficult to capture concisely in any news story—we want to make sure the various parties involved are characterized accurately.

Two key points on this:

1. It's important to note the scale and sophistication of HarbourVest in any summary of their position on these matters.
  - o It's a \$70B global investment firm that operates across asset classes and fund/investment structures.
  - o Its client base is largely comprised of institutional investors, and in descriptions of its service offerings for this audience, the firm highlights its capabilities and experience structuring complex, customized investment solutions.
2. It's also important to note the background of HarbourVest's active and deep involvement in the investment at the center of its complaints.
  - o HarbourVest was not invested in HCLOF as an uninformed, unsophisticated passive investor; it was an active and informed participant from the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF.

It's important that readers are aware of these points, as it is impossible to gain a clear understanding of this matter and accurately evaluate the allegations without them. We believe that neither the facts nor the law supports HarbourVest's allegations, but it would be misleading to include that view in any coverage of the allegations without an objective account of those facts.

Lucy Bannon | Director of Public Relations & Communications  
O: 972.419.6272 | C: 224.436.3266  
[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com)

**From:** Sayed Kadiri <[sayed.kadiri@acuris.com](mailto:sayed.kadiri@acuris.com)>  
**Sent:** Monday, September 14, 2020 9:01 AM  
**To:** Lucy Bannon <[LBannon@HighlandCapital.com](mailto:LBannon@HighlandCapital.com)>  
**Subject:** RE: Creditflux article: HarbourVest litigation

Sure thing Lucy – it's part of the bankruptcy proceedings

Case No. 19-34054

**From:** Lucy Bannon <[LBannon@HighlandCapital.com](mailto:LBannon@HighlandCapital.com)>  
**Sent:** 14 September 2020 14:58  
**To:** Sayed Kadiri <[Sayed.Kadiri@iongroup.com](mailto:Sayed.Kadiri@iongroup.com)>  
**Subject:** Re: Creditflux article: HarbourVest litigation

A spokesperson for Highland told *Creditflux*: "We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be on treating all valid claims in a transparent, orderly, and equitable manner, while disputing those that are meritless through the appropriate channels in the court. That focus will assure that HCMLP's [Highland Capital Management LP] reorganisation progresses toward an efficient and equitable resolution."

A spokesperson for HarbourVest declined to comment on the matter. But in filings the firm says Highland claimed HarbourVest had the ability to control CLO resets, which was one of the reasons the Acis trustee (when that entity went through its own reorganisation) had investigated HarbourVest, on the basis that it was directing the transfer of assets from Acis to Highland.

It further claims in filings that with Highland and its affiliates objecting to and slowing the Acis's chapter 11 proceedings, some of the legal bills were funded by Highland CLO Funding. It estimates the CLO fund has incurred more than \$15 million in legal fees, which it should not have been charged.

HarbourVest's investment in Highland CLO funding is believed to be about \$150 million, with earlier court filings stating Highland was in talks with a private equity firm about an investment of that size (HarbourVest is a private equity firm, with about \$71 billion in assets under management). In November 2017, *Creditflux* had reported the fund had reached \$153 million. HarbourVest states in filings the value of its investment has declined sharply and lays the blame on Highland for conducting the transfers and subsequent actions.

The Acis CLOs that were previously under the Highland umbrella became a separate independent entity as part of Acis's reorganisation, with Terry taking over that business in February 2019. But in an offshoot from Highland's bankruptcy, Acis is at loggerheads with risk retention financier Nearwater Capital over an agreement signed by Highland in 2018.

Thanks for checking in, Sayed. Could you send me the filings when you have a minute? Checking on this now, but that should help expedite the turnaround here given the timing.

Sent from my iPhone

On Sep 14, 2020, at 8:24 AM, Sayed Kadiri <[sayed.kadiri@acuris.com](mailto:sayed.kadiri@acuris.com)> wrote:

Hi Lucy, how are you?

I saw the filing on Friday about HarbourVest's claims against Highland for a CLO investment fund and I am looking to put out a report tomorrow morning London time.

Ahead of that, I wanted to check if Highland would like to comment on the matter?

Regards,  
Sayed

---

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# HarbourVest fights back over CLO fund investment after Highland's objection

By Sayed Kadiri

Thursday, September 17, 2020

HarbourVest Partners, which was the key investor in Highland CLO Funding, a risk retention vehicle, has shot back at Highland Capital Management LP's claim objection as part of its chapter 11 bankruptcy.

Highland filed the omnibus objection against 92 claims. But HarbourVest, in court filings, maintains that "Highland's actions preceding and following the investment caused serious injury to HarbourVest, leading to damages well in excess of \$100 million". Highland filed for bankruptcy protection in October and HarbourVest filed its proof of claim in April.

HarbourVest argues it had not insisted on changing the manager on its CLO fund from Acis to Highland, as Highland had claimed. It adds that Highland had sought to take assets away from Acis following an arbitration award in favour of former Highland employee Josh Terry, which had detrimentally impacted HarbourVest's investment.

HarbourVest invested in Highland CLO Funding (previously known as Acis CLO funding) in November 2017, taking a 49% interest in the fund. It claims that Highland had originally pitched the fund as being managed by Acis Capital Management, which at that point was a Highland affiliate. But over the course of negotiations it changed all references from Acis to Highland, which HarbourVest claims in its filing was done under false pretenses.

Specifically, HarbourVest pinpoints Terry's near-**\$8 million arbitration award**, which he won against his former employer Highland in October 2017, as a turning point. It claims that after this, "Highland orchestrated several transfers that siphoned assets away from Acis".

In 2016, Acis had sold Highland a participation interest based on cashflows deriving from its CLO collateral management agreements for \$666,655 plus a \$12.6 million note payable from Highland to Acis. In filings, HarbourVest says the note was transferred from Acis to an entity known as Highland CLO Management, but with Acis receiving no consideration for the transfer, when the balance on the note was over \$9 million.

HarbourVest claims in its filing that during its due diligence phase on the Highland investment, Highland did not disclose its efforts to strip assets from Acis. When the name of the fund was changed to adopt Highland branding, Highland's reason for doing so was the was "reputational harm" to Acis from Terry's arbitration award, says HarbourVest.

But HarbourVest states in its argument that Highland falsely claimed in court the reason behind the change in manager from Acis to Highland was at HarbourVest's insistence.

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

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In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054 (SGJ)  
 )  
Debtor. )  
 )  
 )

---

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On January 9, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A**, **Exhibit B** and **Exhibit C**; and, on January 11, 2021, via First Class Mail upon the service lists attached hereto as **Exhibit D**, **Exhibit E** and **Exhibit F**:

- **Amended Notice of Hearing** [Docket No. 1714]

Furthermore, on January 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit A**; and via First Class Mail upon the service list attached hereto as **Exhibit D**:

- **Order Granting Consolidated Monthly and Second Interim Application of Wilmer Cutler Pickering Hale and Dorr LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses as Regulatory and Compliance Counsel for the Period July 1, 2020 Through November 30, 2020** [Docket No. 1715]

Furthermore, on January 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit G**; and via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit H**:

- **Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates** [Docket No. 1718]

---

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

Furthermore, on January 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit I**; via Overnight Mail upon the service list attached hereto as **Exhibit J**; and via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit K**:

- **Second Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith** [Docket No. 1719]

Furthermore, on January 12, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service list attached hereto as **Exhibit L**; via Overnight Mail upon the service list attached hereto as **Exhibit M**; and via First Class Mail upon the service list attached hereto as **Exhibit N**:

- **Second Notice of (I) Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, if Any, and (III) Related Procedures in Connection Therewith** [Docket No. 1719]

Furthermore, on January 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit B**; and via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit E**:

- **Amended Notice of Hearing on Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan** [Docket No. 1720]

Furthermore, on January 11, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A**, **Exhibit B** and **Exhibit C**; via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit E**; and on January 12, 2021, via First Class Mail upon the service list attached hereto as **Exhibit F**:

- **Debtor's Witness and Exhibit list with Respect to Hearing to be Held on January 14, 2021** [Docket No. 1722]

Dated: January 15, 2021

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

# EXHIBIT A

Exhibit A  
Core/2002 Service List  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & Mckenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & Mckenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	jwelton@btlaw.com; lwohlford@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	c Carlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	sellott@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust Equity Holders	Heller, Draper & Horn, L.L.C. Hunter Mountain Investment Trust	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy c/o Rand Advisors LLC	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@fldslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
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Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Maxim B. Litvak	mlitvak@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slauch, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslauch@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeschr@sec.gov; nyrobankruptcy@sec.gov
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

# **EXHIBIT B**

**Exhibit B**

Affected Parties

Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to HarbourVest	Crowe & Dunlevy, P.C.	Vickie L. Driver	vickie.driver@crowedunlevy.com
Counsel to HarbourVest	Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com

# EXHIBIT C

**Exhibit C**

Affected Parties  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to James Dondero	Bonds Ellis Eppich Schafer	D. Michael Lynn, John Y. Bonds, III, John T. Wilson, IV, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; john.wilson@bondsellis.com; bryan.assink@bondsellis.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	jcoleman@krcl.com; jkane@krcl.com

# EXHIBIT D

Exhibit D

Core/2002 Service List  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
U.S. Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts	State Comptroller of Public Accounts	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
Equity Holders	Strand Advisors, Inc.		300 Crescent Court	Suite 700		Dallas	TX	75201
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	PO Box 12548			Austin	TX	78711-2548
U.S. Department of the Treasury	U.S. Department of the Treasury	Office of General Counsel	1500 Pennsylvania Avenue, NW			Washington	DC	20220
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	Delaware Division of Revenue	Carvel State Office Building, 8th Floor	820 N. French Street	Wilmington	DE	19801

# EXHIBIT E

**Exhibit E**  
 Affected Parties  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	City	State	Zip
Counsel to HarbourVest	Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425	Dallas	TX	75201
Counsel to HarbourVest	Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	919 Third Avenue	New York	NY	10022

# EXHIBIT F

**Exhibit F**

Affected Parties

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	City	State	Zip
Counsel to James Dondero	Bonds Ellis Eppich Schafer	D. Michael Lynn, John Y. Bonds, III, John T. Wilson, IV, Bryan C. Assink	420 Throckmorton Street, Suite 1000	Fort Worth	TX	76102
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500	New Orleans	LA	70130
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	901 Main Street, Suite 5200	Dallas	TX	75242-1699

# EXHIBIT G

**Exhibit G**  
Affected Parties  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & Mckenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & Mckenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Joshua N. Eppich, J. Robertson Clarke	michael.lynn@bondsellis.com; john@bondsellis.com; joshua@bondsellis.com; robbie.clarke@bondsellis.com
Counsel for Jefferies LLC	Butler Snow LLP	Martin Sosland, Candice Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel for Pension Benefit Guaranty Corporation	Crowe & Dunlevy, P.C.	Vickie L. Driver	vickie.driver@crowedunlevy.com
Counsel for Patrick Daugherty	Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com
Counsel for HarbourVest, et al.	Dentons US LLP	Casey Doherty	casey.doherty@dentons.com
Counsel for Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Lauren Macksoud,	patrick.maxcy@dentons.com; lauren.macksoud@dentons.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Marc B. Hankin, Richard Levin	MHankin@jenner.com
Counsel for UBS Securities LLC and UBS AG, London Branch	JENNER AND BLOCK, LLP	Terri L. Mascherin	TMascherin@jenner.com
Counsel for Meta-e Discovery, LLC	K&L Gates LLP	A. Lee Hogewood, III	Lee.hogewood@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	jcoleman@krcl.com; jkane@krcl.com
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	andrew.clubok@lw.com; sarah.tomkowiak@lw.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Linebarger Goggan Blair & Sampson LLP	Laurie A. Spindler	dallas.bankruptcy@publicans.com; Laurie.Spindler@lgbs.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@lfdslaw.com
Counsel For The Official Committee Of Unsecured Creditors	McCollom D'Emilio Smith Uebler LLC	Thomas A. Uebler, Joseph L. Christensen	tuebler@mdsulaw.com; jchristensen@mdsulaw.com
Counsel for Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan	bankruptcy@morrisoncohen.com
Counsel for James Dondero	Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	drukavina@munsch.com; jvasek@munsch.com
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for Pension Benefit Guaranty Corporation	Pension Benefit Guaranty Corporation	C. Paul Chalmers, Charles L. Finke, Lori A. Butler, Michael I. Baird, Faheem A. Mahmooth	baird.michael@pbgc.gov; efile@pbgc.gov
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Pronske & Kathman, P.C.	Jason P. Kathman	jkathman@pronskepc.com
Counsel for Jack Yang and Brad Borud	Rogge Dunn Group, PC	Brian P. Shaw	shaw@roggedunnngroup.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com

**Exhibit G**  
 Affected Parties  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Dennis Twomey	mclemente@sidley.com; alyssa.russell@sidley.com;
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person,	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
Counsel for the Dugaboy Investment Trust and Get Good Trust	Umari Zugaro, PLLC	Basil A. Umari	bumari@umari-zugaro.com
Counsel to the United States Internal Revenue Service	US Attorney's Office for the Northern District of Texas	Erin Nearly Cox, Donna K. Webb	donna.webb@usdoj.gov
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Winstead PC	Rakhee V. Patel, Annmarie Chiarello	rpatel@winstead.com; achiarello@winstead.com

# EXHIBIT H

**Exhibit H**  
Affected Parties  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave		New York	NY	10018
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500	Dallas	TX	75201
Counsel for James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Joshua N. Eppich, J. Robertson Clarke	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102
Counsel for Jefferies LLC	Butler Snow LLP	Martin Sosland, Candice Carson	2911 Turtle Creek Blvd.	Suite 1400	Dallas	TX	75219
Counsel for Pension Benefit Guaranty Corporation	Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425		Dallas	TX	75201
Counsel for Patrick Daugherty	Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik	919 Third Avenue		New York	NY	10022
Counsel for HarbourVest, et al.	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006
Counsel for Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Lauren Macksoud,	233 South Wacker Drive, Suite 5900		Chicago	IL	60606-6361
Counsel for the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	2101 Cedar Springs Road, Suite 900		Dallas	TX	75201
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500		New Orleans	LA	70130
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Marc B. Hankin, Richard Levin	919 Third Avenue		New York	NY	10022-3908
Counsel for UBS Securities LLC and UBS AG, London Branch	JENNER AND BLOCK, LLP	Terri L. Mascherin	353 North Clark Street		Chicago	IL	60654-3456
Counsel for Meta-e Discovery, LLC	K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW	Bank of America Plaza	Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	901 Main Street, Suite 5200		Dallas	TX	75202
Counsel for Acis Capital Management, L.P. and Acis Capital Management GP, LLC	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Washington	DC	20004
Counsel for the Redeemer Committee of the Highland Crusader Fund	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Suite 100		Los Angeles	CA	90071
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Linebarger Goggan Blair & Sampson LLP	Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000	Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deay Simon LLP	Daniel P. Winikka	12377 Merit Drive, Suite 900		Dallas	TX	75251

**Exhibit H**  
Affected Parties  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel For The Official Committee Of Unsecured Creditors	McCollom D'Emilio Smith Uebler LLC	Thomas A. Uebler, Joseph L. Christensen	Little Falls Centre Two 909 Third Avenue	2751 Centerville Road, Suite 401	Wilmington	DE	19808
Counsel for Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan			New York	NY	10022
Counsel for James Dondero	Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building	Dallas	TX	75242
Counsel for Pension Benefit Guaranty Corporation	Pension Benefit Guaranty Corporation	C. Paul Chalmers, Charles L. Finke, Lori A. Butler, Michael I. Baird, Faheem A. Mahmooth	1200 K Street, N.W.		Washington	D.C.	20005
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County							
Counsel for Jack Yang and Brad Borud	Pronske & Kathman, P.C.	Jason P. Kathman	2701 Dallas Pkwy, Suite 590		Plano	TX	75093
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Rogge Dunn Group, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900		Dallas	TX	75201
Unsecured Creditors	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610		Dallas	TX	75201
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Dennis Twomey	One South Dearborn Street		Chicago	IL	60603
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person,	2021 McKinney Avenue Suite 2000		Dallas	TX	75201
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	717 N. Harwood St., Suite 400		Dallas	TX	75201
Counsel for the Dugaboy Investment Trust and Get Good Trust	Umari Zugato, PLLC	Basil A. Umari	1403 Eberhard		Houston	TX	77019
Counsel to the United States Internal Revenue Service	US Attorney's Office for the Northern District of Texas	Erin Neary Cox, Donna K. Webb	1100 Commerce St. Suite 300		Dallas	TX	75242
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 100		Dallas	TX	75204
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Winstead PC	Rakhee V. Patel, Annmarie Chiarello	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201

# EXHIBIT I

**Exhibit I**

Affected Parties  
Served via Electronic Mail

<b>CreditorName</b>	<b>CreditorNoticeName</b>	<b>Email</b>
CLO Holdco, Ltd.	Myers Bigel P.A.	gscott@myersbigel.com
HarbourVest, et al.	Crowe & Dunlevy, P.C.	vickie.driver@crowedunlevy.com
HarbourVest, et al.	Debevoise & Plimpton LLP	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com
Highland Capital Management Services, Inc.	Attn Director or Officer	fwaterhouse@highlandcapital.com
Highland CLO Funding Ltd.	King & Spalding LLP	pbessette@kslaw.com
JHT Holdings, Inc.	Attn: Christopher Reehl	creehl@jtholdings.com
PAUS2 (Investments) GP Ltd.	Attn: Eric Pedde	Eric.pedde@aimco.alberta.ca

# EXHIBIT J

**Exhibit J**  
 Affected Parties  
 Served via Overnight Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
American Banknote Corporation	Attention: Patrick J. Gentile	560 Sylvan Avenue			Englewood Cliffs	NJ	07632	
Carey Holdings, Inc.	Attention: General Counsel	4530 Wisconsin Avenue, N.W., 5th Floor			Washington	DC	20016	
Cornerstone Healthcare Group Holding, Inc.	Attn: Michael Brohm	13455 Noel Road, Suite 1320			Dallas	TX	75240	
ENA Capital, LLC	Attn: Steve Ellman and Bob Kauffman	Ellman Management Group, Inc.	4040 E. Camelback Road, Suite 250		Phoenix	AZ	85018	
Hewett's Island CLO 1-R, Ltd.	c/o Acis Capital Management	Winstead PC	Rakhee V. Patel, Phillip Lamberson	2728 N. Harwood Street, Suite 500	Dallas	TX	75201	
Hewett's Island CLO 1-R, Ltd.	c/o Acis Capital Management	Blank Rome LLP	John E. Lucian, Josef W. Mintz	1201 N. Market Street, Suite 800	Wilmington	DE	19801	
Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Besette	500 West 2nd St., Suite 1800		Austin	TX	78701-4684	
Highland CLO Funding, Ltd		First Floor, Dorey Court, Admiral Park	St Peter Port		Guernsey		GY1 6HJ	Channel Islands
JHT Holdings, Inc.	Attn: Christopher Reehl	10801 Corporate Drive	PO Box 581025		Pleasant Prairie	WI	53158	
PAUS2 (Investments) GP Ltd.	Attn: Eric Pedde	c/o Alberta Investment Management Corporation	1100-10830 Jasper Avenue		Edmonton	AB	T5J2B3	Canada
Petrocap Incentive Partners III GP, LLC	Attn: Lane Britain	Petrocap Incentive Holdings III, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Petrocap Partners II GP, LLC	Attn: Lane Britain	Petrocap Incentive Partners II, LP	3333 Lee Parkway, Suite 750		Dallas	TX	75219	
Progenics Pharmaceuticals, Inc.	Attn: CEO	777 Old Saw Mill Road			Tarrytown	NY	10591	

# EXHIBIT K

**Exhibit K**  
Affected Parties  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Hewett's Island CLO 1-R, Ltd.	c/o Acis Capital Management	Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
HFP GP, LLC	Attn Highland Capital Management, L.P. as sole member	300 Crescent Court Ste 700		Dallas	TX	75201
Highland Capital Insurance Solutions GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Capital Insurance Solutions LP		300 Crescent Ct	Ste 700	Dallas	TX	75201
Highland Capital Management Services, Inc.		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Capital Management Services, Inc.		300 Crescent Court, Suite 700		Dallas	TX	75201
Highland CDO Opportunity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland CLO Funding Ltd		300 Crescent Ct	Ste 700	Dallas	TX	75201
Highland Credit Opportunities CDO GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Dynamic Income Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Employee Retention Assets LLC		13455 Noel Rd	Ste 800	Dallas	TX	75240
Highland Employee Retention Assets, LLC	Attn James Dondero	Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Fund Holdings, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland GP Holdings LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Multi Strategy Credit Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Multi-Strategy Fund GP, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240

**Exhibit K**

Affected Parties

Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Highland Multi-Strategy Master Fund, L.P.		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Principal Opportunities GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Restoration Capital Partners GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Highland Select Equity Fund GP, LLC		Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
LEE BLACKWELL PARKER, III		300 Crescent Court, Suite 700		Dallas	TX	75201
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	Two Galleria Tower	13455 Noel Road, Suite 1300	Dallas	TX	75240
Penant Management GP, LLC	c/o Highland Capital Management, L.P.	300 Crescent Court Ste 700		Dallas	TX	75201
Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association	Highland Special Opp. Holding Company	2 Galleria Towers 13455 Noel Road	Suite 1300	Dallas	TX	75240
Strand Advisors Inc.		300 Crescent Court		Dallas	TX	75201

# EXHIBIT L

**Exhibit L**

Affected Parties

Served via Electronic Mail

CreditorName	Email
HARBOURVEST 2017 GLOBAL AIF L.P.	mpugatch@harbourvest.com
HARBOURVEST 2017 GLOBAL FUND L.P.	mpugatch@harbourvest.com
HARBOURVEST DOVER STREET IX INVESTMENT	mpugatch@harbourvest.com
HARBOURVEST SKEW BASE AIF L.P.	mpugatch@harbourvest.com
HV INTERNATIONAL VIII SECONDARY L.P.	mpugatch@harbourvest.com

# EXHIBIT M

**Exhibit M**  
Affected Parties  
Served via Overnight Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	Aberdeen Loan Funding, Ltd. c/o Walkers SPV Limited, Walker House	87 Mary Street			George Town	Grand Cayman	KY1-9902	Cayman Islands
Aberdeen Loan Funding, Ltd. and State Street Bank and Trust Company	State Street Bank and Trust Company	200 Clarendon St PO BOX 1931		Mail Code: EUC 108	Boston Columbia	MA TN	02116 38402	US
American Banknote Corporation	Brentwood CLO Ltd, et al	Joseph E Bain	Jones Walker LLP	811 Main St Suite 2900	Houston	TX	77002	US
Brentwood CLO, Ltd.; Investors Bank & Trust Company	Brentwood CLO, Ltd. c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street, George Town	The Directors	Grand Cayman	Cayman Island		Cayman Island
Brentwood CLO, Ltd.; Investors Bank & Trust Company	Investors Bank & Trust Company	200 Clarendon Street		CDO Services - Brentwood CLO, Ltd		MA	02116	
CenturyLink Communications, LLC		1801 California Street			Denver	CO	80202	
Citigroup Financial Products Inc.;				Managing Director, Global Structured Credit Products				
Citigroup Global Markets Inc.	Citigroup Global Markets Inc.	390 Greenwich Street	4th Floor			NY	10013	
CLO Holdco, Ltd.	CLO Holdco Ltd	John J Kane	Kane Russell Coleman Logan PC	901 Main Street Suite 5200	Dallas	TX	75202	US
CLO Holdco, Ltd.	Myers Bigel P.A.	Grant Scott, Director	4140 Park Lake Ave, Ste 600		Raleigh	NC	27612	
CLO Holdco, Ltd.		190 Elgin Avenue	George Town	Grand Cayman				Cayman Islands
Cornerstone Healthcare Group Holding Inc	David Smith	3030 Ross Ave	Ste 5400		Dallas	TX	75201	
DUO Security		170 West Tasman Dr			San Jose	CA	95134	
Eastland CLO, Ltd.	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman		KY1-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Eastland CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House	The Directors-Eastland CLO, Ltd.	George Town	Grand Cayman	KY1-1108	Cayman Islands
Eastland CLO, Ltd. and Investors Bank and Trust Company	Investors Bank and Trust Company (Attr: CDO Services Group; Ref: Eastland CLO	200 Clarendon St		Mail Code: EUC 108	Boston	MA	02116	
Gleneagles CLO, Ltd.; JPMorgan Chase Bank, National Association	JPMorgan Chase Bank, National Association	600 Travis	50th Floor	Worldwide Securities Services - Gleneagles CLO, Ltd. Telecopy: (713) 216-2101	Houston	TX	77002	
GoDaddy		14455 N. Hayden Rd.	Ste. 219		Scottsdale	AZ	85260	
Grayson CLO, Ltd.	Grayson CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Grayson CLO, Ltd.; Investors Bank & Trust Company	Investors Bank and Trust Company c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	The Directors - Grayson CLO, Ltd.	George Town	Grand Cayman	KY1-1108	Cayman Islands
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	Greenbriar CLO, Ltd. c/o Maples Finance Limited	P.O.Box 1093GT	Boundary Hall Cricket Square		George Town	Grand Cayman	KY1-9902	Cayman Islands

**Exhibit M**  
Affected Parties  
Served via Overnight Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Greenbriar CLO, Ltd. and State Street Bank and Trust Company	State Street Bank and Trust Company (Attr: CDO Services Group)	200 Clarendon St	Debevoise and Plimpton	Mail Code: EUC 108	Boston	MA	02116	
HarbourVest 2017 Global AIF L.P.	HarbourVest 2017 Global AIF LP	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022	US
HarbourVest 2017 Global AIF L.P.	HarbourVest 2017 Global AIF LP	co HarbourVest Partners LLC	One Financial Center		Boston	MA	02111	US
HARBORVEST 2017 GLOBAL AIF L.P.	HarbourVest 2017 Global AIF LP	One Financial Centre, 44th Floor	Debevoise and Plimpton		Boston	MA	02111-	
HarbourVest 2017 Global Fund L.P.	HarbourVest 2017 Global Fund LP	Attn Erica Weisgerber	Debevoise and Plimpton LLP	919 Third Avenue	New York	NY	10022	US
HarbourVest 2017 Global Fund L.P.	HarbourVest 2017 Global Fund LP	co HarbourVest Partners LLC	One Financial Center		Boston	MA	02111	US
HARBORVEST 2017 GLOBAL FUND L.P.	HarbourVest 2017 Global Fund LP	One Financial Centre, 44th Floor	Debevoise and Plimpton		Boston	MA	02111-	
HarbourVest Dover Street IX Investment L.P.	HarbourVest Dover Street IX Investment LP	co HarbourVest Partners LLC	One Financial Center		Boston	MA	02111	US
Harbourvest Dover Street IX Investment, LP	HarbourVest Dover Street IX Investment LP	One Financial Centre, 44th Floor	Debevoise and Plimpton		Boston	MA	02111-	
HARBORVEST SKEW BASE AIF L.P.	HarbourVest, et al.	Vickie L. Driver	2525 McKinnon Street, Suite 425		Dallas	TX	75201	
HarbourVest, et al.	Crowe & Dunlevy, P.C.	Erica S. Weisgerber, M.			New York	NY	10022	
HarbourVest, et al.	Debevoise & Plimpton LLP	Natasha Labovitz, Daniel E. Stroik	919 Third Avenue		New York	NY	10013	
Highland CDO and Structured Products Fund, Ltd.; Citigroup Financial Products Inc.; JPMorgan Chase Bank	Citigroup Financial Products Inc.	390 Greenwich Street		Doug Warren	New York	NY	10013	
Highland CDO and Structured Products Fund, Ltd.; Citigroup Financial Products Inc.; JPMorgan Chase Bank	JPMorgan Chase Ban	600 Travis Street	50th Floor	ITS-Greg Sheehan		TX	77002	
Highland CDO Opportunity Fund, Ltd.; IXIS Financial Products Inc.; JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	WSS-Greg Sheehan		TX	77002	
Highland Loan Fund, Ltd. et al	c o The Corporation Trust	PO Box 309	Ugland House South Church Street	Grand Cayman	Cayman Island		KY1-1104	Grand Cayman
Highland Multi Strategy Credit Fund GP LP	Company	1209 Orange St			Wilmington	DE	19801	
Highland Park CDO I, Ltd.	Moody's Investors Service, Inc.	99 Church Street		Commercial Mortgage Surveillance Group and CDO Surveillance	New York	NY	10041	
Highland Park CDO I, Ltd.	Standard & Poor's Ratings Services	55 Water Street	41 st Floor		New York	NY	10041	
Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association	Highland Park CDO I, Ltd.: c/o Maples Finance Limited	P.O. Box 1093GT	Queensgate House, South Church Street, George Town	The Directors	New York	Cayman Island		Cayman Island

**Exhibit M**  
Affected Parties  
Served via Overnight Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Highland Park CDO I, Ltd.; The Bank of New York Trust Company, National Association	The Bank of New York Trust Company, National Association	601 Travis	16th Fl		Houston	TX	77002	
Highland Restoration Capital Partners Offshore LP	c o Intertrust Cayman	190 Elgin Ave One Financial Centre, 44th Floor	George Town		Grand Cayman		KY1-9005	Cayman Islands
HV INTERNATIONAL VIII SECONDARY L.P.		110 A Street			Boston	MA	02111-	
Intex Solutions, Inc.	Jasper CLO Ltd. c/o Maples Finance Limited	Queensgate House, South Church Street, George Town		P.O. Box 1093GT Worldwide Securities Services - Jasper CLO Ltd.	Grand Cayman	Cayman Island	02494	Cayman Island
Jasper CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor		Houston	TX	77002	
Jasper CLO Ltd.; JPMorgan Chase Bank, National Association	Jasper CLO Ltd. c/o Maples Finance Limited	Queensgate House, South Church Street, George Town		P.O. Box 1093GT	Grand Cayman	Cayman Island		Cayman Island
Jasper CLO Ltd; MMP-5 Funding, LLC; and IXIS Financial Products Inc.	Jasper CLO Ltd.	PO Box 1234 Queensgate House	South Church Street	The Directors Worldwide Securities Services-Liberty CLO, Ltd.	Grand Cayman	Cayman Island		Cayman Island
Liberty CLO Ltd.	JPMorgan Chase Bank	600 Travis Street	50th Floor			TX	77002	
Liberty CLO Ltd.	Liberty CLO Ltd. c/o Walkers SPV Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman	Cayman Island		Cayman Island
Mxtoolbox		12710 Research Blvd	Ste 225		Austin	TX	78759	
Onelogin		848 Battery Street			San Francisco	CA	94111	
Pam Capital Funding LP/Ranger Asset Mgt LP		PO Box 309			Cayman Island		KY1-1104	Grand Cayman
Pamco Cayman Ltd./Ranger Asset Mgt LP		PO Box 309			Cayman Island		KY1-1104	Grand Cayman
QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # x9811		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # x0612		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # x8311		17171 Park Row #100			Houston	TX	77084	
QUEST IRA, INC., FBO NEIL DESAI, ACCT. # x9211		17171 Park Row #100			Houston	TX	77084	
Red River CLO Ltd c/o Ogier Fiduciary Services (Cayman) Limited	Attention: The Directors	P.O.Box 1234,	Queensgate House South Church Street	George Town	Grand Cayman		KY1-1108	Cayman Islands
Red River CLO Ltd. et al	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street, Third Floor						
Red River CLO Ltd.; Grand Central Asset Trust	LaSalle Bank N.A.	181 West Madison Street	Suite 3200	CDO Trust Services - Janet Haaek	Boston	MA	02110-	
Red River CLO Ltd.; Grand Central Asset Trust	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Roy Hykal	Chicago	IL	60602	
Red River CLO Ltd.; Grand Central Asset Trust	U.S. Bank, National Association	One Federal Street	3rd Floor	Mr. Jackson Carneiro	Chicago	IL	60602	
					Boston	MA	02110	

**Exhibit M**  
Affected Parties  
Served via Overnight Mail

CreditorName	Creditor/NoticeName	Address1	Address2	Address3	City	State	Zip	Country
Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association	LaSalle Bank N.A., as Collateral Administrator	181 West Madison Street	Suite 3200	CDO Trust Services - Maciej Zurawski	Chicago	IL	60602	
Red River CLO Ltd.; Highland Special Opportunities Holding Company; U.S. Bank National Association	U.S. Bank, National Association	One Federal Street	Third Floor	Mr. Jackson Carneiro	Boston	MA	02110	
Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.	IXIS Financial Products Inc. MMP-5 Funding, LLC	9 West 57th Street	36th Floor		New York	NY	10019	
Red River CLO Ltd.; MMP-5 Funding, LLC; IXIS Financial Products Inc.	MMP-5 Funding, LLC	120 White Plains Road	Suite 115		Tarrytown	NY	10591	
Red River CLO Ltd.; U.S. Bank National Association; IXIS Financial Products Inc.	Red River CLO Ltd. Address: c/o Ogier Fiduciary Services (Cayman) Limited	P.O. Box 1234	Queensgate House South Church Street	Red River CLO Ltd.	George Town	Grand Cayman	KY1-1108	Cayman Islands
Red River CLO, Ltd.	Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) limited	P.O. Box 1093GT	Queensgate House, South Church Street	The Directors	George Town, Grand Cayman			Cayman Islands
Red River CLO, Ltd.; U.S. Bank National Association	U.S. Bank National Association Corporate Trust Services/CDO Department	One Federal Street	Third Floor	Ref: Red River CLO Ltd.; Red River CLO Ltd. c/o Ogier Fiduciary Services (Cayman) Limited	Boston	MA	02110	
Red River CLO, Ltd.; Investors Bank & Trust Company	Investors Bank & Trust Company	P.O. Box 1234	Queensgate House South Church Street	The Directors - Red River	George Town	Grand Cayman	KY1-1108	Cayman Islands
Rockwall CDO II, Ltd.; Investors Bank & Trust Company	Rockwall CDO II Ltd. c/o Maples Finance Limited	200 Clarendon Street		CDO Services Group	George Town	MA	02116	
Rockwall CDO Ltd.	c/o Maples Finance Limited	P.O. Box 1093GT, Boundary Hall	Cricknet Square George Town, Grand Cayman	Attention: The Directors- Stratford CLO Ltd.	Grand Cayman	Cayman Island		Cayman Island
Rockwall CDO Ltd.; JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	P.O. Box 1093GT	Queensgate House South Church Street	George Town	Grand Cayman	Grand Cayman		Grand Cayman
Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.	Highland Loan Funding V Ltd	600 Travis Street	50th Floor	Worldwide Securities Services-Rockwall CDO Ltd.		TX	77002	
Salomon Smith Barney Inc.; Highland Loan Funding V Ltd.	Salomon Smith Barney	P.O. Box 1093 GT	Queensgate House South Church Street	The Directors	George Town	Grand Cayman	KY1-1108	Cayman Islands
Southfork CLO Ltd.; JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	390 Greenwich Street	4th Floor	FI Structured Products Group	New York	NY	10013-2396	Cayman Island
Stratford CLO Ltd.; State Street Bank and Trust Company	State Street Bank and Trust Company	600 Travis Street	50th Floor	P.O. Box 1093GT Institutional Trust Services-Southfork CLO Ltd.	Grand Cayman	Cayman Island		
Stratford CLO Ltd.; State Street Bank and Trust Company	Stratford CLO Ltd.	200 Clarendon Street		CDO Services Group, Ref: Stratford CLO Ltd.		MA	02116	
Stratford CLO Ltd.; State Street Bank and Trust Company	Stratford CLO Ltd.	P.O. Box 1093GT, Boundary Hall	Cricknet Square George Town, Grand Cayman	Attention: The Directors- Stratford CLO Ltd.	Grand Cayman	Cayman Island		Cayman Island

**Exhibit M**  
 Affected Parties  
 Served via Overnight Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip	Country
Valhalla CLO, Ltd.; JPMorgan Chase Bank	JPMorgan Chase Bank	390 Greenwich Street	4th Floor	Institutional Trust Services - Valhalla CLO, Ltd.		NY	10013	
Valhalla CLO, Ltd.; JPMorgan Chase Bank	Valhalla CLO, Ltd. c/o Walkers SPY Limited	Walker House, PO Box 908GT, Mary Street	George Town, Grand Cayman	The Directors	Grand Cayman	Cayman Island		Cayman Island
Westchester CLO, Ltd.	Westchester CLO, Ltd.	P. O. Box 1093GT	Queensgate House, South Church Street	The Directors				Cayman Islands, British West Indies
Westchester CLO, Ltd.; Investors Bank & Trust Company	Investors Bank & Trust Company	200 Clarendon Street		COO Services Group Ref: Westchester CLO, Ltd.;		MA	02116	

# EXHIBIT N

**Exhibit N**

Affected Party  
Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	City	State	Zip
Highland CDO & Structured Products Fund Ltd	Attn Director or Officer	13455 Noel Rd Suite 1300	Dallas	TX	75240

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	
	)	Case No. 19-34054 (SGJ)
Debtor.	)	
	)	

**CERTIFICATE OF SERVICE**

I, Vincent Trang, depose and say that I am employed by Kurtzman Carson Consultants LLC (“KCC”), the claims and noticing agent for the Debtor in the above-captioned case.

On January 21, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A**, **Exhibit B** and **Exhibit C**; and via First Class Mail upon the service lists attached hereto as **Exhibit D**, **Exhibit E** and **Exhibit F**:

- **Order Approving Debtor’s Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith** [Docket No. 1788]

Furthermore, on January 21, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit G**; and via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit H**:

- **Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to be Assumed by the Debtor Pursuant to the Fifth Amended Plan** [Docket No. 1791]

Furthermore, on January 21, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit I**:

- **WebEx Meeting Invitation to participate electronically in the hearing on Tuesday January 26, 2021 at 9:30 a.m. Central Time before the Honorable Stacey G. Jernigan**

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

Furthermore, on January 21, 2021, at my direction and under my supervision, employees of KCC caused the following document to be served via Electronic Mail upon the service lists attached hereto as **Exhibit A** and **Exhibit I**; and via First Class Mail upon the service lists attached hereto as **Exhibit D** and **Exhibit J**:

- **Instructions for any counsel and parties who wish to participate in the Hearing**  
[attached hereto as **Exhibit K**]

Dated: January 26, 2021

/s/ Vincent Trang  
Vincent Trang  
KCC  
222 N Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

# EXHIBIT A

Exhibit A  
 Core/2002 Service List  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Collin County Tax Assessor/Collector	Abernathy, Roeder, Boyd & Hullett, P.C.	Chad Timmons, Larry R. Boyd, Emily M. Hahn	ctimmons@abernathy-law.com; bankruptcy@abernathy-law.com; ehahn@abernathy-law.com
Counsel for NexBank	Alston & Bird LLP	Jared Slade	jared.slade@alston.com
Counsel for NexBank	Alston & Bird LLP	Jonathan T. Edwards	jonathan.edwards@alston.com
Counsel to Jefferies LLC	Ashby & Geddes, P.A.	William P. Bowden, Esq., Michael D. DeBaecke, Esq.	mdebaecke@ashbygeddes.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for NWCC, LLC	Barnes & Thornburg LLP	Thomas G. Haskins, Jr.	jwelton@btlaw.com; lwolford@btlaw.com
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Blank Rome LLP	John E. Lucian, Josef W. Mintz	mintz@blankrome.com; jbibiloni@blankrome.com
Counsel to James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; bryan.assink@bondsellis.com
Counsel to Oracle America, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin A. Sosland and Candice M. Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel to Integrated Financial Associates Inc.	Carlyon Cica Chtd.	Candace C. Carlyon, Esq., Tracy M. Osteen, Esq.	ccarlyon@carlyoncica.com; tosteen@carlyoncica.com
Counsel to the Intertrust Entities and the CLO Entities	Chipman, Brown, Cicero & Cole, LLP	Mark L. Desgrosseilliers	desgross@chipmanbrown.com
Creditor	Cole, Schotz, Meisel, Forman & Leonard, P.A.	Michael D. Warner, Esq.	mwarner@coleschotz.com
Counsel to Siepe LLC	Condon Tobin Sladek Thornton PLLC	J. Seth Moore	smoore@ctstlaw.com
Counsel to Patrick Daugherty ("Mr. Daugherty")	Cross & Simon LLC	Michael L. Vild, Esquire	mvild@crosslaw.com
Counsel to Jefferies LLC	Dentons US LLP	Lauren Macksoud, Esq.	lauren.macksoud@dentons.com
Counsel to Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Esq.	patrick.maxcy@dentons.com
Secured Creditor	Frontier State Bank	Attn: Steve Elliot	selliot@frontier-ok.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Marshall R. King, Esq., Michael A. Rosenthal, Esq. & Alan Moskowitz, Esq.	mking@gibsondunn.com; mrosenthal@gibsondunn.com; amoskowitz@gibsondunn.com
Counsel to Alvarez & Marsal CRF Management LLC as Investment Manager of the Highland Crusader Funds	Gibson, Dunn & Crutcher LLP	Matthew G. Bouslog, Esq.	mbouslog@gibsondunn.com
Counsel for the Debtor	Hayward & Associates PLLC	Melissa S. Hayward, Zachery Z. Annable	MHayward@HaywardFirm.com; ZAnnable@HaywardFirm.com
Counsel for the Dugaboy Investment Trust and Get Good Trust Equity Holders	Heller, Draper & Horn, L.L.C. Hunter Mountain Investment Trust	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy c/o Rand Advisors LLC	ldraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com jhonis@RandAdvisors.com
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Counsel to Crescent TC Investors, L.P.	Jackson Walker L.L.P.	Michael S. Held	mheld@jw.com
Secured Creditor	Jefferies LLC	Director of Compliance	cbianchi@jefferies.com
Secured Creditor	Jefferies LLC	Office of the General Counsel	cbianchi@jefferies.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Jenner & Block LLP	Marc B. Hankin, Richard Levin	mhankin@jenner.com; rlevin@jenner.com
Counsel for CCS Medical, Inc.	Jones Day	Amanda Rush	asrush@jonesday.com
Counsel to the Issuers (group of 25 separate Cayman issuers of loan)	Jones Walker LLP	Joseph E. Bain, Amy K. Anderson	jbain@joneswalker.com; aanderson@joneswalker.com

Exhibit A  
Core/2002 Service List  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	James A. Wright III	james.wright@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	John J. Kane	jkane@krcl.com
Counsel for Highland CLO Funding Ltd.	King & Spalding LLP	Paul R. Bessette	pbessette@kslaw.com
Counsel to BET Investments II, L.P.	Kurtzman Steady, LLC	Jeffrey Kurtzman, Esq.	Kurtzman@kurtzmansteady.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Asif Attarwala	asif.attarwala@lw.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Latham & Watkins LLP	Jeffrey E. Bjork	jeff.bjork@lw.com
Counsel to Coleman County TAD, Kaufman County, Upshur County, Fannin CAD, Tarrant County, Grayson County, Allen ISD, Dallas County, Irving ISD, and Rockwall CAD	Linebarger Goggan Blair & Sampson LLP	Elizabeth Weller, Laurie A. Spindler	dallas.bankruptcy@publicans.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@lfdslaw.com
Creditor	Lynn Pinker Cox & Hurst, L.L.P.	Michael K. Hurst, Esq.	mhurst@lynnllp.com
Equity Holders	Mark K. Okada		mokadadallas@gmail.com
Counsel to the Redeemer Committee of the Highland Crusader Fund	Morris, Nichols, Arsht & Tunnell LLP	Curtis S. Miller, Kevin M. Coen	rdehney@mnat.com; cmiller@mnat.com
Counsel to Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan, Esq. & Sally Siconolfi, Esq.	bankruptcy@morrisoncohen.com
Bank	NexBank	John Danilowicz	john.holt@nexbankcapital.com
Counsel to California Public Employees' Retirement System ("CalPERS")	Nixon Peabody LLP	Louis J. Cisz, III, Esq.	lcisz@nixonpeabody.com
SEC Headquarters	Office of General Counsel	Securities & Exchange Commission	SECBankruptcy-OGC-ADO@SEC.GOV
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	John A. Morris and Gregory V. Demo	jmorris@pszjlaw.com; gdemo@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Counsel for the Debtor	Pachulski Stang Ziehl & Jones LLP	Richard M. Pachulski, Jeffrey N. Pomerantz, Ira D. Kharasch, James E. O'Neill	rpachulski@pszjlaw.com; jpomerantz@pszjlaw.com; ikharasch@pszjlaw.com; joneill@pszjlaw.com
Pension Benefit Guaranty Corporation ("PBGC")	Pension Benefit Guaranty Corporation	Michael I. Baird	baird.michael@pbgc.gov; efile@pbgc.gov
Counsel to City of Garland, Garland ISD, Wylie ISD	Perdue, Brandon, Fielder, Collins & Mott, L.L.P.	Linda D. Reece	lreece@pbfc.com
Delaware counsel to Alvarez & Marsal CRF Management LLC	Potter Anderson & Corroon LLP	Jeremy W. Ryan, Esq., R. Stephen McNeill, Esq. & D. Ryan Slaugh, Esq.	jryan@potteranderson.com; rmcneill@potteranderson.com; rslauth@potteranderson.com
Secured Creditor	Prime Brokerage Services	Jefferies LLC	cbianchi@jefferies.com
Counsel to Patrick Daugherty	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com
Counsel to UBS Securities LLC and UBS AG London Branch ("UBS")	Richards, Layton & Finger PA	Michael J. Merchant, Sarah E. Silveira	merchant@rlf.com; silveira@rlf.com
Counsel to Hunter Mountain Trust	Rochelle McCullough, LLP	E. P. Keiffer	pkeiffer@romclaw.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel to the Intertrust Entities and the Issuers (group of 25 separate Cayman issuers of loan)	Schulte Roth & Zabel LLP	David J. Karp, James V. Williams III	david.karp@srz.com; jay.williams@srz.com
SEC Regional Office	Securities & Exchange Commission	Andrew Calamari, Regional Director	bankruptcynoticeshr@sec.gov; nyrobankruptcy@sec.gov

Exhibit A  
Core/2002 Service List  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
SEC Regional Office	Securities & Exchange Commission	Sharon Binger, Regional Director	philadelphia@sec.gov
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Elliot A. Bromagen	mclemente@sidley.com; alyssa.russell@sidley.com; ebromagen@sidley.com
Counsel to Official Committee of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person, Juliana Hoffman	preid@sidley.com; pmontgomery@sidley.com; cpersons@sidley.com; jhoffman@sidley.com
DE Secretary of State	State of Delaware	Division of Corporations - Franchise Tax	dosdoc_bankruptcy@state.de.us
Counsel to the Hunter Mountain Trust ("Hunter")	Sullivan Hazeltine Allinson LLC	William A. Hazeltine, Esq.	whazeltine@sha-llc.com
Equity Holders	The Dugaboy Investment Trust		gscott@myersbigel.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #1		mokadadallas@gmail.com
Equity Holders	The Mark and Pamela Okada Family Trust - Exempt Trust #2		mokadadallas@gmail.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
United States Attorney General	United States Attorney General	U.S. Department of Justice	askdoj@usdoj.gov
Counsel to Acis Capital Management GP LLC and Acis Capital Management, L.P. (collectively, "Acis")	Winstead PC	Rakhee V. Patel, Phillip Lamberson	rpatel@winstead.com; plamberson@winstead.com; achiarello@winstead.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: David Neier	dneier@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Katherine A. Preston	kpreston@winston.com
Counsel for Frank Waterhouse, Scott B. Ellington, Isaac Leventon, Jean Paul Sevilla, Hunter Covitz, and Thomas Surgent (the "Employees")	Winston & Strawn LLP	Attn: Thomas M. Melsheimer; Natalie L. Arbaugh	tmelsheimer@winston.com; narbaugh@winston.com
Counsel to Official Committee of Unsecured Creditors	Young Conaway Stargatt & Taylor, LLP	Michael R. Nestor, Edmon L. Morton, Sean M. Beach, Esq., Jaclyn C. Weissgerber, Esq.	bankfilings@ycst.com; mnestor@ycst.com; emorton@ycst.com; sbeach@ycst.com; jweissgerber@ycst.com

# **EXHIBIT B**

**Exhibit B**

Affected Parties  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to HarbourVest	Crowe & Dunlevy, P.C.	Vickie L. Driver	vickie.driver@crowedunlevy.com
Counsel to HarbourVest	Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com

# EXHIBIT C

**Exhibit C**

Affected Parties  
Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel to James Dondero	Bonds Ellis Eppich Schafer	D. Michael Lynn, John Y. Bonds, III, John T. Wilson, IV, Bryan C. Assink	michael.lynn@bondsellis.com; john@bondsellis.com; john.wilson@bondsellis.com; bryan.assink@bondsellis.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	jcoleman@krcl.com; jkane@krcl.com

# EXHIBIT D

Exhibit D

Core/2002 Service List  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Bank	BBVA	Michael Doran	8080 North Central Expressway	Suite 1500		Dallas	TX	75206
IRS	Internal Revenue Service	Centralized Insolvency Operation	PO Box 7346			Philadelphia	PA	19101-7346
Secured Creditor	KeyBank National Association	as Administrative Agent	225 Franklin Street, 18th Floor			Boston	MA	02110
Secured Creditor	KeyBank National Association	as Agent	127 Public Square			Cleveland	OH	44114
Texas Attorney General	Office of the Attorney General	Ken Paxton	300 W. 15th Street			Austin	TX	78701
Attorney General of the United States	Office of the Attorney General		Main Justice Building, Room 5111	10th & Constitution Avenue, N.W.		Washington	DC	20530
U.S. Attorneys Office for Northern District of TX	Office of the United States Attorney	Erin Nealy Cox, Esq	1100 Commerce Street, 3rd Floor			Dallas	TX	75202
TX Comptroller of Public Accounts Equity Holders	State Comptroller of Public Accounts Strand Advisors, Inc.	Revenue Accounting Division- Bankruptcy Section	PO Box 13258			Austin	TX	78711
TX AG Office	Texas Attorney Generals Office	Bankruptcy-Collections Division	300 Crescent Court	Suite 700		Dallas	TX	75201
U.S. Department of the Treasury	U.S. Department of the Treasury	Office of General Counsel	PO Box 12548			Austin	TX	78711-2548
Delaware Division of Revenue	Zillah A. Frampton	Bankruptcy Administrator	1500 Pennsylvania Avenue, NW	Carvel State Office Building, 8th Floor	820 N. French Street	Washington	DC	20220
			Delaware Division of Revenue			Wilmington	DE	19801

# EXHIBIT E

**Exhibit E**

Affected Parties

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	City	State	Zip
Counsel to HarbourVest	Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425	Dallas	TX	75201
Counsel to HarbourVest	Debevoise & Plimpton LLP	Erica S. Weisgerber, M. Natasha Labovitz, Daniel E. Stroik	919 Third Avenue	New York	NY	10022

# EXHIBIT F

**Exhibit F**

Affected Parties

Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	City	State	Zip
Counsel to James Dondero	Bonds Ellis Eppich Schafer	D. Michael Lynn, John Y. Bonds, III, John T. Wilson, IV, Bryan C. Assink	420 Throckmorton Street, Suite 1000	Fort Worth	TX	76102
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Broughpy	650 Poydras Street, Suite 2500	New Orleans	LA	70130
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	901 Main Street, Suite 5200	Dallas	TX	75242-1699

# EXHIBIT G

**Exhibit G**

Affected Parties

Served via Electronic Mail

CreditorName	CreditorNoticeName	Email
Strand Advisors, Inc.	Attn: Isaac Leventon	ileventon@highlandcapital.com
Strand Advisors, Inc.	Attn: James Seery	jpseeryjr@gmail.com
Strand Advisors, Inc.	Attn: John Dubel	jdubel@dubel.com
Strand Advisors, Inc.	Attn: Russell Nelms	rfargar@yahoo.com

# EXHIBIT H

**Exhibit H**  
 Affected Parties  
 Served via First Class Mail

CreditorName	CreditorNoticeName	Address1	Address2	Address3	City	State	Zip
Highland CDO & Structured Products Fund Ltd	Attn Director or Officer	13455 Noel Rd Suite 1300			Dallas	TX	75240
Highland CDO and Structured Products Fund, Ltd.; Citigroup Financial Products Inc.; JPMorgan Chase Bank	Citigroup Financial Products Inc.	390 Greenwich Street	Doug Warren		New York	NY	10013
Highland CDO and Structured Products Fund, Ltd.; Citigroup Financial Products Inc.; JPMorgan Chase Bank	JPMorgan Chase Bank	600 Travis Street	50th Floor	ITS-Greg Sheehan	Houston	TX	77002
HIGHLAND CDO OPPORTUNITY FUND	Attn Director or Officer	13455 NOEL RD STE 800			Dallas	TX	75240
Highland CDO Opportunity Fund, Ltd.; IXIS Financial Products Inc.; JPMorgan Chase Bank, National Association	JPMorgan Chase Bank	600 Travis Street	50th Floor	WSS-Greg Sheehan	Houston	TX	77002
IXIS Financial Products Inc.	Attn Director or Officer	9 West 57th Street	36th Floor		New York	NY	10019
Strand Advisors Inc.	Attn Director or Officer	300 Crescent Court			Dallas	TX	75201
Strand Advisors, Inc.	Attn: Isaac Leventon	300 Crescent Court, Suite 700			Dallas	TX	75201
Strand Advisors, Inc.	Attn: James Seery	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240
Strand Advisors, Inc.	Attn: John Dubel	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240
Strand Advisors, Inc.	Attn: Russell Nelms	Two Galleria Tower	13455 Noel Road, Suite 1300		Dallas	TX	75240

# EXHIBIT I

Exhibit I  
 Affected Parties  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Debra A. Dandeneau	debra.dandeneau@bakermckenzie.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Michelle Hartmann	michelle.hartmann@bakermckenzie.com
Counsel for James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Joshua N. Eppich, J. Robertson Clarke	michael.lynn@bondsellis.com; john@bondsellis.com; joshua@bondsellis.com; robbie.clarke@bondsellis.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin Sosland, Candice Carson	martin.sosland@butlersnow.com; candice.carson@butlersnow.com
Counsel for HarbourVest, et al.	Crowe & Dunlevy, P.C.	Vickie L. Driver	vickie.driver@crowedunlevy.com
Counsel for Patrick Daugherty	Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik	nlabovitz@debevoise.com; eweisgerber@debevoise.com; destroik@debevoise.com
Counsel for Jefferies LLC	Dentons US LLP	Casey Doherty	casey.doherty@dentons.com
Counsel for Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Lauren Macksoud,	patrick.maxcy@dentons.com; lauren.macksoud@dentons.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	mplatt@fbtlaw.com
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	ddraper@hellerdraper.com; lcollins@hellerdraper.com; gbrouphy@hellerdraper.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Marc B. Hankin, Richard Levin	MHankin@jenner.com
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Terri L. Mascherin	TMascherin@jenner.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	A. Lee Hogewood, III	Lee.hogewood@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	artoush.varshosaz@klgates.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	stephen.topetzes@klgates.com
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	jcoleman@krcl.com; jkane@krcl.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	andrew.clubok@lw.com; sarah.tomkowiak@lw.com
Counsel for UBS Securities LLC and UBS AG, London Branch	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	jeff.bjork@lw.com; kim.posin@lw.com
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Linebarger Goggan Blair & Sampson LLP	Laurie A. Spindler	dallas.bankruptcy@publicans.com; Laurie.Spindler@lgbs.com
Counsel for Jack Yang and Brad Borud	Loewinsohn Flegle Deary Simon LLP	Daniel P. Winikka	danw@lfdslaw.com
Counsel for Patrick Daugherty	McCollom D'Emilio Smith Uebler LLC	Thomas A. Uebler, Joseph L. Christensen	tuebler@mdsulaw.com; jchristensen@mdsulaw.com
Counsel for Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan	bankruptcy@morrisoncohen.com
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	drukavina@munsch.com; jvasek@munsch.com
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	lisa.l.lambert@usdoj.gov
Counsel for Pension Benefit Guaranty Corporation	Pension Benefit Guaranty Corporation	C. Paul Chalmers, Charles L. Finke, Lori A. Butler, Michael I. Baird, Faheem A. Mahmooth	baird.michael@pbgc.gov; efile@pbgc.gov

Exhibit I  
 Affected Parties  
 Served via Electronic Mail

Description	CreditorName	CreditorNoticeName	Email
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Rogge Dunn Group, PC	Brian P. Shaw	shaw@roggedunnngroup.com
Counsel for Scott Ellington, Thomas Surgent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	judith.ross@judithwross.com; frances.smith@judithwross.com; eric.soderlund@judithwross.com
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Dennis Twomey	mclemente@sidley.com; alyssa.russell@sidley.com; preid@sidley.com;
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person,	pmontgomery@sidley.com; cpersons@sidley.com
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Spencer Fane LLP	Jason P. Kathman	jkathman@spencerfane.com
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	david.g.adams@usdoj.gov
Counsel for Meta-e Discovery, LLC	Umari Zugaro, PLLC	Basil A. Umari	bumari@umari-zugaro.com
Counsel for Pension Benefit Guaranty Corporation	US Attorney's Office for the Northern District of Texas	Erin Nearly Cox, Donna K. Webb	donna.webb@usdoj.gov
Counsel For Nexpoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	jason.rudd@wickphillips.com; lauren.drawhorn@wickphillips.com
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Winstead PC	Rakhee V. Patel, Annmarie Chiarello	rpatel@winstead.com; achiarello@winstead.com

# EXHIBIT J

**Exhibit J**  
 Affected Parties  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Debra A. Dandeneau	452 Fifth Ave		New York	NY	10018
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Baker & McKenzie LLP	Michelle Hartmann	1900 North Pearl	Suite 1500	Dallas	TX	75201
Counsel for James Dondero	Bonds Ellis Eppich Schafer Jones LLP	D. Michael Lynn, John Y. Bonds, III, Joshua N. Eppich, J. Robertson Clarke	420 Throckmorton Street, Suite 1000		Fort Worth	TX	76102
Counsel for UBS Securities LLC and UBS AG, London Branch	Butler Snow LLP	Martin Sosland, Candice Carson	2911 Turtle Creek Blvd. Suite 1400		Dallas	TX	75219
Counsel for HarbourVest, et al.	Crowe & Dunlevy, P.C.	Vickie L. Driver	2525 McKinnon Street, Suite 425		Dallas	TX	75201
Counsel for Patrick Daugherty	Debevoise & Plimpton LLC	M. Natasha Labovitz, Erica S. Weisgerber, Daniel E. Stroik	919 Third Avenue		New York	NY	10022
Counsel for Jefferies LLC	Dentons US LLP	Casey Doherty	1221 McKinney Street, Suite 1900		Houston	TX	77010-2006
Counsel for Jefferies LLC	Dentons US LLP	Patrick C. Maxcy, Lauren Mackssoud,	233 South Wacker Drive, Suite 5900		Chicago	IL	60606-6361
Counsel for the Redeemer Committee of the Highland Crusader Fund	Frost Brown Todd LLC	Mark A. Platt	2101 Cedar Springs Road, Suite 900		Dallas	TX	75201
Counsel for the Dugaboy Investment Trust and Get Good Trust	Heller, Draper & Horn, L.L.C.	Douglas S. Draper, Leslie A. Collins, Greta M. Brouphy	650 Poydras Street, Suite 2500		New Orleans	LA	70130
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Marc B. Hankin, Richard Levin	919 Third Avenue		New York	NY	10022-3908
Counsel for the Redeemer Committee of the Highland Crusader Fund	JENNER AND BLOCK, LLP	Terri L. Mascherin	353 North Clark Street		Chicago	IL	60654-3456
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	A. Lee Hogewood, III	4350 Lassiter at North Hills Ave., Suite 300		Raleigh	NC	27609
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Artoush Varshosaz	1717 Main Street, Suite 2800		Dallas	TX	75201
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	K&L Gates LLP	Stephen G. Topetzes	1601 K Street, NW		Washington	DC	20006-1600
Counsel to CLO Holdco, Ltd.	Kane Russell Coleman Logan PC	Joseph M. Coleman, John J. Kane	901 Main Street, Suite 5200	Bank of America Plaza	Dallas	TX	75202
Counsel for UBS Securities LLC and UBS AG, London Branch	Latham & Watkins LLP	Andrew Clubok, Sarah Tomkowiak	555 Eleventh Street, NW, Suite 1000		Washington	DC	20004

**Exhibit J**  
Affected Parties  
Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel for UBS Securities LLC and UBS AG, London Branch	Latham & Watkins LLP	Jeffrey E. Bjork, Kimberly A. Posin	355 South Grand Avenue, Suite 100		Los Angeles	CA	90071
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Linebarger Goggan Blair & Sampson LLP	Laurie A. Spindler	2777 N. Stemmons Freeway	Suite 1000	Dallas	TX	75207
Counsel for Jack Yang and Brad Borud	Loewensohn Flegle Deary Simon LLP	Daniel P. Winikka	12377 Merit Drive, Suite 900	2751 Centerville Road, Suite 401	Dallas	TX	75251
Counsel for Patrick Daugherty	McCullom D'Emilio Smith Uebler LLC	Thomas A. Uebler, Joseph L. Christensen	Little Falls Centre Two		Wilmington	DE	19808
Counsel for Meta-e Discovery, LLC	Morrison Cohen LLP	Joseph T. Moldovan	909 Third Avenue		New York	NY	10022
Counsel for Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., et al	Munsch Hardt Kopf & Harr, P.C.	Davor Rukavina, Julian P. Vasek	3800 Ross Tower	500 N. Akard Street	Dallas	TX	75202-2790
US Trustee for Northern District of TX	Office of the United States Trustee	Lisa L. Lambert, Esq	1100 Commerce Street, Room 976	Earle Cabell Federal Building	Dallas	TX	75242
Counsel for Pension Benefit Guaranty Corporation	Pension Benefit Guaranty Corporation	C. Paul Chalmers, Charles L. Finke, Lori A. Butler, Michael I. Baird, Faheem A. Mahmooth	1200 K Street, N.W.		Washington	D.C.	20005
Counsel for Acis Capital Management, L.P. and Acis Capital Management GP, LLC	Rogge Dunn Group, PC	Brian P. Shaw	500 N. Akard Street, Suite 1900		Dallas	TX	75201
Counsel for Scott Ellington, Thomas Sargent, Frank Waterhouse, and Issac Leventon (the "Senior Employees")	Ross & Smith, PC	Judith W. Ross, Frances A. Smith, Eric Soderlund	700 North Pearl Street, Suite 1610		Dallas	TX	75201
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Matthew Clemente, Alyssa Russell, Dennis Twomey	One South Dearborn Street		Chicago	IL	60603
Counsel For The Official Committee Of Unsecured Creditors	Sidley Austin LLP	Penny P. Reid, Paige Holden Montgomery, Charles M. Person,	2021 McKinney Avenue Suite 2000		Dallas	TX	75201
Attorneys for Dallas County, Counsel for Dallas County, City of Allen, Allen ISD, City of Richardson and Kaufman County	Spencer Fane LLP	Jason P. Kathman	5700 Granite Parkway, Suite 650		Plano	TX	75024
Counsel to the United States Internal Revenue Service	U.S. Department of Justice, Tax Division	David G. Adams	717 N. Harwood St., Suite 400		Dallas	TX	75201
Counsel for Meta-e Discovery, LLC	Umari Zugaro, PLLC	Basil A. Umari	1403 Eberhard		Houston	TX	77019
Counsel for Pension Benefit Guaranty Corporation	US Attorney's Office for the Northern District of Texas	Erin Nearty Cox, Donna K. Webb	1100 Commerce St. Suite 300		Dallas	TX	75242

**Exhibit J**  
 Affected Parties  
 Served via First Class Mail

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip
Counsel For Nexpoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC	Wick Phillips Gould & Martin, LLP	Jason M. Rudd, Lauren K. Drawhorn	3131 McKinney Avenue, Suite 100		Dallas	TX	75204
Counsel for Acis Capital Management, L.P and Acis Capital Management GP, LLC	Winstead PC	Rakhee V. Patel, Annmarie Chiarello	500 Winstead Building	2728 N. Harwood Street	Dallas	TX	75201

# EXHIBIT K

Judge Jernigan - January 26, 2021 at 9:30 a.m. - Highland Capital Management, 19-34054-sgj11

Hosted by Judge Stacey Jernigan

When it is time to join the meeting, click the link below:

<https://us-courts.webex.com/us-courts/j.php?MTID=m73c83be7c289c69643e4260bdc56bc2a>

Meeting number: 180 584 9608

Password: bankruptcy

Join by phone

1-650-479-3207 Call-in toll number (US/Canada)

Access code: 180 584 9608

Highland Capital Management, 19-34054

Confirmation hearing, 1/26/2021

001017

### **CONNECTION INSTRUCTIONS FOR PARTICIPATING IN A WEBEX VIRTUAL HEARING**

The court will allow participation in a virtual hearing using either of the following two methods. Please connect at least 10 minutes prior to the hearing time. It is recommended that attorneys discuss the logistics of the WebEx appearance with their clients/witnesses at least 48 hours before the hearing.

#### **Option 1: Using the WebEx app on your smartphone, tablet, laptop, or desktop.**

It is strongly preferred that participants who may speak during a hearing use the WebEx application rather than using the "call-in" option described in Option 2.

Witnesses and attorneys who anticipate giving extensive legal argument or conducting examination are required to utilize the video function. The court may consider special requests for other appearance options on a case by case basis.

Please connect using only one device. Using two or more devices may cause audio feedback issues.

If using a phone or tablet for video, it should be set in a stationary position. Holding a phone or tablet in your hand while speaking does not yield a good video for the court.

**NOTE: If you are experiencing audio issues when using the WebEx application,** you may use the "Call Me At" selection under "Audio Connection" to move just the audio portion of the WebEx conference to your telephone.

#### **Option 2: Call-in via phone (audio only).**

The meeting number/access code changes with each meeting and will be made available, along with the dial-in number on the WebEx link and instructions sheet found on the judge's webpage and/or on the ECF docket for the case.

### **HELPFUL HINTS AND ETIQUETTE**

- A. Please use the mute function when you are not speaking. Please be aware that sometimes the court mutes everyone when there is background noise. When you want to speak, make sure you are not on mute. Call-in users should dial \*6 to unmute your line.
- B. Remember to state your name for the record each time before speaking and speak slowly and clearly so the court can get a good record.
- C. Use headphones whenever possible, especially if using a desktop PC with external speakers. We have found that newer iPhones provide the best visual and audio feed – better than most desktop computers. If you are on a personal computer, headphones or earbuds are required for those who need to speak during the hearing.
- D. During examination, attorneys and witnesses should use a separate camera and microphone when possible. To avoid feedback, parties using separate devices must not be in the same room. The court may consider special requests on a case by case basis.
- E. WebEx participants may use the "share" button to easily share their screen or document with the court or other WebEx participants. Press "stop sharing" to remove the presentation from the meeting.
- F. When making an appearance from a vehicle, please park in a safe location with windows rolled up (to minimize background distraction and noise) and use a headset that is ear-to-phone (not the vehicle's hands-free speaker-phone option).
- G. Suggestions for those participating in a WebEx hearing from home: If you are having connectivity problems, turn off devices that may be using bandwidth on your home network. Devices or applications such as Facetime, Roku, streaming media players, video games, or large downloads can negatively impact the audio and video quality of the WebEx meeting.
- H. Participants are reminded that they should wear attire suitable for court.
- I. Participants who wish to test their WebEx connection or the share screen functionality in advance of the hearing may arrange a "practice run" by contacting the courtroom deputy.

### **EXHIBITS AND DEMONSTRATIVE AIDS**

Exhibits should be filed ahead of time by the date that they would normally be exchanged pursuant to our local rules using the "notice" or "list (witness/exhibit/generic)" event in ECF. For voluminous exhibits, please contact the courtroom deputy, as it may be necessary for you to provide the court with an exhibit notebook or zip file in advance of the hearing.

Demonstrative aids and Power Points should also be filed prior to the hearing, if possible. If not, WebEx has the ability to allow you to share your screen, or a particular document, with everyone in the hearing. If these documents are admitted as exhibits, they would then have to be filed after the hearing.

During the hearing, lawyers can refer to (and offer) their exhibits by referencing the exhibit's docket number for the court and all to access. After the hearing, the court will create a Minute Entry



Joseph M. Coleman (State Bar No. 04566100)  
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ATTORNEYS FOR CLO HOLDCO, LTD.

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

IN RE:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.,

DEBTOR.

§  
§  
§  
§  
§  
§  
§

CHAPTER 11

CASE No. 19-34054-SGJ

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**WITNESS AND EXHIBIT LIST**

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COMES NOW, CLO Holdco, Ltd. ("**CLO Holdco**"), a creditor and party-in-interest in this case, and files this Witness and Exhibit List for the hearing scheduled for **Thursday, January 14, 2021, at 9:30 a.m. CST** (the "**Hearing**") before the Honorable Stacey G. Jernigan on the Debtor's motion to approve its settlement with the Harbourvest claimants in the above-captioned chapter 11 bankruptcy case.

**WITNESSES**

CLO Holdco may call any of the following witnesses at the Hearing, in person or by proffer:

1. Any witness called or designated by any other party.
2. Any impeachment or rebuttal witnesses.

**EXHIBITS**

CLO Holdco may offer into evidence one or more of the following exhibits at the Hearing:

EXHIBIT	DESCRIPTION OF EXHIBIT	OFFERED	OBJECTION	ADMITTED
1.	Motion to Compromise Controversy with Harbourvest Entities [Dkt. No. 1625]			
2.	Proposed Settlement Agreement – Harbourvest [Dkt. No. 1631-1]			
3.	CLO Holdco's Objection to Motion to Compromise Controversy [Dkt. No. 1707]			
4.	HCLOF Members Agreement			
5.	Deposition Excerpts – Deposition of Mike Pugatch of Harbourvest Entities dated Jan. 11, 2021			

CLO reserves the right to: (i) use any exhibits presented by any other party; (ii) use any exhibits not listed herein for impeachment and rebuttal purposes; (iii) limit any exhibits to redacted form; and (iv) supplement and/or amend this Witness and Exhibit List at any time prior to the Hearing.

DATED: January 11, 2021

Respectfully submitted,

**KANE RUSSELL COLEMAN LOGAN PC**

By: /s/John J. Kane

**Joseph M. Coleman**  
State Bar No. 0456610

**John J. Kane**  
State Bar No. 24066794

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**ATTORNEYS FOR CLO HOLDCO, LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2021, a true and correct copy of the foregoing *Witness and Exhibit List* was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case. Copies of CLO Holdco's proposed Exhibits were provided to the Court, counsel for the Debtor, counsel for the Harbourvest entities, and to any other party who requested CLO Holdco's Exhibits, subject to this Court's prior protective orders.

/s/ John J. Kane  
John J. Kane

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 5**

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*Attorneys for The Dugaboy Investment Trust and Get Good Trust*

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

*Vol. 1*

- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Exhibit 1 # <u>2</u> Exhibit 2 # <u>3</u> Exhibit 3 # <u>4</u> Exhibit 4 # <u>5</u> Exhibit 5 # <u>6</u> Exhibit 6 # <u>7</u> Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

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		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

ddraper@hellerdraper.com

Leslie A. Collins, La. Bar No. 14891

lcollins@hellerdraper.com

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Heller, Draper & Horn, L.L.C.

650 Poydras Street, Suite 2500

New Orleans, LA 70130

Telephone: (504) 299-3300

Fax: (504) 299-3399

*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

ATTORNEYS FOR JAMES DONDERO

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

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054
	§	
Debtor.	§	Chapter 11

**JAMES DONDERO'S WITNESS AND EXHIBIT LIST**

James Dondero ("Dondero") hereby files this Witness and Exhibit List for the hearing to consider *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154)* [Docket No. 1625] (the "Motion") filed by Highland Capital Management, L.P. (the "Debtor"), currently set for January 14, 2021 at 9:30 a.m. In support thereof, Dondero respectfully shows as follows:

**A. Documents that Dondero may use as exhibits:**

<b>Dondero Exhibit No.</b>	<b>Description</b>	<b>Offered</b>	<b>Objection</b>	<b>Admitted by Agreement</b>	<b>Admitted</b>
A.	Proof of Claim Nos. 143, 147, 149, 150, 153, and 154 filed by the HarbourVest entities (collectively, " <u>HarbourVest</u> ")				
B.	<i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims</i> [Docket No. 906] (the " <u>Debtor Objection</u> ")				
C.	<i>HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims</i> [Docket No. 1057] (the " <u>HarbourVest Response</u> ")				
D.	<i>Declaration of John Morris in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest</i> [Docket No. 1631]				
E.	<i>Motion for 2004 Examination of Investor in Highland CLO Funding, Ltd. and Certain Affiliates Thereof</i> [Acis Dkt. 634], filed by Robin Phelan, Chapter 11 Trustee on October 10, 2018				
F.	HarbourVest 3018 Motion [Docket No. 1207]				
G.	Declaration of Michael Pugatch in Support of 3018 Motion [Docket No. 1208]				

H.	Highland CLO Funding, Ltd. (“HCLOF”) Articles of Incorporation				
I.	HCLOF Members Agreement				
J.	HCLOF Offering Memorandum				
K.	Portfolio management agreement between HCLOF and Highland HCF Advisor, Ltd., dated November 15, 2017				
L.	Subscription and Transfer Agreement for Ordinary Shares, dated November 15, 2017				
M.	Email from Brad Eden to Dustin Willard, dated August 15, 2017, with attachment				
	Any document or pleading filed in the bankruptcy case of Acis Capital Management, LP and Acis Capital Management GP, LLC, Case No. 18-30264				
	Any document or pleading filed in the above-captioned bankruptcy case				
	Any exhibit necessary for impeachment or rebuttal purposes				
	Any and all documents identified or offered by any other party				

Dondero reserves the right to supplement this Exhibit List should he determine that any other document may be helpful to the trier of fact, whether in his case in chief or rebuttal.

**B. Witnesses that Dondero may call to testify:**

1. Michael Pugatch;
2. James P. Seery, Jr.;

3. Any and all other witnesses identified or called by any other party; and
4. Any witness necessary for rebuttal.

Dondero reserves the right to supplement this Witness List should he determine that any other witness may be helpful to the trier of fact, whether in his case in chief or rebuttal.

Dated: January 11, 2021

Respectfully submitted,

/s/ Bryan C. Assink

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile  
Email: michael.lynn@bondsellis.com  
Email: john@bondsellis.com  
Email: john.wilson@bondsellis.com  
Email: bryan.assink@bondsellis.com

**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 11, 2021, true and correct copies of the foregoing document and all identified exhibits were served via the Court's CM/ECF system on all parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

Bryan C. Assink

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. Who is the current creditor? HarbourVest 2017 Global Fund L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. Has this claim been acquired from someone else?  
 No  
 Yes. From whom? \_\_\_\_\_

3. Where should notices and payments to the creditor be sent?  
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. Does this claim amend one already filed?  
 No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?  
 No  
 Yes. Who made the earlier filing? \_\_\_\_\_

**Dondero Ex. A**



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harb

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
	(Empty)	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

001032

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	<b>Where should payments to the creditor be sent? (if different)</b> See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
---	---	--

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
 Signature

**Print the name of the person who is completing and signing this claim:**

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P.		
<b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded	
	<b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No	
	<b>Related Claim Filed By:</b>	
<b>Filing Party:</b> Authorized agent		
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No	
	<b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No	<b>Nature of Secured Amount:</b>	
<b>Amount of 503(b)(9):</b> No	<b>Value of Property:</b>	
<b>Based on Lease:</b> No	<b>Annual Interest Rate:</b>	
<b>Subject to Right of Setoff:</b> No	<b>Arrearage Amount:</b>	
	<b>Basis for Perfection:</b>	
	<b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time		
<b>Title:</b> Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative		
<b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

001041

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management  
 Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
 Signature

**Print the name of the person who is completing and signing this claim:**

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

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*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Dover Street IX Investment L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

001059

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HV International VIII Secondary L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**  
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:   __ __ __ __
7. How much is the claim?	\$ <u>See Annex</u> . Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?  No  Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?  No  Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
 Signature

**Print the name of the person who is completing and signing this claim:**

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

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bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

<p><b>Where should notices to the creditor be sent?</b></p> <p>HarbourVest Skew Base AIF L.P.                  Attn: Erica Weisgerber                  Debevoise and Plimpton LLP                  919 Third Avenue                  New York, NY 10022, U.S.A.</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p> <p>Contact phone <u>2129096000</u>                  Contact email <u>eweisgerber@debevoise.com</u></p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p> <p>See summary page</p> <p>Contact phone <u>6173483773</u>                  Contact email <u>agoren@harbourvest.com</u></p>
---	---

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv <b>Company:</b> Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings

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in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717) (admitted pro hac vice)  
Ira D. Kharasch (CA Bar No. 109084) (admitted pro hac vice)  
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10100 Santa Monica Blvd., 13th Floor  
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HAYWARD & ASSOCIATES PLLC  
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10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
 )  
Debtor. )  
 )  
\_\_\_\_\_ )

**DEBTOR’S FIRST OMNIBUS OBJECTION TO CERTAIN  
(A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS;  
(C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-  
LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

**\*\*\*CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR  
NAMES AND CLAIMS IN THE SCHEDULES ATTACHED  
TO THE PROPOSED ORDER ON THIS OBJECTION\*\*\***

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

**Dondero Ex. B**



**A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT  
[HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH](http://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH)  
OR BY EMAIL REQUEST TO [JONEILL@PSZJLAW.COM](mailto:JONEILL@PSZJLAW.COM)**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON  
SEPTEMBER 10, 2020 AT 2:30 P.M. CENTRAL TIME.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST  
RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED  
BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH  
THE CLERK OF THE UNITED STATES BANKRUPTCY COURT  
AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS  
75242-1496 BEFORE CLOSE OF BUSINESS ON SEPTEMBER 1,  
2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM  
THE DATE OF SERVICE HEREOF. YOU MUST SERVE A  
COPY OF YOUR RESPONSE ON THE PERSON WHO SENT  
YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT  
THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF  
REQUESTED.**

Highland Capital Management, L.P. (the “Debtor”), by and through its undersigned counsel, hereby files this omnibus objection (the “Objection”), seeking entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), (i) disallowing certain duplicate claims listed on **Schedule 1** to the Order (the “Duplicate Claims”), (ii) reducing and allowing certain overstated claims listed on **Schedule 2** (the “Overstated Claims”) in amounts which comport with the Debtor’s books and records, (iii) disallowing certain claims that were filed after the applicable bar date listed on **Schedule 3** to the Order (the “Late-Filed Claims”), (iv) disallowing certain claims that have already been satisfied listed on **Schedule 4** to the Order (the “Satisfied Claims”), (v) disallowing certain claims for which the Debtor’s books and records show no liability listed on **Schedules 5 and 6** to the Order (the “No-Liability Claims”), and (vi) disallowing claims which contain insufficient documentation listed on **Schedule 7** to the Order (the “Insufficient-Documentation Claims,” and together with the Duplicate Claims, the

Overstated Claims, the Late-Filed Claims, the Satisfied Claims, and the No-Liability Claims, the “Disputed Claims”). In support of this Objection, the Debtor respectfully represents as follows:

## I. JURISDICTION

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

## II. BACKGROUND

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s bankruptcy case to this Court [Docket No. 186].<sup>2</sup>

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<sup>2</sup> All docket numbers refer to the docket maintained by this Court.

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the “Bar Date Order”). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the “General Bar Date”). For Governmental Units, the Bar Date Order fixed the deadline to file proofs of claim as April 13, 2020 at 5:00 p.m. (prevailing Central Time). The Bar Date Order also set April 23, 2020 as the deadline to file claims for investors in funds managed by the Debtor (the “Fund Investor Bar Date”). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

8. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the “Bar Date Notice”). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See* Certificate of Service [Docket No. 530].

9. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

### **The Claims Resolution Process**

10. In the ordinary course of business, the Debtor maintains books and records (the “Books and Records”) that reflect, *inter alia*, the Debtor’s liabilities and the amounts owed to its creditors.

11. The Debtor’s register of claims (the “Claims Register”), prepared and maintained by Kurtzman Carson Consultants LLC (“KCC”)—the court-appointed notice and claims agent in this case—reflects that, as of the date of this Objection, 194 proofs of claim have been filed in the Debtor’s chapter 11 case.

12. The Debtor and its professionals have been reviewing and analyzing claims. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction, and/or reclassification.

### **III. RELIEF REQUESTED**

13. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, (i) disallowing the Duplicate Claims listed on Schedule 1 to the Order, (ii) reducing and allowing the Overstated Claims listed on Schedule 2 to the Order in amounts which comport with the Books and Records; (iii) disallowing the Late-Filed Claims listed on Schedule 3 to the Order, (iv) disallowing the Satisfied Claims listed on Schedule 4 to the Order, (v) disallowing the No-Liability Claims listed on Schedules 5 and 6 to the Order, and (vi) disallowing the Insufficient-Documentation Claims listed on Schedule 7 to the Order.

### **IV. OBJECTIONS**

14. Section 502(a) of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any

claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), 1107(a); *see also Int'l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.)*, 922 F.2d 659, 661-62 (11th Cir. 1991).

15. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Texas Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at \*2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima facie* validity, however, “[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery.” *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at \*8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff’d sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes “at least one of the allegations that is essential to the claim’s legal sufficiency.” *In re Am. Reit, Inc.*, 07-40308, 2008 WL 1771914, at \*3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). “The ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . .” 11 U.S.C. § 502(b)(1).

**The Disputed Claims Should Be Disallowed and Expunged or Reduced**

17. For the reasons set forth below, the Disputed Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

A. Duplicate Claims

18. The Debtor has identified 3 proofs of claim—listed on Schedule 1 to the Order—where each claimant filed multiple proofs of claim representing a single obligation of the Debtor. The Debtor is requesting that the listed Duplicate Claims be disallowed such that only the surviving claims listed on Schedule 1 remain, subject to any other objection the Debtor may bring in the future. Disallowing and expunging these claims will prevent the claimants from receiving multiple recoveries for a single claim.

B. Claims to be Reduced and Allowed

19. The Debtor has examined the 4 proofs of claim listed on Schedule 2 to the Order and has determined that the amounts listed on the claims exceed the liability listed for each claimant on the Debtor's Books and Records. The Debtor is requesting that the amount of each claim be reduced so that it correctly reflects the amount of the Debtor's books and records.

C. Late-Filed Claims

20. The Debtor has identified 1 proof of claim listed on Schedule 3 to the Order that was filed after the passage of the applicable Bar Date.

D. Satisfied Claims

21. The Debtor has identified 11 proofs of claim listed on Schedule 4 to the Order that, according to the Debtor's books and records, were fully satisfied in the ordinary course of business. Disallowing and expunging such claims, therefore, will prevent the claimants from obtaining double-recovery on account of their claims.

E. No-Liability Claims

22. The Debtor has identified 63 proofs of claim listed on Schedules 5 and 6 to the Order that can be characterized as "No-Liability Claims"—*i.e.*, claims that erroneously assert a

liability that is not reflected in the Debtor's books and records. Certain claims listed on Schedule 5 to the Order appear to be protective claims for claimants asserting claims related to agreements with the Debtor. No amount is asserted on these claims and, although the claimants have indicated they would supplement the claims within ninety (90) days, that time has passed and no amendment or supplement has been filed and no additional documentation has been provided to support the claims. Each claim listed on Schedule 6 to the Order erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor. The Debtor has reviewed each No-Liability Claim listed on Schedules 5 and 6 to the Order and all supporting information and documentation provided therewith, made reasonable efforts to research each No-Liability Claim, and determined that the Debtor is not liable for such No-Liability Claims. Accordingly, the Debtor requests that each No-Liability Claim be disallowed and expunged.

F. Insufficient-Documentation Claims

23. The Debtor was not able to determine the validity of the 10 claims listed on Schedule 7 to the Order because such claims were not filed with sufficient accompanying documentation and provided no explanation for the bases of the claims. Additionally, no liability for these claims appears on the Debtor's books and records. Accordingly, the Debtor requests that the Insufficient-Documentation Claims be disallowed and expunged because the claimants have failed to carry their burden to support their claims.

V. RESPONSES TO OBJECTIONS

24. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **September 1, 2020 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office

of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

**Pachulski Stang Ziehl & Jones LLP**  
Jeffrey N. Pomerantz  
Ira D. Kharasch  
Gregory V. Demo  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[joneill@pszjlaw.com](mailto:joneill@pszjlaw.com)

-and-

**Hayward & Associates PLLC**  
Melissa S. Hayward  
Zachery Z. Annable  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
[mhayward@haywardfirm.com](mailto:mhayward@haywardfirm.com)  
[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)

25. Every Response to this Objection must contain, at a minimum, the following information:

- i. a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;
- ii. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;
- iii. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- iv. any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

- v. the name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

26. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in Exhibit A, without further notice to the claimant.

#### **VI. REPLIES TO RESPONSES**

27. Consistent with Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

#### **VII. SEPARATE CONTESTED MATTERS**

28. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

#### **VIII. RESERVATION OF RIGHTS**

29. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims.

30. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

#### **IX. NOTICE**

31. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

#### **X. COMPLIANCE WITH LOCAL RULES**

32. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: July 30, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
Gregory V. Demo (NY Bar No. 5371992)  
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-and-

**HAYWARD & ASSOCIATES PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT A**  
**(Proposed Order)**



parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.
2. Each of the claims listed as a Duplicative Claim on **Schedule 1** hereto is disallowed and expunged in its entirety.
3. Each of the claims listed as an Overstated Claim on **Schedule 2** hereto is reduced and allowed in the amount as stated on Schedule 2.
4. The claim listed as a Late-Filed Claim on **Schedule 3** hereto is disallowed and expunged in its entirety.
5. Each of the claims listed as a Satisfied Claim on **Schedule 4** hereto is disallowed and expunged in its entirety.
6. Each of the claims listed as a No-Liability Claim on **Schedule 5** and **Schedule 6** hereto is disallowed and expunged in its entirety.
7. Each of the claims listed as an Insufficient-Documentation Claim on **Schedule 7** hereto is disallowed and expunged in its entirety.
8. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.
9. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims and any other claims (filed or not) which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.
10. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** through **Schedule 7** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

11. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

**###END OF ORDER###**

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 1 - Duplicate Claims

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Surviving Claim No.	Objection Page No. Reference
1	Daniel Sheehan and Associates, PLLC	40	3/10/2020	\$ 32,433.75	Claim 47	7
2	Dun & Bradstreet	18	12/27/2019	\$ 5,746.40	Claim 25	7
3	Eastern Point Trust Company, Inc.	21	12/23/2019	\$ 34,875.91	Claim 52	7

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 2 - Overstated Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Proposed Amount	Objection Page Number Reference
1	Collin County Tax Assessor/Collector	34	2/24/2020	\$ 524,24	Claim #34 includes an estimated fee of \$300.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 224,24	7
2	Collin County Tax Assessor/Collector	35	2/24/2020	\$ 2,391.91	Claim #34 includes an estimated fee of \$400.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 1,991.91	7
3	Dallas County	6	11/6/2019	\$ 62,694.94	Claim #6 includes tax statements for Highland Capital (5 Center Ave, Little Falls, NJ 07242). The Debtor is not affiliated with that party.	\$ 60,592.37	7
4	Opus 2 International Inc	10	11/21/2019	\$ 51,156.88	Claim #10 includes \$11,943 of interest charges. Interest charges are not defined in The Amendment To Opus 2 Internationals Work Order signed on 9/19/2013 between an employee of the Debtor and Opus 2 International, Inc.	\$ 39,214.00	7

**Highland Capital Management, L.P.**  
**Case No. 19-34054-sgj11**  
**Schedule 3 - Late Filed Claims**

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No Reference
1	Parmentier, Andrew	181	5/13/2020	\$ 150,000.00	Claim #181 was filed past the April 8, 2020 bar date.	7

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 4 - Satisfied Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	4CAST Inc	12	11/26/2019	\$ 16,500.00	Paid via wire on 2/14/2020	7
2	Advent Software Inc	29	12/30/2019	\$ 8,378.68	Paid via wire on 3/20/2020	7
3	ConvergeOne, Inc.	61	03/24/2020	\$ 23,518.15	Paid via wire on 5/19/2020	7
4	Denton County	Scheduled	12/13/2019	\$ 557.14	Paid online on 2/5/2020	7
5	Internal Revenue Service	179	04/27/2020	\$ 10,386.87	IRS assessed a late tax deposit penalty for the claim amount; Payroll provider Paylocity informed Debtor the penalty was removed.	7
6	Kaufman County	9	11/06/2019	\$ 12,081.17	Paid online on 2/4/2020	7
7	Maples and Calder	Scheduled	12/13/2019	\$ 25,800.11	Paid via wire on 5/29/2020	7
8	McLagen Partners, Inc.	74	04/06/2020	\$ 16,400.00	Paid via wire on 4/22/2020	7
9	Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation	76	04/03/2020	\$ 7,436.56	Paid by NexBank via check	7
10	Moody's Analytics, Inc.	91	04/08/2020	\$ 5,728.05	Paid on 6/8/20 - Reference # 1259769	7
11	Quintairos, Prieto Wood & Boyer	Scheduled	12/13/2019	\$ 8,608.17	Paid via wire on 5/13/2020	7

Highland Capital Management, L.P.  
Case No. 19-34054-sgj11  
Schedule 5 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Advisors Equity Group, LLC	111	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
2	Eagle Equity Advisors, LLC	110	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
3	HCRE Partner, LLC	146	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
4	Highland Capital Management Fund Advisors,	95	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
5	Highland Capital Management Fund Advisors,	119	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
6	Highland Capital Management Services, Inc.	175	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
7	Highland Capital Management Services, Inc.	176	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
8	Highland Energy MLP Fund	102	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
9	Highland Fixed Income Fund	109	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
10	Highland Floating Rate Fund	125	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
11	Highland Funds I	106	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
12	Highland Funds II	114	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
13	Highland Global Allocation Fund	98	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
14	Highland Healthcare Opportunities Fund	116	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
15	Highland iBoxx Senior Loan ETF	122	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
16	Highland Income Fund HFRO	105	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
17	Highland Long/Short Equity Fund	112	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
18	Highland Merger Arbitrage Fund	132	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
19	Highland Opportunistic Credit Fund	100	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
20	Highland Small-Cap Equity Fund	127	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
21	Highland Socially Responsible Equity Fund	115	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
22	Highland Tax-Exempt Fund	101	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
23	Highland Total Return Fund	126	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
24	NexBank SSB	178	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
25	NexPoint Advisors, L.P.	104	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
26	NexPoint Advisors, L.P.	108	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
27	NexPoint Capital, Inc.	107	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
28	NexPoint Capital, Inc.	140	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
29	NexPoint Discount Strategies Fund	117	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
30	NexPoint Energy and Material Opportunities	124	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
31	NexPoint Event-Driven Fund	123	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
32	NexPoint Healthcare Opportunities Fund	121	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
33	NexPoint Latin America Opportunities Fund	130	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
34	NexPoint Real Estate Strategies Fund	118	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
35	NexPoint Strategic Opportunities Fund	103	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
36	The Dugaboy Investment Trust	131	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
37	The Dugaboy Investment Trust	177	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8

Highland Capital Management, L.P.  
Case No. 19-34054-sjl  
Schedule 6 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Callan, Bentley	157	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim is for a stock appreciation unit related to a Non-Debtor party	7/8
2	City of Garland	19	12/16/2019	\$ 254,58	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
3	Clay Callan	162	04/08/2020	\$ 55,125.60	No liability on the Debtor's books and records	7/8
4	Eastern Point Trust Company, Inc.	52	03/18/2020	\$ 34,875.91	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
5	Garland Independent School District	20	12/16/2019	\$ 459.81	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
6	Grayson County	3	11/06/2019	\$ 1,882.01	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
7	HarbourVest 2017 Global Fund L.P.	143	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
8	HarbourVest 2017 Global AIF L.P.	147	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
9	HarbourVest Partners L.P. on behalf of funds and accounts under management	149	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
10	HarbourVest Dover Street IX Investment L.P.	150	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
11	HarbourVest Skew Base AIF L.P.	154	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
12	Hartman Wanzor LLP	42	03/10/2020	\$ 701.25	No liability on the Debtor's books and records; claim appears to be filed against Non-Debtor estate	7/8
13	Irving, ISD	5	11/06/2019	\$ 827.96	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
14	John Morris	60	03/23/2020	\$ 500,000.00	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
15	John R. Watkins	89	04/07/2020	\$ 322,701.12	No liability on the Debtor's books and records; Never an employee of the Debtor and not an obligation of the Debtor	7/8
16	Linear Technologies, Inc.	4	11/06/2019	\$ 489.94	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
17	Mass. Dept. of Revenue	45	03/13/2020	\$ 1,352.46	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
18	Mediant Communications Inc.	15	12/02/2019	\$ 1,755.57	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
19	Oklahoma Tax Commission	28	02/03/2020	\$ 2,706.93	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
20	Park, Jun	73	04/06/2020	\$ 32,676.61	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
21	Paul N. Adkins	65	03/30/2020	\$ 23,957.95	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
22	Paul N. Adkins	66	03/31/2020	\$ 249,230.48	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
23	Tarrant County	2	11/06/2019	\$ 8,267.52	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
24	Theodore N. Dameris	85	04/07/2020	Unliquidated	No liability on the Debtor's books and records; claimant does not list an proceeding that they are named as a deponent, witness, party, or any other type of participant in a proceeding.	7/8
25	Theodore N. Dameris	174	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim related to pension and should be asserted against pension, not the Debtor	7/8
26	Zang, Weijun	170	04/09/2020	\$ 25,000.00	No liability on the Debtor's books and records; individual not employed at time of bonus payout and not entitled to receive bonus	7/8

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 7 - Insufficient Documentation Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Anish Tailor	56	03/20/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
2	Boyce-Field, Mollie	43	03/12/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
3	Charles Byrne	44	03/13/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
4	Donald Salvino	41	03/10/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
5	Garcia, Ericka	71	04/03/2020	\$ 2,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
6	Garman Turner Gordon	161	04/08/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
7	Joe Kingsley	171	04/10/2020	BLANK	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
8	Mason, Frederic	63	03/25/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
9	TDA Associates, Inc.	55	03/20/2020	\$ 7,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
10	Wilkinson Center	54	03/20/2020	\$ -	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8

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

----- X  
In re: : Chapter 11  
: :  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** : Case No. 19-34054  
: :  
Debtor. : :  
: :  
: :  
----- X

**HARBOURVEST RESPONSE TO DEBTOR’S FIRST OMNIBUS OBJECTION TO  
CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-FILED  
CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND  
(F) INSUFFICIENT-DOCUMENTATION CLAIMS**

**Dondero Ex. C**



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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) file this Response (the “**Response**”) to the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**”), filed by Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”), and respectfully state as follows:

### **Overview**

1. HarbourVest’s claims against Highland arise out of its November 15, 2017 investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s actions preceding and following the Investment caused serious injury to HarbourVest, leading to damages well in excess of \$100 million. On April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”).

2. After HarbourVest filed its Proofs of Claim, Highland filed the Claim Objection—an omnibus objection to 92 claims. Despite being a bare-bones, omnibus objection, the Claim Objection ostensibly contains substantive (though paper-thin) objections to dozens of claims, including HarbourVest’s, tucked in among procedural and technical objections to other claims.

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not objected to by Highland, but is included herein out of an abundance of caution.

3. The Claim Objection states that “each claim listed on Schedule 6 to the Order [including the HarbourVest Claims] erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor.” Claim Obj. ¶ 22.<sup>2</sup> Schedule 6 further lists the HarbourVest Claims as purportedly having “[n]o liability on the Debtor’s books and records.” Claim Obj. Sched. 6. That is the entirety of Highland’s objection with respect to the HarbourVest Claims. Highland makes no attempt to rebut *any* of the factual or legal bases of the well-founded HarbourVest Claims, and indeed filed the Claim Objection before even meaningfully engaging with HarbourVest regarding the HarbourVest Claims.<sup>3</sup>

4. In addition to being deficient on its face and procedurally improper, the Claim Objection is simply inaccurate. As described below, the HarbourVest Claims are indeed obligations of Highland, and Highland is well aware of the factual bases for them—namely, the misrepresentations, omissions, and other misconduct of Highland both prior to and during HarbourVest’s Investment. Highland’s failure to book a liability associated with the damages its fraud and misconduct caused is no defense to the liability itself.

5. The Claim Objection does not rebut HarbourVest’s *prima facie* case for its Claims and fails on its face. For the avoidance of doubt, however, this Response provides additional details regarding the HarbourVest Claims<sup>4</sup>—details of which Highland is well aware, clearly establishing HarbourVest’s right to significant damages from Highland’s misconduct and fraudulent inducement of HarbourVest’s Investment in a fund that has merely served as a pawn

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<sup>2</sup> All citations herein to “A\_\_” refer to Appendix A, filed concurrently herewith. Due to their length, certain documents contained in the Appendix have been provided in excerpted form only. Full copies are available upon request.

<sup>3</sup> To the extent that Highland raises any substantive objections in a reply to this Response, HarbourVest expressly reserves its rights to move to strike and/or submit additional briefing as appropriate.

<sup>4</sup> HarbourVest is supplementing its Proofs of Claim with these additional details.

in Highland's feud with a former employee (who Highland also defrauded). The Claim Objection should be overruled, and the HarbourVest Claims should be allowed.

### **Factual Background**

6. The events giving rise to HarbourVest's claims begin in June 2016, when Highland terminated the employment of Joshua Terry ("**Terry**"), the employee who managed Highland's CLO business and served as CLO manager for Acis Capital Management L.P. ("**Acis LP**").<sup>5</sup> Litigation ensued between Terry and Highland in or around September 2016, with Terry claiming his termination was unlawful. 4/13/2018 Involuntary Ruling at 4.

7. Around that time, on October 7, 2016, Acis LP sold Highland a participation interest in its expected future cash flow in CLO Collateral Management Agreements for \$666,655 plus a \$12,666,446 note payable from Highland to Acis LP (the "**Highland Note**"). *Id.* at 17. On May 31, 2017, a \$3,370,694 payment was made on the Highland Note. *Id.*

8. By summer 2017, HarbourVest was engaged in preliminary discussions with Highland regarding the Investment. On September 8, 2017, Highland sent HarbourVest a draft term sheet, which identified the target fund as "Acis Loan Funding, Ltd." and the fund's portfolio manager as Acis LP. As described below, during the course of negotiations, Highland unilaterally changed the name of the target fund (referred to herein as HCLOF) from "Acis Loan Funding, Ltd." to "Highland CLO Funding, Ltd." and swapped out Acis LP for Highland HCF Advisor, Ltd. ("**Highland HCF**") as portfolio manager, under false pretenses.

9. On October 20, 2017, Terry won an arbitration award of \$7,949,749.15 plus post-award interest against Acis (the "**Arbitration Award**"). 4/13/2018 Involuntary Ruling, at 4.

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<sup>5</sup> Findings of Fact & Conclusions of L. in Supp. of Ord. for Relief Issued After Trial on Contested Involuntary Bankr. Pets. at 3-4, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018), ECF No. 118 (hereinafter the "4/13/2018 Involuntary Ruling").

HarbourVest did not become aware of many of the facts described herein until long after their occurrence. HarbourVest's investigation of its claims and the surrounding factual circumstances is continuing.

Shortly thereafter, Highland orchestrated several transfers (the “**Transfers**”) that siphoned assets away from Acis.

10. On October 24, 2017, HCLOF acquired HCLOF shares owned by Acis LP for \$991,180.13. *Id.* at 17–18. As this Court previously described: “[n]o credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was ‘toxic’ in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.” *Id.* at 18.

11. Thereafter, on October 27, 2017, Acis’s portfolio management rights for HCLOF were transferred to Highland HCF. *Id.* at 19. Highland HCF entered into a Portfolio Management Agreement with HCLOF that superseded and replaced the HCLOF portfolio management agreements with Acis. *Id.* at 19. On November 3, 2017, Acis LP transferred its interest in the Highland Note to Highland CLO Management, Ltd. *Id.* at 19–20. The balance owing on the Note was over \$9 million, but Acis received no consideration for the transfer. 1/31/2019 Confirmation Ruling, at 20–21, n.37.

12. During diligence and negotiations preceding HarbourVest’s Investment, Highland hid from HarbourVest its effort to strip Acis of assets. When Highland changed HCLOF’s portfolio manager from an Acis-branded entity to a Highland-branded entity, in addition to other structural changes, Highland stated that its reason for doing so was “reputational harm” to Acis LP from the Terry Arbitration Award.

13. Further concealing its true motive—denuding Acis of value—Highland informed HarbourVest that, in lieu of redemptions, resetting the CLOs was necessary and that it would be easier to reset under the “Highland” CLO brand than the Acis CLO brand. Through November

2017, Highland continued its misrepresentations and omissions regarding the Arbitration Award and structural changes to the HCLOF investment to conceal the true purpose of these maneuvers and their implications for the Investment. In reliance on these misrepresentations, HarbourVest finalized the Investment on November 15, 2017.

14. Highland’s misrepresentations continued after the initial Investment was made. On November 27, 2017, in an email to HarbourVest attaching a Wall Street Journal article regarding the Terry Arbitration Award, Highland again assuaged HarbourVest’s concerns regarding the dispute with Terry, claiming it “has no impact on our investment activities.”

15. On December 18, 2017, a final judgment confirming the Terry Arbitration Award was entered in state court. 4/13/2018 Involuntary Ruling, at 4. On the same day, Mark Okada (a Highland founder) and Dugaboy Investment Trust (a family trust of Highland founder Jim Dondero) conveyed their limited partnership interests in Acis LP, 25% and 74.9%, respectively, to Neutra, Ltd. (“**Neutra**”), a company controlled by Highland.<sup>6</sup>

16. On December 19, 2017, Acis LP and Highland CLO Holdings Ltd. (“**Highland Holdings**”) entered into 2017-7 Assignment and Transfer Agreement, which transferred to Highland Holdings all of Acis LP’s interest in the Master Sub-Advisory Agreement and Staff and Services Agreement to manage Acis CLO 2017-7’s portfolio to Highland Holdings. 4/13/2018 Involuntary Ruling, at 21. The agreement also transferred to Highland Holdings all of Acis LP’s indirect equity interests in Acis CLO Management, allegedly for forgiveness of \$2.8 million owed by Acis LP to Highland under the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. *Id.*

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<sup>6</sup> Bench Ruling & Mem. Of L. in Supp. of: (A) Final Approval of Disclosure Statement; & (B) Confirmation of Ch. 11 Tr.’s Third Am. Joint Plan at 16, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), ECF No. 827 (hereinafter “1/31/2019 Confirmation Ruling”); 4/13/2018 Involuntary Ruling at 22.

17. On January 24, 2018, after Mr. Terry became aware of the Transfers involving Acis LP and HCLOF, he requested a temporary restraining order from the Texas state court that confirmed his arbitration award. Plaintiff’s Application for TRO, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A156. The state court ordered, with the agreement of Acis, that no CLO management contracts or money would be transferred away from Acis for a period of time. Transcript of Hearing held on January 24, 2018 at 42-43, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A225–26.

18. On January 30, 2018, Terry filed involuntary bankruptcy petitions (together, the “**Acis Bankruptcy**”) against Acis LP and its general partner, Acis Capital Management G.P. LLC (“**Acis GP**”), stating that the ongoing transfers and restructuring efforts were part of an “orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value.” 4/13/2018 Involuntary Ruling, at 23. On April 13, 2018, this Court issued a ruling in the Acis Bankruptcy concluding that the involuntary bankruptcy case was appropriately filed and that a “chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP” *Id.*, at 53. On May 14, 2018, Robin Phelan was appointed as trustee (the “**Acis Trustee**”) to oversee the Acis Bankruptcy.<sup>7</sup>

19. Finally called to account for the Transfers, Highland again defaulted to its *modus operandi*: deception. Highland made numerous fraudulent statements, including to this Court, accusing HarbourVest of causing the Transfers that denuded Acis LP, including the following:

- **Prior to the appointment of the Acis Trustee, Highland-controlled Acis falsely claimed that HarbourVest invested in HCLOF only on the condition that Acis would not have anything to do with the CLOs going forward, and that HarbourVest would demand its money back if a reset transaction was done with Acis:**

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<sup>7</sup> Chapter 11 Notice of Appointment of Tr. and of Amount of Bond, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. May 14, 2018), ECF No. 213, A230.

- “In May 2017, a private equity firm expressed an interest in making a \$150 million investment in [HCLOF]. [HCLOF] was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by [HarbourVest] in making its investment was that [HCLOF] would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. [HCLOF] issued this instruction requested by [HarbourVest] on October 6, 2017 (two weeks *prior* to the arbitration award).”<sup>8</sup>
- **Highland witnesses claimed that HarbourVest said, with absolute certainty, that it had no interest in doing business with Acis because the Acis brand was toxic, including:**
  - Highland General Counsel Scott Ellington testified that HarbourVest had communicated to Highland that the Acis brand was “so toxic that it’s impossible to sell the bonds with Acis as the manager,” that “nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO” and that they said “categorically, with absolute certainty, if there’s any relation to Acis, the Acis brand, the Acis structure, we have no interest in doing business with you at all.”<sup>9</sup>
  - Mr. Ellington further testified that HarbourVest had “demanded” that Highland “call the deal and terminate the [collateral management agreements] or transfer the [collateral management agreements]” and that “their only directive was call and get rid of Acis or get rid of Acis or we’re not doing the deal through a reset.”<sup>10</sup>
  - Highland CEO Jim Dondero claimed that the “Boston investor” deal was “all dependent upon getting as far away from Acis as possible and a new collateral manager.”<sup>11</sup>
- **Highland witnesses claimed that HarbourVest had the ability to control and dictate the terms of any reset transactions, including:**

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<sup>8</sup> Joint Obj. of Alleged Debtors to Emergency Mot. of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(F), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C. § 363 at ¶ 31, *In re Acis Capital Mgmt, L.P.* No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), ECF No. 16 (emphasis in original), A247.

<sup>9</sup> Transcript of Hearing held on February 7, 2018, at 55–57, No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 12, 2018), ECF No. 28 (hereinafter “2/7/2018 Acis Bankruptcy Transcript”) (Testimony of Highland General Counsel Scott Ellington), A271–73.

<sup>10</sup> 2/7/2018 Acis Bankruptcy Transcript at 202–04, A276–78.

<sup>11</sup> Transcript of Hearing held on March 23, 2018 at 143–44, No. 18-30264-sgj11 (Bankr. N.D. Tex. Mar. 27, 2018), ECF No. 99 (Testimony of Highland CEO Jim Dondero), A288–89; *see also* 1/31/2019 Confirmation Ruling at 27, n. 56.

- Mr. Ellington testified that because HarbourVest “would be putting in additional capital in connection with any reset CLOs, it had the ability to ‘start calling the shots’ and dictate the terms of any reset transactions.” 2/7/2018 Acis Bankruptcy Transcript at 226, A281.

20. These and other statements led the Acis Trustee to investigate HarbourVest as the alleged perpetrator of the Transfers. Ultimately, the Acis Trustee served HarbourVest with broad Rule 2004 discovery requests seeking extensive information related to the Investment and a deposition of a corporate representative. HarbourVest complied with the Acis Trustee’s requests, producing significant documentation and sitting for a deposition in the Acis Bankruptcy.

21. The HarbourVest investigation was not the only expensive sideshow that Highland’s litigious behavior caused in the Acis Bankruptcy. At each step of the case, Highland and a veritable parade of its affiliates (Neutra, HCLOF, Highland HCF, CLO Holdco) filed objections and motions impeding the orderly progress of Acis’s chapter 11 proceedings. To make matters worse, HarbourVest was effectively forced to foot the bill: many of the legal fees incurred by Highland and its affiliates were funded from the coffers of HCLOF, depleting the value of HarbourVest’s Investment.

22. Despite Highland’s assurance that the Terry Arbitration Award and related restructuring efforts would have no impact on Highland’s investment activities or HarbourVest’s Investment, Highland’s misconduct and fraudulent Transfers necessitated a variety of injunctions that significantly impaired both the ability of HCLOF to operate as expected and the value of HarbourVest’s investment. The below timeline details some of the constraints on HCLOF caused by Highland’s misconduct and the additional litigation generated by it:

- a. On April 30, 2018, HCLOF sent five notices requesting optional redemption, ordering a liquidation of the CLOs.<sup>12</sup>
- b. On May 22, 2018, the Acis Trustee warned that HCLOF's attempted optional redemption notices violated the automatic stay.<sup>13</sup>
- c. On May 30, 2018, Highland and HCLOF initiated adversary proceedings alleging that the Acis Trustee breached the applicable portfolio management agreements by failing to effectuate optional redemptions pursuant to the notices.<sup>14</sup>
- d. On May 31, 2018, this Court issued a *sue sponte* temporary restraining order in the Acis Bankruptcy preventing any action in furtherance of the optional redemptions or other liquidation of the Acis CLOs.<sup>15</sup>
- e. On June 14, 2018, HCLOF withdrew the optional redemption notices.<sup>16</sup>
- f. On June 15, 2018, the TRO expired and HCLOF gave notice to the Acis Trustee that it was requesting an optional redemption. *Id.* at 3-4. However, the request was ultimately withdrawn on July 6, 2018.<sup>17</sup>
- g. On June 21, 2018, the Acis Trustee filed an adversary proceeding against Highland seeking an injunction preventing Highland/HCLOF from taking steps towards a redemption.<sup>18</sup>
- h. On July 10, 2018, this Court issued an injunction preventing optional redemptions while the Acis Trustee attempted to confirm a plan or otherwise resolve the Acis Bankruptcy.<sup>19</sup>
- i. On August 30, 2018, this Court denied confirmation of the First Amended Joint Plan for the Debtors and ruled that the preliminary injunction must stay in place.

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<sup>12</sup> Verified Original Compl. & Application for TRO & Prelim. Inj. at 14, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018) (hereinafter "Acis Trustee Complaint"), A304.

<sup>13</sup> *Id.* at 14, 33.

<sup>14</sup> *Highland Capital Mgmt, L.P. v. Phelan*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex.).

<sup>15</sup> Status Conference, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. May 31, 2018) ("Court issued Section 105 extraordinary TRO"); *see also* Temporary Restraining Order, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. June 6, 2018), ECF No. 256, A330.

<sup>16</sup> Acis Trustee Complaint at 3, A293.

<sup>17</sup> Highland CLO Funding, Ltd.'s Mot. to Dissolve Prelim. Inj. & Lift Automatic Stay at 5, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018), A344.

<sup>18</sup> *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex.).

<sup>19</sup> Prelim. Inj. Order at 10, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), ECF No. 21, A376.

- j. On March 20, 2019, following confirmation, HCLOF sent a letter to Acis LP stating that it is “neither interested in pursuing, nor able to pursue, a reset transaction.”<sup>20</sup>

Highland’s fraudulent scheme resulted in severe constraints on the HCLOF investment, including on its ability to redeem, refinance or reset the applicable CLOs, which is and was a critical element of maintaining and growing the value of the Investment. Rather than attempt to mitigate losses, Highland doubled down, further entrenching itself in its litigation positions.

23. Highland concealed its Transfer scheme from HarbourVest before the Investment through a series of fraudulent actions, omissions, and misrepresentations, concealing the truth to lock HarbourVest into a long-term, illiquid investment that was—as a result of Highland’s improper behavior—destined to fail. Had HarbourVest been properly informed of the full extent of behind-the-scenes transfers occurring involving Acis and HCLOF, and the true reasons they were made, it would never have made the Investment, and therefore would have avoided the severe price of being tangled up in Highland’s web.

24. One need look no farther than the rulings and filings in the Acis Bankruptcy to reach the conclusion that Highland’s behavior was improper, illegal, and indeed, fraudulent:

- April 13, 2018: The Court ruled that Joshua Terry filed involuntary bankruptcy petitions against Acis LP and Acis GP due to a good faith belief that these transfers were part of an “*orchestrated, sophisticated effort to denude the Alleged Debtors of their assets* and value.” 4/13/2018 Involuntary Ruling, at 23.
- July 2, 2018: The Acis Trustee filed counterclaims against Highland, HCLOF, Highland HCF, Highland CLO Management, Ltd., and Highland Holdings *alleging they orchestrated a systematic transfer of value away from Acis to other Highland entities* after Terry’s termination in 2016 through the period when the Terry Arbitration Award was issued to make Acis judgment-proof.<sup>21</sup>

<sup>20</sup> Letter from M Maloney, King & Spalding LLP, to B. Shaw, Rogge Dunn Group (Mar. 20, 2019), A383.

<sup>21</sup> Def.’s Answer, Affirmative Defenses, Counterclaims, & Third Party Claims at 17-18, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), ECF No. 23, A403–04.

- Aug. 30, 2018: Judge Jernigan ruled that preliminary injunction must stay in place because the “*evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value.*” 8/30/2018 Plan Ruling at 6.
- January 31, 2019: This Court confirmed Acis’s Third Amended Plan and concluded that: “The record contains substantial evidence of both *intentional and constructive fraudulent transfers* with regard to the Equity/ALF PMA and other assets. The *numerous prepetition transfers* that occurred around the time of and after the Terry Arbitration Award *appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors’ creditors.* Highland’s only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis’s brand was toxic in the market place. However, *these business justifications were not supported (and, in fact, were contradicted) by the evidence.*” 1/31/2019 Confirmation Ruling, at 27.
- June 20, 2019: The Acis Trustee filed an amended complaint asserting among other things, *claims for intentional and constructive fraudulent transfer based on the prepetition transfers involving Acis.*<sup>22</sup>

25. On October 16, 2019, Highland itself filed for bankruptcy in Delaware, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del.), and on December 4, 2019, on motion of the Official Committee of Unsecured Creditors, its case was transferred to this Court.<sup>23</sup>

26. On April 8, 2020, due to its damages sustained from the misconduct described above, HarbourVest filed its Proofs of Claim against Highland.

### Basis for Relief

#### The Claim Objection Is Improper and Should Be Denied

27. HarbourVest’s Proofs of Claim have *prima facie* validity, and the Debtor must produce evidence sufficient to overcome this presumption. *See* 11 U.S.C. §§ 501, 502 (2020); Fed. R. Bankr. P. 3001(f) (2020) (“A proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim”); *see also*

<sup>22</sup> Second Am. Compl. at 42-84, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157, A466–508.

<sup>23</sup> Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del. Dec. 4, 2019), ECF No. 184, A534.

*Matter of Fid. Holding Co.*, 837 F.2d 696 (5th Cir. 1988) (“a correctly-filed proof of claim establishes a *prima facie* case against the debtor’s assets”); *In re Armstrong*, 320 B.R. 97, 102 (Bankr. N.D. Tex. 2005) (same). “Conclusory statements are insufficient to rebut [Rule] 3001(f)’s presumption.” *In re Today's Destiny, Inc.*, No. 05-90080, 2008 WL 5479109, at \*4 (Bankr. S.D. Tex. Nov. 26, 2008). Instead, the objecting party must put forth “evidence at least equal in probative force to that offered by the proof of claim.” *Id.* (citations omitted).

28. Highland’s Claim Objection fails to put forward any evidence regarding the HarbourVest Claims. It is a mere denial of the validity of the HarbourVest Claims, based on Highland’s own say-so. It fails to refute—or even address—the legal sufficiency of the HarbourVest Claims. Highland cannot evade substantial claims by one of its largest creditors based on its illegal conduct with a one-sentence, unsupported, and blanket denial. The Claim Objection should be overruled as to HarbourVest’s Proofs of Claim as failing to satisfy even the most minimal legal requirements to object to a claim.

29. The Claim Objection is also procedurally improper. While styled as an “omnibus” objection pursuant to Bankruptcy Rule 3007(d), Highland’s “no liability” objection has no basis at all in the rule.<sup>24</sup> This is not just a procedural nicety. Highland’s attempt to style its conclusory-but-substantive denial of liability as a procedural objection buried in an omnibus objection underscores Highland’s lack of substantive defenses on the merits of the claims in addition to its disregard for the bankruptcy process.

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<sup>24</sup> Federal Rule of Bankruptcy Procedure 3007(d) provides that “objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or (8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.”

**The HarbourVest Claims Are Valid and Should Be Allowed**

30. Highland has failed to carry its burden to rebut the *prima facie* case for the HarbourVest Claims. Accordingly, the HarbourVest Claims should be allowed in full. For clarity of the record, the HarbourVest Claims are described in detail below.

31. In general, the HarbourVest Claims result from (i) Highland's material misrepresentations and omissions relating to the Investment, including the existence and purpose of Highland's scheme to denude Acis and avoid payment of the Arbitration Award; (ii) Highland's gross mismanagement of the HCLOF Investment; (iii) Highland's misuse of fund assets and improper charges to HCLOF; and (iv) Highland's continued fraudulent conduct and misrepresentations during the Acis bankruptcy. Specifically, based on the above-described facts, HarbourVest has claims for, among other things: Fraud, Fraudulent Concealment, Fraudulent Inducement, Fraudulent Misrepresentation, Negligent Misrepresentation; Breach of Fiduciary Duties; Misuse of Fund Assets; U.S. State and Federal Securities Law Claims; Violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("**RICO**"); and Unfair Prejudice under the Guernsey Companies Law.

**A. Fraud, Fraudulent Inducement, Fraudulent Concealment, Fraudulent Misrepresentation, and Negligent Misrepresentation**

32. A plaintiff pleading common law *fraud* must show (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. 41 Tex. Jur. 3d Fraud & Deceit § 8 (Aug. 2020); *see also JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). *Fraudulent inducement* occurs

when, through fraud, a defendant induces another to enter into a contract through the use of fraudulent misrepresentations. 41 Tex. Jur. 3d Fraud & Deceit § 8; *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018).

33. Similarly, claims for ***fraudulent concealment*** or ***fraud by omission*** will lie where (1) the defendant concealed from or failed to disclose material facts to the plaintiff that the defendant had a duty to disclose; (2) the defendant knew the plaintiff was ignorant of the facts and the plaintiff did not have an equal opportunity to discover the facts; (3) the defendant was deliberately silent when the defendant had a duty to speak; (4) by failing to disclose the facts, the defendant intended to induce the plaintiff to take some action or refrain from acting; (5) the plaintiff relied on the defendant's nondisclosure; and (6) the plaintiff was injured as a result of acting without the undisclosed facts. 41 Tex. Jur. 3d Fraud & Deceit § 16.

34. Similarly, under Guernsey law, a plaintiff may have a claim for ***fraudulent misrepresentation*** against a defendant that makes statements that he knows to be (or is reckless as to whether they are) false with the intent that they shall be acted on by another, who suffers damages as a result of reliance on those statements. *Derry v. Peek* (1889) 14 AC (HL) 337 (appeal taken from Eng.), A14. Damages extend to the loss actually suffered by the person as a result of the misrepresentation. *Doyle v. Olby (Ironmongers) Ltd.* (1969) 2 W.L.R. 673, A59.

35. ***Negligent misrepresentation*** is established when (1) the defendant made a representation in the course of the defendant's business; (2) the defendant supplied false information for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffered pecuniary loss by justifiably relying on the representation. 41 Tex. Jur. 3d Fraud & Deceit § 10. Liability for negligent misstatements may also be asserted under Guernsey

law where shareholders suffer financial loss as a result of acquiring shares in reliance on any misstatements made carelessly, if the defendant owes the shareholder a duty of care.<sup>25</sup> *Hall v. Cable & Wireless Plc* (2009) EWHC 1793 (Comm), A75.

36. Highland's conduct prior to the Investment presents a textbook case of fraud, fraudulent inducement, and fraudulent concealment and fraud by omission. As Highland and HarbourVest were negotiating the terms of the Investment, Highland both concealed and misrepresented the nature of the Transfers undertaken to deprive Acis of assets and Highland's true intentions with respect to the Terry dispute and Arbitration Award. These facts were material: indeed, HarbourVest expressed concern and requested further information regarding the Transfers, the Arbitration Award, and their implications for HCLOF and the Investment's closing date was delayed. The nature and intent behind the Transfers, and Highland's plan to use HCLOF to fund its feud with Terry, were material facts misrepresented and concealed from HarbourVest in order to induce HarbourVest to invest with HCLOF.

37. Highland's multiple, purposeful, knowing, reckless, and/or negligent misrepresentations and omissions include:

- Highland never informed HarbourVest that Highland had no intention of paying the Arbitration Award and was undertaking steps to ensure that Mr. Terry could not collect on his judgment;
- Highland did not inform HarbourVest that it undertook the Transfers to siphon assets away from Acis LP and that such transfers would prevent Mr. Terry from collecting on the Arbitration Award. Instead, Highland simply did not inform HarbourVest and represented to HarbourVest that the reason for changing the portfolio manager for HCLOF was because Acis was "toxic" in the industry and alleged reputational issues relating to Acis would detrimentally affect the HCLOF investment;

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<sup>25</sup> As discussed below, during the course of the Investment, Highland owed fiduciary duties to HarbourVest as a "shadow director" or "de facto" director of HCLOF.

- Highland indicated to HarbourVest that the dispute with Mr. Terry (which appeared on a litigation schedule presented to HarbourVest during diligence) would have no impact on investment activities;
- Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs, notwithstanding that Highland was using HCLOF as part of its scheme to avoid paying the Arbitration Award.

38. Even assuming Highland's statements did not rise to the level of fraud (though they do), such statements were at minimum made negligently by Highland.

39. In reliance on Highland's misrepresentations and omissions, HarbourVest invested in HCLOF. Had these misrepresentations and omissions not occurred, HarbourVest would not have made the Investment.

40. HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution. This enormous decline can be traced directly back to the fraudulent Transfer scheme that Highland hid from HarbourVest behind a smokescreen of misstatements and omissions, and Highland's subsequent conduct in connection therewith. The situation has been further compounded by HCLOF's use to fund Highland's litigation and HarbourVest incurring its own out-of-pocket fees and expenses from the fallout.

#### **B. Breach of Fiduciary Duties and Misuse of Fund Assets**

41. Under Guernsey law, Highland constituted both a "shadow director" and a de facto director of HCLOF. A shadow director is a person in accordance with whose directions or instructions the directors of the company are accustomed to act. Companies (Guernsey) Law 2008 § 132(1). A "de facto" director is a person or entity that similarly has practical decision-making control over a company under Guernsey law. *Carlyle Capital Corporation Ltd. v. Conway & Others*, Royal Court of Guernsey, 4 September 2017, Judgment 38/2017, A2. As a

shadow director and/or de facto director, Highland owed fiduciary duties to HarbourVest, which it breached by the conduct described herein.

42. At all times, Highland exercised complete control over HCLOF and over its Guernsey directors. Highland directed HCLOF's nominal directors, who acted in accordance with Highland's instructions, and Highland itself acted on behalf of HCLOF. Indeed, this Court has previously recognized evidence demonstrating that HCLOF operated at the behest of Highland, not its nominal directors:

- “It was enormously clear to the court. . . that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere ‘figureheads’ for HCLOF Guernsey and they defer to Highland entirely to tell them what to do, what to say, and when.” 1/31/2019 Confirmation Ruling, at 14.
- HCLOF Guernsey was “absolutely, beyond any reasonable doubt, controlled by Highland.” 1/31/2019 Confirmation Ruling, at 17.
- The evidence was overwhelming that “(a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey’s behalf...[Bill Scott] confirmed that all investment decisions were made by Highland.” 1/31/2019 Confirmation Ruling, at 46.
- Ms. Bestwick “testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey) or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey). She reiterated that she only talks to Highland employees. . . . She testified that she learned of the Terry Arbitration Award in mid-April 2018 (some six months after the fact) and ‘[y]ou’d have to ask Highland’ why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were ‘heavily reliant on our service providers, and that means Highland.’ With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.” 1/31/2019 Confirmation Ruling, at 43–44.
- Highland’s expert, “Mr. Castro, testified that the ‘actual humans’ who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF). Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the

HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.” 1/31/2019 Confirmation Ruling, at 23.

43. Highland’s complete control of HCLOF is further confirmed by the deposition testimony of HCLOF’s nominal directors. In a deposition in the Acis Bankruptcy, HCLOF’s then-Director Heather Bestwick testified that:

- She first learned about the Terry arbitration award from Highland in April 2018 and did not need to do any further independent verification because the directors relied on Highland to keep them updated.<sup>26</sup>
- She was unable to remember a time she disagreed with Mr. Scott or Highland. *Id.* at 48:10–49:12, A539.
- Highland is involved in any substantive conversation about HCLOF, and Bestwick relied on Highland’s advice and judgment as to what was in the best interest of investors. *Id.* 50:10–24, 58:12–59:20, 67:13–68:7, 138:4–21 & 172:9–173:6, A540, 542, 544, 552 & 560.
- She lacked a command of the fees that Acis and Highland were receiving from HCLOF, and did not know whether Highland Capital might have differing interests from Highland HCF. *Id.* at 99:10–100:11 & 155:13–20, A547, 556.
- Conversations with Highland were the extent of the due diligence done with respect to a new portfolio manager. *Id.* 200:14–201:20, A562.

44. Similarly, HCLOF then-Director William Scott testified that:

- The directors had “no knowledge” of litigation with Terry or the arbitration award until 2018; the litigation did not cause him to second-guess his relationship with Highland.<sup>27</sup>
- The directors went with the counsel selected by Highland to represent HCLOF. *Id.* at 91:25–94:25, A566–67.
- Investment decisions for HCLOF are formulated by Highland; the role of the directors is just to “police” the performance of the service providers, and he has never disagreed with Ms. Bestwick or Highland on HCLOF matters. *Id.* at 102:16–104:1, 105:22–107:17, A570–71.

<sup>26</sup> Bestwick Dep. Tr. 60:18–61:19, 130:14–131:12, 133:4–133:21, 135:21–136:2, 136:17–137:5, 138:17–21, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A542–43, 550–52.

<sup>27</sup> W. Scott Dep. Tr. 135:9–136:24, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A574.

- He did not take any steps to investigate the Terry situation; he got all information he knows about it from Highland. *Id.* at 140:13–145:5, A575–76.
- Highland has not made key information available to the directors of HCLOF. *Id.* at 263:20–265:23, A584. Scott himself lacked information about the various Transfers in 2017 that were conducted by Highland. *Id.* at 214:19–216:14, 220:6–221:11, A579–80.

45. As a “shadow director” or “de facto” director of HCLOF, Highland breached several duties, including its duty of care, its duty to exercise powers for a proper purpose, its duty to avoid/mitigate conflicts of interest, and its duty to act in good faith and in the best interests of the company. Highland breached its fiduciary duties as a shadow/ de facto director as set out below.

46. Highland is liable for breach of fiduciary duty for its continued misrepresentations and omissions relating to the Arbitration Award and the Transfers, including following HarbourVest’s Investment, its conduct of litigation relating to Mr. Terry and the Acis Bankruptcy, and its mismanagement of HCLOF following the Investment.

47. This includes the massive legal fees that were charged to HCLOF by Highland and Highland-related entities in furtherance of Highland’s scheme. Since at least 2018, immense and unwarranted legal fees were borne by HCLOF’s investors for Highland’s scorched-earth litigation relating to Terry and the Acis Bankruptcy, including significant litigation costs that were not in the interests of HCLOF.

48. As this Court noted, the Acis Bankruptcy proceedings “have been astonishingly contentious,” with Highland, HCLOF, and Neutra “in ‘lockstep’ with one another in objecting to virtually every position taken by the Chapter 11 Trustee,” and the Highland entities “have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.” 1/31/2019 Confirmation Ruling, at 3, 11. This extensive litigation has spanned multiple jurisdictions (United States and Guernsey) and venues (state

court, federal bankruptcy court, federal district and appellate courts), and included appeals of nearly every substantive ruling during the Acis Bankruptcy. HCLOF's investors—including HarbourVest—bore millions of dollars of legal fees incurred by numerous parties, including attorneys' fees for (i) HCLOF, (ii) Highland, (iii) Acis, (iv) Highland HCF and (v) various affiliated persons, entities and experts.

49. No justifiable basis existed for Highland to cause HCLOF to pay Highland-related parties' expenses and fees arising from the Acis Bankruptcy. Those fees were grossly inappropriate, excessive, and unreasonable, caused by Highland's own malfeasance, and they are not covered under the HCLOF governing documents.

50. On this point, it is worth underscoring that, to HarbourVest's knowledge, HCLOF has, to date, incurred more than **\$15 million** in legal fees since 2018, much of which appears to be related to fighting an **\$8 million** Arbitration Award. Even if such fees could appropriately be charged to HCLOF (and they cannot), the amount of legal fees incurred is grossly unreasonable. Highland's use of HCLOF assets to pay these astounding legal fees creates liability for its misuse of fund assets in gross breach of its duties as a sub-advisor and as a shadow / de facto director.

51. In addition to the improper legal expenses, Highland's gross mismanagement of HCLOF includes Highland (i) directing the Trustee to sell numerous loans during the Acis Bankruptcy and (ii) failing to reset the CLOs and or consider alternatives in light of the court-ordered injunction on resets.<sup>28</sup>

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<sup>28</sup> See, e.g., Acis Trustee Complaint at 29, n. 46 (“Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a ‘refinance’ or ‘reset’ transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption.”), A319; Second Am. Compl. at 24–28, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157 (Highland Capital “grossly mismanaged the CLOs” when it “failed to purchase a single loan for the CLOs . . . [and] in an apparent tactical move to accumulate cash in the CLOs . . . ordered that the Trustee sell numerous loans.” When the Trustee found new parties to perform services under the Sub Agreements, Highland Capital “offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that

**C. Securities Claims**

52. HarbourVest also has state and federal securities fraud claims against Highland.

53. Under the Texas Securities Act (the “**TSA**”), “[a] person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security.” Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) (West). Hence, “to recover under the TSA, a buyer of a security must prove that the security was sold by means of (1) an untrue statement of material fact or (2) an omission to state a material fact that is necessary in order to make the statements made not misleading.” *Kubbernus v. ECAL Partners, Ltd.*, 574 S.W.3d 444, 480 (Tex. App. 2018). A plaintiff need not show reliance, loss causation, or damages under the TSA. *See id.*; *In re Skyport Glob. Commc'ns, Inc.*, No. 08-36737, 2011 WL 111427, at \*47 (Bankr. S.D. Tex. Jan. 13, 2011). In addition to primary violators, “[a] person who directly or indirectly controls a seller, buyer, or issuer of a security” or “who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security,” is liable under the TSA “jointly and severally with the seller, buyer, or issuer and to the same extent as if he were the seller, buyer, or issuer.” Tex. Rev. Civ. Stat. Ann. art. 581-33 (F) (West).

54. Section 10(b) of the Securities Exchange Act makes it unlawful for any person “[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative

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Highland had grossly overcharged Acis.”), A448–52; 1/31/19 Confirmation Ruling at 29–30 (“[I]n this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan. Mr. Scott, a director of HCLOF Guernsey, testified that HCLOF Guernsey can sell its interest in the subordinated notes in the market.”); 1/31/19 Confirmation Ruling at 20 (“[A]fter Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level.”).

or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.” 15 U.S.C. § 78j(b). And Rule 10b-5, promulgated by the SEC under the authority of Section 10(b), makes it unlawful for “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” to “employ any device, scheme, or artifice to defraud”; “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading”; or “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.” 17 C.F.R. § 240.10b-5.

55. The Supreme Court has recognized an implied private cause of action to enforce Section 10(b) and its implementing regulation, Rule 10b-5. *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37 (2011). To state a claim under Section 10(b) and Rule 10b-5 based on an alleged misrepresentation or omission, a plaintiff must show “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Id.* (citations omitted). Joint and several liability for violations of Section 10(b) and Rule 10b-5 extends to “[e]very person who, directly or indirectly, controls any person liable under” Section 10(b) and Rule 10b-5 “to the same extent as such controlled person.” 15 U.S.C. § 78t(a).

56. Here, Highland, in connection with its sale of HCLOF shares to HarbourVest, made material misrepresentations and omitted material facts, as detailed above. That is sufficient to state a claim under the TSA. Those material misrepresentations and omitted

material facts likewise state a claim under federal law for the recovery of damages caused by Highland's fraud, because they were made with the intent to deceive HarbourVest, were relied upon by HarbourVest, and caused substantial losses to HarbourVest's investment.

**D. RICO Claims**

57. RICO makes it unlawful, among other things, for a person associated with an enterprise to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. *See* 18 U.S.C. § 1962(c). Under RICO, any person injured in his business or property by reason of such a violation may recover treble damages and reasonable attorney's fees. *See* 18 U.S.C. § 1964(c).

58. Here, Highland engaged in a pattern of racketeering activity involving numerous predicate acts over multiple years, including mail, wire, and bankruptcy fraud, as part of a scheme to defraud Terry, obstruct the enforcement of his judgment, and obtain investor funding to further finance the scheme. Highland committed these violations through its control of and conduct of the affairs of multiple enterprises, including Acis.

59. In furtherance of that scheme, Highland committed further predicate acts of fraud and bankruptcy fraud as described at length herein, including when, prior to the appointment of the Acis Trustee, Highland caused Acis to make false statements with respect to HarbourVest in the Acis bankruptcy proceedings. *See* 18 U.S.C. § 152(2), (3). Highland's statements were made with knowledge of their falsity and caused HarbourVest significant damages as detailed above, including significant and unwarranted fees and expenses from the Acis Trustee's investigation, and Highland is liable for its pattern of deceptive and fraudulent behavior.

**E. Unfair Prejudice**

60. HarbourVest also has claims against Highland for unfair prejudice under Guernsey law. Under Section 349 of the Companies (Guernsey) Law 2008, shareholders may

apply for relief where the affairs of a company have been conducted in a manner that is unfairly prejudicial to the applicant. § 349(1)(a). To succeed on such an application, the applicant need show only that: (1) the acts or omissions of which he complains of were acts of the Company, including acts taken by the board or a shadow director; (2) the conduct of those affairs has caused prejudice to the applicant's interests as a member of the Company, and (3) the prejudice is unfair. *Prodefin Trading Ltd. v. Midland Res. Holding Ltd.*, Royal Court of Guernsey, 14 February 2017, Judgment 7/2017, A91.

61. The court's remedial powers for an unfair prejudice claim are broad. Section 350 of the Guernsey Companies Law provides: "[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of." Such relief may include ordering a buyout of the applicant's interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; see also *Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523, A117. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420, A140.

62. HarbourVest has been unfairly prejudiced by the full range of Highland's actions and behavior described above, including (i) the fraudulent Transfers immediately preceding and following the Investment, as well as misrepresentations and omissions regarding those Transfers and the Arbitration Award; (ii) breaches of fiduciary duty by Highland as shadow or de facto director of the Company; (iii) misuse of fund assets and legal fee charges to HCLOF; (iv) mismanagement of the HCLOF investment by Highland; and (v) Highland's false statements about HarbourVest, including to this Court, accusing HarbourVest of perpetrating the Transfers.

Such actions warrant relief based upon what the value of HarbourVest's interests in HCLOF *would have been* had Highland not engaged in such misconduct—a value that far exceeds the Investment's current value.

**Prayer for Relief**

63. HarbourVest respectfully requests: (i) this Court deny and overrule the Claim Objection with respect to HarbourVest's Proof of Claim, (ii) sustain and allow HarbourVest's Proofs of Claim, and (iii) grant HarbourVest such other and further relief to which it may be justly entitled, both at law and in equity.

Dated: Dallas, Texas  
September 11, 2020

/s/ Vickie L. Driver  
Vickie L. Driver (No. 24026886)  
Crowe & Dunlevy, P.C.

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HarbourVest Partners L.P., on behalf of funds and  
accounts under management*

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

-----	X
	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	:
	:
-----	X

**APPENDIX TO HARBOURVEST RESPONSE TO DEBTOR’S FIRST OMNIBUS  
OBJECTION TO CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS;  
(C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS;  
AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

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**Appendix to HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims**

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*Counsel for the Debtor and Debtor-in-Possession*

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

-----  
In re: §  
          § Chapter 11  
          §  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> § Case No. 19-34054-sgj11  
          §  
          § Debtor. §  
-----

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR’S MOTION  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
(CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS  
CONSISTENT THEREWITH**

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

**Dondero Ex. D**



1. I am a partner in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as Exhibit 1 is a true and correct copy of the *Settlement Agreement*, executed as of December 23, 2020.

3. Attached as Exhibit 2 is a true and correct copy of Proof of Claim No. 143.

4. Attached as Exhibit 3 is a true and correct copy of Proof of Claim No. 147.

5. Attached as Exhibit 4 is a true and correct copy of Proof of Claim No. 149.

6. Attached as Exhibit 5 is a true and correct copy of Proof of Claim No. 150.

7. Attached as Exhibit 6 is a true and correct copy of Proof of Claim No. 153.

8. Attached as Exhibit 7 is a true and correct copy of Proof of Claim No. 154.

Dated: December 24, 2020

/s/ John A. Morris  
John A. Morris

# EXHIBIT 1

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”;

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

---

<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a "Support Termination Event"): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
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Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its  
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed  
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General  
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,  
its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

# Exhibit A

**TRANSFER AGREEMENT**  
**FOR ORDINARY SHARES OF**  
**HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [redacted], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
  - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
  - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
  - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
  - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
  - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
  - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
  - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
  - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
  - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

  - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
  - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

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

**TRANSFeree:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

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

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

Exhibit A

<u>Transferee Name</u>	<u>Number of Shares</u>	<u>Percentage</u>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

## EXHIBIT 2

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global Fund L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harb

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P.		
<b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

<p>In re:</p> <p>Highland Capital Management, L.P.</p> <p>Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19-34054 (SGJ)</p>
---	--

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 3

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

<p><b>Where should notices to the creditor be sent?</b></p> <p>HarbourVest 2017 Global AIF L.P.                  Attn: Erica Weisgerber                  Debevoise and Plimpton LLP                  919 Third Avenue                  New York, NY 10022, U.S.A.</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p> <p>Contact phone <u>2129096000</u>                  Contact email <u>eweisgerber@debevoise.com</u></p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p> <p>See summary page</p> <p>Contact phone <u>6173483773</u>                  Contact email <u>agoren@harbourvest.com</u></p>
---	---

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 4

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  No  Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. See Annex

9. Is all or part of the claim secured?  No  Yes. The claim is secured by a lien on property. Nature or property:  Real estate: If the claim is secured by the debtor's principle residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.  Motor vehicle  Other. Describe: Basis for perfection: Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ Amount of the claim that is secured: \$ Amount of the claim that is unsecured: \$ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ Annual Interest Rate (when case was filed) %  Fixed  Variable

10. Is this claim based on a lease?  No  Yes. Amount necessary to cure any default as of the date of the petition. \$

11. Is this claim subject to a right of setoff?  No  Yes. Identify the property:

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 5

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Dover Street IX Investment L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  No  Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. See Annex

9. Is all or part of the claim secured?  No  Yes. The claim is secured by a lien on property. Nature or property:  Real estate: If the claim is secured by the debtor's principle residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.  Motor vehicle  Other. Describe: Basis for perfection: Value of property: \$ Amount of the claim that is secured: \$ Amount of the claim that is unsecured: \$ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ Annual Interest Rate (when case was filed) %  Fixed  Variable

10. Is this claim based on a lease?  No  Yes. Amount necessary to cure any default as of the date of the petition. \$

11. Is this claim subject to a right of setoff?  No  Yes. Identify the property:



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 6

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HV International VIII Secondary L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? [X] No [ ] Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges? [ ] No [ ] Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. See Annex

9. Is all or part of the claim secured? [X] No [ ] Yes. The claim is secured by a lien on property. Nature or property: [ ] Real estate: If the claim is secured by the debtor's principle residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. [ ] Motor vehicle [ ] Other. Describe: Basis for perfection: Value of property: \$ Amount of the claim that is secured: \$ Amount of the claim that is unsecured: \$ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ Annual Interest Rate (when case was filed) % [ ] Fixed [ ] Variable

10. Is this claim based on a lease? [X] No [ ] Yes. Amount necessary to cure any default as of the date of the petition. \$

11. Is this claim subject to a right of setoff? [X] No [ ] Yes. Identify the property:

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 7

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

<p><b>Where should notices to the creditor be sent?</b></p> <p>HarbourVest Skew Base AIF L.P.                  Attn: Erica Weisgerber                  Debevoise and Plimpton LLP                  919 Third Avenue                  New York, NY 10022, U.S.A.</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p> <p>Contact phone <u>2129096000</u>                  Contact email <u>eweisgerber@debevoise.com</u></p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p> <p>See summary page</p> <p>Contact phone <u>6173483773</u>                  Contact email <u>agoren@harbourvest.com</u></p>
---	---

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

<p>In re:</p> <p>Highland Capital Management, L.P.</p> <p>Debtor.</p>	<p>Chapter 11</p> <p>Case No. 19-34054 (SGJ)</p>
---	--

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings

in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

Rakhee V. Patel – State Bar No. 00797213  
Phillip Lamberson – State Bar No. 00794134  
Joe Wielebinski – State Bar No. 21432400  
Annmarie Chiarello – State Bar No. 24097496  
**WINSTEAD PC**  
500 Winstead Building  
2728 N. Harwood Street  
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Jeff P. Prostok – State Bar No. 16352500  
J. Robert Forshey – State Bar No. 07264200  
Suzanne K. Rosen – State Bar No. 00798518  
Matthias Kleinsasser – State Bar No. 24071357  
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777 Main St., Suite 1290  
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mkleinsasser@forsheyprostok.com

**SPECIAL COUNSEL FOR  
ROBIN PHELAN, CHAPTER 11 TRUSTEE**

**COUNSEL FOR  
THE CHAPTER 11 TRUSTEE**

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**

§  
§  
§  
§  
§  
§  
§

**CHAPTER 11 CASES**

**Case No. No. 18-30264-SGJ-11)  
(Jointly Administered)**

**Expedited Hearing Requested**

**MOTION FOR 2004 EXAMINATION OF INVESTOR IN HIGHLAND CLO FUNDING,  
LTD. AND CERTAIN AFFILIATES THEREOF**

**TO THE HONORABLE STACEY G.C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Robin Phelan (the "Trustee"), the Chapter 11 Trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, the "Debtors" or "Acis"), the Debtors in the above-styled and numbered bankruptcy cases (the "Cases"), files this *Motion for 2004 Examination of Investor in Highland CLO Funding, Ltd. and Certain Affiliates Thereof* (the "2004 Motion"), and respectfully states the following:

**Dondero Ex. E**

## BACKGROUND

1. Acis LP is portfolio manager for certain collateralized loan obligations (“CLOs”) including: (i) Acis CLO 2013-1 LTD. (“CLO-1”), (ii) Acis CLO 2014-3 (“CLO-3”), (iii) Acis CLO 2014-4 LTD. (“CLO-4”), (iv) Acis CLO 2014-5 LTD. (“CLO-5”), and (v) Acis CLO 2015-6 LTD. (“CLO-6”). CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6 are collectively referred to herein as the “Acis CLOs.”

2. Acis LP manages the Acis CLOs through: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the “CLO-1 PMA”); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the “CLO-3 PMA”); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the “CLO-4 PMA”); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the “CLO-5 PMA”); and that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the “CLO-6 PMA”). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the “PMAs.” Acis LP generates revenue primarily through the management of the Acis CLOs via the PMA<sup>s</sup>.<sup>1</sup>

3. Highland CLO Funding, Ltd. (“HCLOF”), formerly known as Acis Loan Funding (“ALF”), is the holder of either all or the majority of the subordinated notes in each of the Acis CLOs, except for CLO-1, in which it possesses a blocking position.

4. HCLOF has taken many positions throughout the course of this case that appear to be economically irrational, contrary to the best interests of HCLOF and its investors, and

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<sup>1</sup> See *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the “Opinion”) at page 13.

instead designed to ensure the destruction of the Acis CLOs so that creditors of Acis, and Joshua Terry in particular, receive nothing or as little as possible from the Acis bankruptcy estate. Recently,<sup>2</sup> William Scott, the director of HCLOF, testified that he wants to “reset” the Acis CLOs to bring them in line with current market interest rates and that the inability to do the reset is causing damage to HCLOF in the amount of approximately \$295,000 per week.<sup>3</sup> Likewise, J.P. Sevilla, in-house counsel for Highland Capital Management, LP (“HCM,” and together with its affiliates, including HCLOF, the “Highlands”), recently swore in an affidavit filed in Guernsey that a reset transaction, which involves changing the interest rate, reinvestment terms and non-call period in the Acis CLOs, would be extremely beneficial to HCLOF because it would “create greater cash at the end of the payment waterfall for the holder of the sub-notes,” and was cheaper and easier to accomplish than creating a new CLO or doing a refinancing transaction because the existing collateral pool stays the same, a new issuer is not required, and the legal expenses are much lower.<sup>4</sup> Mark Okada, a principal and 25% owner of HCM, testified that not doing a reset was “a bad thing” and that “we don’t want that.”<sup>5</sup> Finally, counsel for Acis (while it was receiving shared services and sub-advisory services from HCM) likewise concurred that it “makes no sense” for an equity investor to just sit back and watch its dividend diminish without requesting a reset transaction.<sup>6</sup>

5. To address HCLOF’s request, the Trustee’s Second Amended Joint Plan (the “Plan”) [Docket No. 612] provides for such a reset to be performed by the Reorganized Acis and

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<sup>2</sup> As the Court will recall, HCLOF previously requested a liquidation of the Acis CLOs after the entry of the order for relief, which the Court enjoined, but then vigorously contested the Trustee’s original plan which would have resulted in HCLOF receiving mid-NAV plus 25 basis points, an amount well in excess of the liquidation value of the subordinated notes.

<sup>3</sup> Transcript, July 6, 2018, p. 136.

<sup>4</sup> Affidavit of J.P. Sevilla, p. 6.

<sup>5</sup> See Transcript, Involuntary Trial, March 23, 2018 at pp. 38-39.

<sup>6</sup> See Transcript, Involuntary Trial, February 21, 2018, pp 74-75.

its sub-advisor, Brigade Capital Management, LP (“Brigade”). Although Mr. Scott, Mr. Sevilla, and all of the experts in this case have testified that pursuing a reset transaction would make the Acis CLOs more profitable to HCLOF, HCLOF has indicated that it will not reset the Acis CLOs with the Reorganized Acis and Brigade under the Plan. Instead, despite the substantial potential losses to HCLOF and its investors, it appears that HCLOF will wind-down the Acis CLOs by declining to reset them prior to the expiration of their respective reinvestment periods which, at least for Acis CLO-3, will expire in a few short months, on February 1, 2019.

6. Such a decision by HCLOF would “make no sense” and be contrary to its own best interests. Although HCLOF/ALF was at one time wholly-owned by an affiliate of Highland, it did an offering memorandum in November 2017 and, as a result, is now owned 49.985% by certain affiliates of a large investor and manager of private equity funds (“Investor”),<sup>7</sup> and 50.015% by affiliates (49.0153%) and employees (0.9997%) of Highland. Despite its large ownership percentage in HCLOF and the alleged millions in losses that will result if the Acis CLOs are not reset to make them consistent with prevailing market conditions, the Investor has not yet appeared in this case or taken any position in this bankruptcy case. Further, the Trustee does not have any information as to whether the Investor would be amenable to pursuing a reset with Reorganized Acis and Brigade following confirmation of the Plan. Because time is short if CLO-3 is to be reset before the end of its reinvestment period, the Trustee needs to obtain information from the Investor immediately.

7. During the involuntary trial, a number of representations were made to the Court by counsel for Acis (while HCM was its shared services provider and sub-advisor) that the Investor only invested in HCLOF on the condition that Acis would not have anything to do with

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<sup>7</sup> Although the identity of the Investor and the amount of its investment in HCLOF has previously been disclosed on the record in this case, the Trustee is taking an ultra-conservative approach in this Motion because certain of the documents reflecting the identity of the Investor in HCLOF were marked as “confidential” in discovery.

the Acis CLOs going forward, and that the Investor would demand its money back if a reset transaction was done with Acis.<sup>8</sup> Likewise, Scott Ellington, general counsel for HCM, testified that the new equity holders (Investor) said, with absolute certainty, that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO.<sup>9</sup> Mr. Ellington also testified that, because it would be putting in additional capital in connection with any reset CLOs, the Investor had the ability to “start calling the shots” and dictate the terms of any reset transactions.<sup>10</sup> Finally, Mr. Okada testified that a reset transaction could not be performed by Acis because the market would not accept Acis as a portfolio manager and Acis was no longer risk-retention compliant.<sup>11</sup>

8. However, circumstances have changed dramatically in the six months since the conclusion of the involuntary trial, and the harbingers of doom predicted by the Highlands have not come to fruition. For example, the Court found that the Highlands’ self-serving allegations regarding the Acis brand being toxic were not credible or convincing because Acis CLO 2017-7, Ltd. closed in April 2017 with Acis as the portfolio manager.<sup>12</sup> Further, the operations of Acis LP have stabilized in bankruptcy and Acis LP, with the assistance of Brigade, has not only continued to perform its duties under the PMAs, but improved the condition of the CLOs through the acquisition of additional loans. In addition, although the Highlands took actions that rendered Acis non-complaint with certain risk-retention requirements,<sup>13</sup> such requirements were

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<sup>8</sup> See Transcript, Involuntary Trial, February 6, 2018 at p. 46.

<sup>9</sup> See Transcript, Involuntary Trial, February 7, 2018 at pp. 56-57.

<sup>10</sup> See Transcript, Involuntary Trial, February 7, 2018 at p. 226.

<sup>11</sup> See Transcript, Involuntary Trial, March 23, 2018 at p. 53.

<sup>12</sup> See Findings of Fact and Conclusions of Law, Docket No. 118, at p. 18.

<sup>13</sup> Id.

determined to be inapplicable to CLO managers and such decision was not appealed by regulators to the Supreme Court.<sup>14</sup> As a result, there are neither reputational issues nor any other impediments to the ability of the Reorganized Acis, with the assistance of Brigade, to both perform the resets and continue to serve as the portfolio manager of any reset Acis CLOs. Finally, Brigade has explored the market and believes that the Reorganized Acis and Brigade will be able to reset the Acis CLOs on terms that improve the economics of the Acis CLOs if a reset is requested by HCLOF in a timely fashion.

9. The Trustee needs information from the Investor regarding whether its purported refusal to doing a reset with Acis was based on the erroneous assumptions articulated during the involuntary trial that Acis would not be able to perform the resets due to risk-retention issues, unsubstantiated reputational issues, or an alleged inability to accomplish the resets without the assistance of the Highlands. None of these purported concerns exist to impair the ability of the Reorganized Acis and Brigade to perform a reset. Further, although these matters were alleged by the Highlands, no one from the Investor ever testified during the involuntary trial. As a result, the Trustee needs to examine the Investor to determine whether the Investor ever actually had such concerns regarding proceeding with Acis. The Trustee also needs information regarding whether the Investor presently has any concerns about pursuing reset transactions with the Reorganized Acis and Brigade under the Plan now that Acis has been able to successfully serve as the portfolio manager for the Acis CLOs on a post-petition basis and there are no impediments to the ability of the Reorganized Acis and Brigade to pursue a reset on the Acis CLOs. This is particularly necessary given Mr. Ellington's previous sworn testimony that the Investor is the party calling the shots for HCLOF with respect to any reset transactions. Time is also of the essence as the reinvestment period for Acis CLO-3 will expire on February 1, 2019.

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<sup>14</sup> *Loan Syndications & Trading Ass'n v. SEC*, 882 F.3d 220, 229 (D.C. Cir. 2018).

10. Finally, although the Highlands have represented to the Court that the Investor is an unrelated and independent third party, a decision by an unrelated and independent third party to refuse the opportunity to reset the Acis CLOs with the Reorganized Acis and Brigade “makes no sense” and would appear to be economically irrational given that Brigade has at least as good of a track record (if not a better track record) than does Highland in relation to its CLO business. As a result, the Trustee seeks information regarding the relationship, if any, between the Investor and the Highlands.

### **RELIEF SOUGHT AND GROUNDS THEREFOR**

11. The Trustee requests entry of an Order, pursuant to Section 105(a) of the Bankruptcy Code and Rule 2004, authorizing and directing (i) the production of documents by the Investor in response to the document requests attached as **Exhibit A**; and (ii) testimony by one or more corporate representatives of the Investor through depositions, including testimony relating to the matters set forth in **Exhibit B** attached hereto. A copy of the Trustee’s proposed order granting the relief requested herein is attached as **Exhibit C** hereto.<sup>15</sup>

12. The Rule 2004 information requested in this 2004 Motion will provide Debtor with information it needs to understand (i) the Investor’s intentions at the time it invested in HCLOF, (ii) the Investor’s position regarding doing the reset transactions with Acis prior to the entry of the order for relief on April 13, 2018, (iii) the Investor’s current position regarding whether HCLOF should do a reset with the Reorganized Acis and Brigade, (iv) whether and to what extent the Investor is “calling the shots” for HCLOF, and (v) the relationship, if any, between the Investor and the Highlands.

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<sup>15</sup> Again, out of an abundance of caution, the identity of the Investor is not disclosed in the proposed order. At the hearing on the Motion, the Trustee will ask the Court to determine whether any order on the Motion should either identify the Investor, identify but redact the name of the Investor, or be entered under seal.

13. Bankruptcy Rule 2004 allows a party in interest, including the Trustee, to examine any entity regarding matters that may affect the administration of the Debtors' estate. *See, e.g., In re Summit Corp.*, 891 F. 2d 1, 5 (1st Cir. 1989). Bankruptcy Rule 2004 also allows the Court to order parties-in-interest to produce documents. *See In re Correra*, No. 16-30728-SGJ-7, 2018 Bankr. LEXIS 2498, \*14 (Bankr. N.D. Tex. 2018).

14. It is well settled that a Rule 2004 examination is broad in scope. *See, e.g., In re Washington Mutual, Inc.*, 408 B.R. 45, 49 (Bankr. D. Del. 2009) ("[t]he scope of a Rule 2004 examination is unfettered and broad.") (internal quotation marks omitted). "Third parties are subject to examination pursuant to Rule 2004 if they have knowledge of the debtor's affairs." *Correra*, 2018 Bankr. LEXIS 2498 at \*60 (citing *In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983)). "Courts tend to be reluctant to allow 'escape from a Rule 2004 examination unless the party can show that the examination' would be 'oppressive or burdensome.'" *Id.* at \*60 (citing 9 Collier On Bankruptcy ¶ 2004.01[8] (Richard Levin et al. eds. 16th ed.)).

15. The Trustee does not propose to use the examination for any improper purpose, such as to annoy, embarrass or oppress the party being examined. *See In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 712 (Bankr. S.D.N.Y. 1991).

16. The requested information in **Exhibit A**, and the deposition topics reflected on the attached **Exhibit B**, relates to, among other things, the Investor's intentions at the time it invested in HCLOF, the Investor's prior position regarding pursuing a reset of the Acis CLOs with Acis as the portfolio manager, the Investor's current position regarding pursuing a reset transaction with the Reorganized Acis and Brigade under the Plan, whether the Investor is actually calling the shots for HCLOF, and the relationship between the Investor and the

Highlands. The requested information is within the scope of Bankruptcy Rule 2004 because it relates to the Plan and the administration of this bankruptcy case.

**WHEREFORE, PREMISES CONSIDERED**, the Trustee respectfully requests that the Court: (i) grant the 2004 Motion; (ii) enter the proposed order attached hereto as **Exhibit C**, (iii) order the requested examination under oath of one or more corporate representatives of the Investor under Federal Rule of Bankruptcy Procedure 2004; (iv) order Investor, within thirty (30) days of entry of an order approving the 2004 Motion, to produce the records requested in **Exhibit A**; (v) order the attorneys for the Trustee be authorized to execute and serve any and all subpoenas that are necessary for the requested production of documents; and (vi) grant the Trustee such further relief, whether in law or in equity, to which he may be justly entitled.

**DATED: OCTOBER 10, 2018**

Respectfully submitted,

By: /s/Jeff P. Prostok

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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Bankruptcy Rule 2004-1(a), I hereby certify that the undersigned counsel for the Trustee has conferred with Craig A. Bruens, counsel for the Investor, regarding the relief requested by the 2004 Motion. A conference was held but, at the time of such conference, Mr. Buens advised that the Investor had not yet had an opportunity to review and form an opinion about the relief requested in the 2004 Motion. As a result, the 2004 Motion is presumed to be opposed and is presented to the Bankruptcy Court for determination. In the event the undersigned subsequently learns that the Investor does not oppose the 2004 Motion, an amended certificate of conference will be filed.

*/s/ Jeff P. Prostok*

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Jeff P. Prostok

**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2018, notice of this document will be (i) electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Court Filing (ECF) Procedures in this District, (ii) emailed and mailed to counsel for the Investor at the address below, and (iii) served by first class U.S. mail, postage prepaid, on any parties on the attached Service List that do not receive the Court's ECF notifications.

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*/s/ Suzanne K. Rosen*  
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## **EXHIBIT A**

### **DOCUMENTS TO BE PRODUCED BY INVESTOR**

## **TRUSTEE'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

### **I. DEFINITIONS**

1. "Document" or "Documents" is defined broadly to include: (a) all originals and all non-identical copies of all written, typed, printed, or recorded matter of any kind, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, including, without limitation, all letters, correspondence, e-mails, facsimiles, telegrams, telexes, memoranda, notes, marginal notations, summaries or other records of personal or telephonic conversations, summaries or other records of meetings or conferences, summaries or other records of negotiations or discussions of any kind, diaries, diary entries, calendars, appointment books, time records, visitor records, work records, telephone bills and records, expense records, travel and entertainment records, inspections, estimates, reports, offers, counter-offers, proposals, counter-proposals, drafts, revisions, rejections, acceptances, repudiations, agreements, contracts, understandings, articles of incorporation and all amendments thereto, by-laws and all amendments thereto, notices, waivers, consents, proxies, minutes, motions, votes, resolutions, orders, directives, policy statements, organization charts, partnership agreements and all amendments thereto, partnership certificates and all amendments thereto, stock or share certificates, transfer books or ledgers, voting lists, progress reports, completion agreements, purchase orders, invoices, financial records, financial statements, balance sheets, income statements, financial summaries, journals, journal entries, ledgers, ledger entries, worksheets, work papers, accounting records, bank records, bank statements, canceled checks, check stubs, checkbooks, deposit receipts, employee records, payroll records, drafts, promissory notes, letters of credit, bills of lading, bills of sale, cash receipts, revolving credit agreements, deeds, deeds of trust, security agreements, mortgages, liens, guaranty agreements, UCC filings, insurance agreements or policies, reports, opinions, evaluations, appraisals, feasibility studies, analyses, recommendations, bills, invoices, fee statements, books, articles, magazines, circulars, trade letters, press clippings, surveys, statistical data, punch cards, programs, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing; (b) graphic or aural records or representations of any kind including, without limitation, graphs, maps, charts, pamphlets, speeches, transcripts, transcripts of hearings, transcripts of testimony, microfilm, microfiche, voice recordings, video recordings, tape or disc recordings, film, photographs, electronic recordings, and any other data compilations from which information can be obtained or translated; and, (c) electronic, mechanical or electric records or representations of any kind, including, without limitation, e-mails, tapes, cassettes, disks, discs, recordings, and all transcriptions, in whole or in part, of any of the foregoing.

For purposes of electronically stored information ("ESI"), "Document" also includes but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file or files (readily accessible by one or more computer applications or forensics software); and "deleted" but recoverable electronic files on such media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during normal operations of a computer [RAM slack] or residual data left on the hard drive after new data has been overwritten some but not all of previously stored data).

2. "Person" as used herein shall mean and include any natural person, governmental agency, corporate entity, proprietorship, partnership, corporation, board, committee, or any other form of organization, association, or legal entity of any type, whether public or private.

3. "Identify" means, when referring to a document, to give to the extent known, the following information:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the authors, addressees, and recipients of the document;
- (e) the location of the document;
- (f) the identity of the person who has custody of the document; and
- (g) whether the document has been destroyed, and if so
  - (i) the date of its destruction,
  - (j) the reason for its destruction, and
  - (k) the identity of the person who destroyed it.

4. "Identify" means, when referring to a person, to give to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify" means, as applied to a location or place, the full street address, including the city, state and zip code or postal code of the location, as well as the person whose place of business is located there or who uses or occupies such location.

6. "Identify" means, as applied to a Communication, the identity of the Person or Persons making the Communication, and the identity of the Person or Persons who was the recipient of the Communication, as well as the subject matter and contents of the Communication.

7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and includes without limitation, any document, email, electronic transmission, oral statement, meeting or conference, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind was transmitted, received, or stored in any matter whatsoever.

8. "Pertaining to" is defined as relating to, referring to, relevant to, constituting, depicting, showing, describing, identifying, indicating, summarizing, analyzing, explaining, evaluating, appraising, justifying, supporting, contradicting, establishing, refuting, tending to establish the truth or falsity of or tending to establish the existence or non-existence of.

9. The use of the singular form of any word includes the plural and vice versa.

10. The following terms shall have the meaning set forth below:
- (i) “Acis CLOs” refers to CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6.
  - (ii) “Acis GP” refers to Acis Capital Management GP, LLC;
  - (iii) “Acis LP” refers to Acis Capital Management, L.P.;
  - (iv) “Acis PMAs” refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
  - (v) “Affiliates” has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code;
  - (vi) “Bankruptcy Court” refers to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division;
  - (vii) “Bankruptcy Cases” refers to the Debtors’ chapter 11 bankruptcy cases, which are being jointly-administered under Case No. 18-30264-sgj-11;
  - (viii) “Bankruptcy Code” refers to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.;
  - (ix) “Brigade” refers to Brigade Capital Management, L.P.;
  - (x) “CLO-1” refers to Acis CLO 2013-1 Ltd.;
  - (xi) “CLO-1 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013;
  - (xii) “CLO-3” refers to Acis CLO 2014-3 Ltd.;
  - (xiii) “CLO-3 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014;
  - (xiv) “CLO-4” refers to Acis CLO 2014-4 Ltd.;
  - (xv) “CLO-4 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014;
  - (xvi) “CLO-5” refers to Acis CLO 2014-5 Ltd.;
  - (xvii) “CLO-5 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014;
  - (xviii) “CLO-6” refers to Acis CLO 2015-6 Ltd.;
  - (xix) “CLO-6 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015;

- (xx) "Debtors" refer individually or collectively to Acis LP and Acis GP;
- (xxi) "HCLOF" refers to Highland CLO Funding, Ltd.;
- (xxii) "HCM" refers to Highland Capital Management, L.P.;
- (xxiii) "Highlands" refers to HCM, HCLOF, and any Affiliates of HCM or HCLOF;
- (xxiv) "Investor," "You," or "Your" refers to the Investor, its Affiliates, and any successors in interest thereto;
- (xxv) "Petition Date" refers to the date of the filing of the involuntary Chapter 11 petitions against the Debtors on January 30, 2018;
- (xxvi) "Plan" refers to any plan proposed by the Trustee in the Bankruptcy Cases;
- (xxvii) "PMAs" refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
- (xxviii) "Reorganized Acis" refers collectively to the reorganized Acis LP and Acis GP following the effective date of the Trustee's Plan; and
- (xxix) "Trustee" refers to Robin Phelan, the Chapter 11 Trustee for the Debtors.

## **II. INSTRUCTIONS**

1. Unless otherwise indicated, the use herein of the name of a party, business organization, entity or other person shall specifically include all employees, agents, representatives, members, officers, directors, partners, parent, subsidiaries, affiliates, and attorneys of the party, business organization, entity or other person.

2. In accordance with Rule 34 of the Federal Rules of Civil Procedure, as made applicable by Rule 7034, you are required to produce all responsive documents and tangible things within your possession, custody and control within such time as may be specified in Rule 34, agreed to by the parties or as may be fixed by the Bankruptcy Court. Possession, custody and control include constructive possession, and include all responsive documents in the possession or control of your employees, agents, attorneys or representatives. You need not have actual physical possession of such documents or tangible things. So long as you have a superior right to compel production from a third party (including any employee, agent, attorney or representative), you have possession, custody or control of the documents and tangible things.

2. With regard to the production of ESI, pursuant to Rule 34(E) of the Federal Rules of Civil Procedure, the Debtor requests that all ESI be produced in the form in which it is ordinarily maintained (native format) with all original metadata intact.

3. In accordance with Rule 26(e) of the Federal Rules of Civil Procedure, these requests are continuing in nature. If you obtain information upon the basis of which you know that a response was incorrect or incomplete when made, or such that though correct and complete when made, a response is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading, then supplementation of your responses is required.

### **III. REQUESTS FOR PRODUCTION**

1. All documents and communications pertaining to the Investor's decision to invest in HCLOF.
2. All documents and communications pertaining to the Investor's investment in HCLOF.
3. All documents and communications pertaining to any reset or proposed reset of one or more of the Acis CLOs.
4. All documents and communications pertaining to the Debtors.
5. All documents and communications pertaining to the PMAs.
6. All documents and communications pertaining to the portfolio manager of the Acis CLOs or any reset Acis CLOs.
7. All documents and communications pertaining to the Bankruptcy Cases.
8. All documents and communications pertaining to the Plan.
9. All documents and communications pertaining to the Reorganized Acis or Brigade.
10. All documents and communications reflecting the governance or decision-making processes of HCLOF.
11. All documents and communications pertaining to or reflecting any relationship between the Investor and any of the Highlands.
12. All documents and communications pertaining to or reflecting any equity ownership by any of the Highlands in the Investor, or by the Investor in any of the Highlands.

## **EXHIBIT B**

### **DEPOSITION TOPICS FOR A CORPORATE REPRESENTATIVE OF INVESTOR**

## **TRUSTEE'S DEPOSITION TOPICS FOR INVESTOR**

### **I. DEFINITIONS**

1. "Document" or "Documents" is defined broadly to include: (a) all originals and all non-identical copies of all written, typed, printed, or recorded matter of any kind, as well as all attachments, addenda, and appendices thereto, of any nature or description whatsoever, wherever located, and in whatever form or condition, including, without limitation, all letters, correspondence, e-mails, facsimiles, telegrams, telexes, memoranda, notes, marginal notations, summaries or other records of personal or telephonic conversations, summaries or other records of meetings or conferences, summaries or other records of negotiations or discussions of any kind, diaries, diary entries, calendars, appointment books, time records, visitor records, work records, telephone bills and records, expense records, travel and entertainment records, inspections, estimates, reports, offers, counter-offers, proposals, counter-proposals, drafts, revisions, rejections, acceptances, repudiations, agreements, contracts, understandings, articles of incorporation and all amendments thereto, by-laws and all amendments thereto, notices, waivers, consents, proxies, minutes, motions, votes, resolutions, orders, directives, policy statements, organization charts, partnership agreements and all amendments thereto, partnership certificates and all amendments thereto, stock or share certificates, transfer books or ledgers, voting lists, progress reports, completion agreements, purchase orders, invoices, financial records, financial statements, balance sheets, income statements, financial summaries, journals, journal entries, ledgers, ledger entries, worksheets, work papers, accounting records, bank records, bank statements, canceled checks, check stubs, checkbooks, deposit receipts, employee records, payroll records, drafts, promissory notes, letters of credit, bills of lading, bills of sale, cash receipts, revolving credit agreements, deeds, deeds of trust, security agreements, mortgages, liens, guaranty agreements, UCC filings, insurance agreements or policies, reports, opinions, evaluations, appraisals, feasibility studies, analyses, recommendations, bills, invoices, fee statements, books, articles, magazines, circulars, trade letters, press clippings, surveys, statistical data, punch cards, programs, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing; (b) graphic or aural records or representations of any kind including, without limitation, graphs, maps, charts, pamphlets, speeches, transcripts, transcripts of hearings, transcripts of testimony, microfilm, microfiche, voice recordings, video recordings, tape or disc recordings, film, photographs, electronic recordings, and any other data compilations from which information can be obtained or translated; and, (c) electronic, mechanical or electric records or representations of any kind, including, without limitation, e-mails, tapes, cassettes, disks, discs, recordings, and all transcriptions, in whole or in part, of any of the foregoing.

For purposes of electronically stored information ("ESI"), "Document" also includes but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file or files (readily accessible by one or more computer applications or forensics software); and "deleted" but recoverable electronic files on such media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during normal operations of a computer [RAM slack] or residual data left on the hard drive after new data has been overwritten some but not all of previously stored data).

2. "Person" as used herein shall mean and include any natural person, governmental agency, corporate entity, proprietorship, partnership, corporation, board, committee, or any other form of organization, association, or legal entity of any type, whether public or private.

3. "Identify" means, when referring to a document, to give to the extent known, the following information:

- (a) the type of document;
- (b) the general subject matter of the document;
- (c) the date of the document;
- (d) the authors, addressees, and recipients of the document;
- (e) the location of the document;
- (f) the identity of the person who has custody of the document; and
- (g) whether the document has been destroyed, and if so
  - (i) the date of its destruction,
  - (j) the reason for its destruction, and
  - (k) the identity of the person who destroyed it.

4. "Identify" means, when referring to a person, to give to the extent known, the person's full name, present or last known address, telephone number, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in compliance with this paragraph, only the name of that person needs to be listed in response to later discovery requesting the identification of that person.

5. "Identify" means, as applied to a location or place, the full street address, including the city, state and zip code or postal code of the location, as well as the person whose place of business is located there or who uses or occupies such location.

6. "Identify" means, as applied to a Communication, the identity of the Person or Persons making the Communication, and the identity of the Person or Persons who was the recipient of the Communication, as well as the subject matter and contents of the Communication.

7. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and includes without limitation, any document, email, electronic transmission, oral statement, meeting or conference, formal or informal, at any time or place, and under any circumstances whatsoever, whereby information of any kind was transmitted, received, or stored in any matter whatsoever.

8. "Pertaining to" is defined as relating to, referring to, relevant to, constituting, depicting, showing, describing, identifying, indicating, summarizing, analyzing, explaining, evaluating, appraising, justifying, supporting, contradicting, establishing, refuting, tending to establish the truth or falsity of or tending to establish the existence or non-existence of.

9. The use of the singular form of any word includes the plural and vice versa.

10. The following terms shall have the meaning set forth below:
- (i) “Acis CLOs” refers to CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6.
  - (ii) “Acis GP” refers to Acis Capital Management GP, LLC;
  - (iii) “Acis LP” refers to Acis Capital Management, L.P.;
  - (iv) “Acis PMAs” refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
  - (v) “Affiliates” has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code;
  - (vi) “Bankruptcy Court” refers to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division;
  - (vii) “Bankruptcy Cases” refers to the Debtors’ chapter 11 bankruptcy cases, which are being jointly-administered under Case No. 18-30264-sgj-11;
  - (viii) “Bankruptcy Code” refers to the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.;
  - (ix) “Brigade” refers to Brigade Capital Management, L.P.;
  - (x) “CLO-1” refers to Acis CLO 2013-1 Ltd.;
  - (xi) “CLO-1 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013;
  - (xii) “CLO-3” refers to Acis CLO 2014-3 Ltd.;
  - (xiii) “CLO-3 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014;
  - (xiv) “CLO-4” refers to Acis CLO 2014-4 Ltd.;
  - (xv) “CLO-4 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014;
  - (xvi) “CLO-5” refers to Acis CLO 2014-5 Ltd.;
  - (xvii) “CLO-5 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014;
  - (xviii) “CLO-6” refers to Acis CLO 2015-6 Ltd.;
  - (xix) “CLO-6 PMA” refers to that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015;

- (xx) "Debtors" refer individually or collectively to Acis LP and Acis GP;
- (xxi) "HCLOF" refers to Highland CLO Funding, Ltd.;
- (xxii) "HCM" refers to Highland Capital Management, L.P.;
- (xxiii) "Highlands" refers to HCM, HCLOF, and any Affiliates of HCM or HCLOF;
- (xxiv) "Investor," "You," or "Your" refers to Investor, its Affiliates, and any successors in interest thereto;
- (xxv) "Petition Date" refers to the date of the filing of the involuntary Chapter 11 petitions against the Debtors on January 30, 2018;
- (xxvi) "Plan" refers to any plan proposed by the Trustee in the Bankruptcy Cases;
- (xxvii) "PMAs" refers to the CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA;
- (xxviii) "Reorganized Acis" refers collectively to the reorganized Acis LP and Acis GP following the effective date of the Trustee's Plan; and
- (xxix) "Trustee" refers to Robin Phelan, the Chapter 11 Trustee for the Debtors.

### **III. DEPOSITION TOPICS**

1. The decision of the Investor to invest in HCLOF including, but not limited to, whether its decision to invest in HCLOF was conditioned upon the removal of Acis LP as the portfolio manager for the Acis CLOs.
2. The position taken by the Investor from 2017 to the present regarding Acis LP's or the Reorganized Acis' role as the portfolio manager for the Acis CLOs or any reset Acis CLOs.
3. The current position of the Investor pertaining to the reset of one or more of the Acis CLOs by the Reorganized Debtor and Brigade.
4. The governance and decision-making processes of HCLOF.
5. The relationship, if any, between Investor and the Highlands.
6. Any equity ownership by any of the Highlands in the Investor, or by the Investor in any of the Highlands.

## **EXHIBIT C**

### **PROPOSED ORDER**

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

<b>IN RE:</b>	§	<b>Case No. 18-30264-SGJ-11</b>
	§	<b>Case No. 18-30265-SGJ-11</b>
<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,</b>	§	<b>(Jointly Administered Under Case No. 18-30264-SGJ-11)</b>
<b>DEBTORS.</b>	§	<b>Chapter 11</b>

**ORDER GRANTING MOTION FOR 2004 EXAMINATION OF [INVESTOR] AND  
CERTAIN AFFILIATES THEREOF**

Upon the Motion for 2004 Examination of [Investor] and Certain Affiliates Thereof (the "2004 Motion")<sup>1</sup> filed by Robin Phelan (the "Trustee"), the Chapter 11 Trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP," together with

<sup>1</sup> Unless otherwise indicated, capitalized terms used in this Order shall have the meanings ascribed to them in the 2004 Motion.

Acis LP, the "Debtors" or "Acis"), the Debtors in the above-styled and numbered bankruptcy cases (the "Cases"), and the Court having jurisdiction to consider the 2004 Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the 2004 Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the 2004 Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing,

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The 2004 Motion is **GRANTED**, as set forth herein;
2. The examination of [Investor] is **ORDERED** as set forth herein;
3. [Investor] shall produce the documents requested in **Exhibit "A"** to the 2004 Motion, within thirty (30) days of entry of this Order;
4. [Investor] shall present one or more corporate representatives for deposition by the Trustee regarding the matters set forth in **Exhibit "B"** to the Motion; and
5. The attorneys for the Trustee are authorized to execute and serve any and all subpoenas that are necessary for the requested production of documents and the depositions of one or more corporate representatives of [Investor]

**### END OF ORDER ###**

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

----- X  
In re: : Chapter 11  
: :  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** : Case No. 19-34054  
: :  
Debtor. : Hearing Date: November 10,  
: 2020  
: Objection Date: November 8,  
: 2020  
----- X

**MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF  
CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

**Dondero Ex. F**



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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) hereby moves (this “**Motion**”) this Court pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”) for entry of an order temporarily allowing HarbourVest’s claims for the purpose of voting to accept or reject the Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”) Plan (as defined below) in the above-captioned Chapter 11 case (“**Chapter 11 Case**”). In support of the Motion, HarbourVest respectfully represents the following:

### INTRODUCTION

1. In its Solicitation Motion, the Debtor proposes to disallow for voting purposes all claims to which it has objected for any reason. The Debtor objected to the HarbourVest Claims (as defined below) on a perfunctory and unfounded basis, by tucking them in among the 92 claims in the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**” or “**Objection**”), which was an omnibus objection simply claiming, with no substance or explanation, that there was “no liability” for HarbourVest’s Claims. More than a month ago, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the “**Response**”), which amply

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not included in the Claim Objection (as defined herein); however, the Debtor has represented to HarbourVest that it was inadvertently omitted, and that Highland objects to it on the same grounds as other HarbourVest Claims.

detailed the legal and factual predicates for its claims. To date, that Response remains entirely un rebutted.

2. If the Solicitation Motion is granted, HarbourVest—one of Highland’s most significant creditors—would be disenfranchised in this Chapter 11 Case on the basis of a meritless, one-sentence “no liability” objection that is wholly insufficient to rebut HarbourVest’s prima facie case for its Claims. To avoid this unjust result, HarbourVest has filed this Motion pursuant to Bankruptcy Rule 3018, and seeks that the HarbourVest Claims be temporarily allowed for purposes of voting in full recognition of HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Northern District of Texas (the “**Court**” or “**Bankruptcy Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief requested herein are sections 502 and 1126 of the Bankruptcy Code (“**Bankruptcy Code**”) and Bankruptcy Rules 3001 and 3018(a).

### BACKGROUND

#### A. Case Background

7. On October 16, 2019 (“**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

8. Since filing the petition, the Debtor has been operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On September 21, 2020, the Debtor filed the *First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1079] (the “**Plan**”) and related *Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1080] (the “**Disclosure Statement**”).

10. On September 28, 2020, the Debtor submitted the *Debtor’s Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice* [Docket No. 1108] (“**Solicitation Motion**”). The Solicitation Motion requests that the confirmation hearing for the Plan be held on December 3, 2020 at 9:30 a.m. (prevailing Central Time), or such other date as may be scheduled by the Court, and requests a Voting Deadline (as defined in the Solicitation Motion) of November 20, 2020 at 5:00 p.m. (prevailing Central Time).

### **B. HarbourVest Claims**

11. HarbourVest’s claims against Highland arise out of its November 15, 2017, investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s pattern of fraudulent behavior preceding and following the Investment, including its scheme to drain Acis Capital Management L.P. of assets and its many lies and omissions regarding this scheme to (and, in this Court, about) HarbourVest, and the subsequent fallout, caused serious injury to HarbourVest. This caused HarbourVest damages in excess of \$100 million, as detailed below. As a consequence of those damages, on April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”). In

addition, in its still-unrebutted response to Highland’s Claim Objection filed on September 11, 2020, HarbourVest described the HarbourVest Claims, and the supporting facts and law, in significant detail.<sup>2</sup>

12. As described in the Response, HarbourVest has strong claims against Highland under a number of legal theories, including but not limited to claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duties, misuse of fund assets, U.S. state and federal securities law claims, violations of the federal Racketeer Influenced and Corrupt Organizations Act (“**RICO**”), and unfair prejudice under the Guernsey Companies Law.

13. These claims entitle HarbourVest to recovery of the significant damages it has experienced following Highland’s fraudulent inducement of HarbourVest into the HCLOF investment, which include:

- Investment-related losses as of August 31, 2020 of **more than \$100 million**, taking into account the original expected proceeds<sup>3</sup> from HarbourVest’s **\$78,521,429 of contributions to HCLOF<sup>4</sup> plus 5% interest per year<sup>5</sup>**;

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<sup>2</sup> The Response, which is incorporated into this Motion by reference to avoid repetition, provides an extensive description of the HarbourVest Claims, as well as a thorough demonstration of the fatal defects of the Claim Objection as applied to them, which are only summarized herein.

<sup>3</sup> 41 Tex. Jur. 3d Fraud and Deceit § 105; *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768 (Tex. 2009). As discussed further in the Response, separate from the remedies available to HarbourVest for its claims under U.S. federal and state law, the court’s remedial powers for a Guernsey unfair prejudice claim, *see* Response at 23–25, are broad. Section 350 of the Guernsey Companies Law provides: “[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.” Such relief may include ordering a buyout of the applicant’s interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; *see also Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420.

- HarbourVest’s share of years of staggering legal fees inappropriately charged to HCLOF: **more than \$7.5 million to date**<sup>6</sup>;
- **Exemplary or punitive damages** for Highland’s fraudulent behavior<sup>7</sup>;
- HarbourVest’s own legal fees incurred as a result of the Acis Trustee’s investigation of HarbourVest in the Acis bankruptcy and HarbourVest’s protection of its own rights: **more than \$1 million to date**.<sup>8</sup>

### C. Highland Objection and Subsequent Discussions

14. After HarbourVest filed its Proofs of Claim, Highland filed its Claim Objection.

While styled as a procedural and technical objection to claims which are facially deficient (such

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<sup>4</sup> See Pugatch Decl. ¶¶ 2–3. See also *Language People, Inc. v. Barish*, No. 03-18-00538-CV, 2019 WL 5057659, at \*7 (Tex. App. Oct. 9, 2019). For reference, the unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228.

<sup>5</sup> See, e.g., Tex. Rev. Civ. Stat. Ann. art. 581-33(D)(1) (“On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).”); see also *Duperier v. Texas State Bank*, 28 S.W.3d 740, 754 (Tex. App. 2000); *Covenant Capital Partners v. Soil Savers, Inc.*, No. 3:06-CV-0399-O, 2008 WL 2941125, at \*9 (N.D. Tex. July 30, 2008); Tex. Fin. Code Ann. § 304.003; Judgment Rate Ceilings Tex. Fin. Code §304.003 (2019), <https://occc.texas.gov/sites/default/files/uploads/interest/19.judgement-rate-summary.pdf>. Such remedies are available to HarbourVest for its securities fraud claims, among others.

<sup>6</sup> Pugatch Decl. ¶ 4.

<sup>7</sup> *Gen. Res. Org., Inc. v. Deadman*, 907 S.W.2d 22, 32 (Tex. App. 1995) (“Given the egregiousness of this scheme to defraud investors of large amounts of money we feel the award of punitive damages is warranted.”); *Artripe v. Hughes*, 857 S.W.2d 82, 87 (Tex. App. 1993) (“Fraudulent misrepresentations used to induce the creation of a contract, coupled with damages caused by the misrepresentation, will support an award for exemplary damages.”).

<sup>8</sup> Pugatch Decl. ¶ 5; see also *supra* n. 3, *Aquaplex*, 297 S.W.3d at 775-777. Under the Texas Securities Act, a party may also be entitled to recover reasonable attorney’s fees if the court finds that such recovery would be equitable. Tex. Rev. Civ. Stat. Ann. art. 581–33D(7); *Lane Hartman Ltd. v. P.R.O. Missions, Inc.*, No. 3:95-CV-0869, 1997 WL 457512, at \*9 (N.D. Tex. Aug. 5, 1997).

as late-filed claims and duplicate claims), it also included conclusory assertions of “no liability” regarding a number of claims, including the HarbourVest Claims. The Claim Objection—which makes no attempt to rebut any of the factual or legal bases of the well-founded HarbourVest Claims—fails for all the reasons set forth at length in the Response.

15. The Debtor advised HarbourVest that its objection to the Highland Claims was scheduled to be heard on October 6, 2020. However, after the Response was filed, recognizing that the HarbourVest Claims could not be easily disposed of, the Debtor sought to adjourn the hearing on its objection to the HarbourVest Claims. In an effort to be accommodating, and in light of the competing demands on the Court’s time and docket, HarbourVest agreed to temporarily adjourn the hearing.<sup>9</sup> Counsel to the respective parties continue to discuss an appropriate discovery and trial schedule.

### **RELIEF REQUESTED**

16. By this Motion, HarbourVest seeks entry of an order temporarily allowing the Claims for voting purposes, pursuant to Bankruptcy Rule 3018(a), in an amount that recognizes HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### **BASIS FOR RELIEF**

#### **A. Legal Authority**

17. Holders of allowed claims or interests are permitted to vote to accept or reject a chapter 11 plan. 11 U.S.C. § 1126. A claim represented by a timely and properly filed proof of claim “is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Once a party in interest objects to a filed claim, the holder of that claim may not (absent other relief) be entitled to vote on a chapter 11 plan while the objection is pending. *See* 11 U.S.C. § 1126. The

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<sup>9</sup> HarbourVest reserves all rights in connection with such adjournment.

proposed Solicitation Procedures, which provide that holders of claims that are subject to a pending objection are not entitled to vote on account of the disputed portion of their claims, reflects this statutory structure. *See* Solicitation Motion ¶ 43(d).

18. However, where a claim is not yet allowed (due to a pending objection or otherwise), bankruptcy courts “may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018. The policy behind Bankruptcy Rule 3018(a) is “to prevent possible abuse by plan proponents” who attempt to ensure acceptance of a plan by strategically objecting to the claims of dissenting creditors. *In re Armstrong*, 292 B.R. 678, 686 (10th Cir. B.A.P. 2003). Unless HarbourVest is permitted to vote the estimated amount of its claim, exactly this sort of abuse will be at play in this Chapter 11 Case.

19. Bankruptcy courts are given significant discretion and flexibility in estimating claims, with the goal that the process “must be accomplished quickly and efficiently.” *In re Adelpia Bus. Sols., Inc.*, 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003); *see also In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771, 774 (Bankr. S.D.N.Y. 1996). Bankruptcy courts also have flexibility to “employ whatever method is best suited to the circumstances of the case” when determining whether and in what amount to allow a claim for voting purposes. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. at 775; *see also In re Frascella Enters., Inc.*, 360 B.R. 435, 458 (Bankr. E.D. Pa. 2007). Rule 3018(a) contemplates only a summary estimation proceeding, not a full trial on the merits of the claim. *See, e.g., In re Windsor Plumbing Supply Co.*, 170 B.R. 503, 521 (Bankr. E.D.N.Y. 1994); *In re Zolner*, 173 B.R. 629, 633 (Bankr. N.D. Ill. 1994).

20. Although the Bankruptcy Code and the Bankruptcy Rules do not dictate a formal procedure for calculating a claim for voting purposes, courts have held that the calculation

“should ensure that the voting power is commensurate with the creditor’s economic interests in the case.” *In re Quigley Co.*, 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006). When determining whether to temporarily allow a claim, courts may look to (1) the debtor’s scheduling of the claim, (2) the details of the claim itself, and (3) the debtor’s objection to determine parties’ expectations regarding the amount and nature of the claim to be voted. *In re Stone Hedge Props.*, 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995). Calculation of a claim under Bankruptcy Rule 3018(a), however, is not determinative or preclusive of the ultimate validity or amount of the claim or any causes of action before a non-bankruptcy court. *See In re Quigley*, 346 B.R. at 654.

### **B. Argument**

21. The Debtor is well aware that the HarbourVest Claims cannot be disposed of through any rote objection—or even through briefing. Indeed, this is why the Debtor has sought to adjourn the hearing on the HarbourVest Claims. In three steps, the Debtor seeks to avoid having to litigate the HarbourVest Claims on a timely basis, while simultaneously denying HarbourVest a voice on the Plan and the ultimate treatment of its substantial claims in this Chapter 11 Case:

Step 1: File a one-line, baseless, procedurally improper, and facially insufficient objection to the HarbourVest Claims to render them *technically* “disputed” (without actually providing any facts or even argument to refute their validity).

Step 2: Refuse to withdraw the frivolous objection when HarbourVest provides a detailed basis for the HarbourVest Claims and emphasizes the impropriety of including the HarbourVest Claims in an unsupported omnibus objection.

Step 3: When publicly challenged in the Response—a pleading demonstrating the strength of the HarbourVest Claims, the extent of the Debtor’s deception and misconduct, and the vacuity of the Debtor’s objection—adjourn the hearing on that objection.

The result, if successful? The Debtor would have handily disenfranchised one of its largest creditors—located in what is likely to be a key class for its Plan—on the eve of confirmation.

22. Bankruptcy Rule 3018 is precisely the mechanism designed to avoid this sort of mischief. The Debtor contends that it cannot resolve the HarbourVest Claims prior to the confirmation hearing. While HarbourVest reserves its rights to seek formal allowance of its claims prior to confirmation, it acknowledges that a Rule 3018 valuation of its claims in full for voting purposes would allow the Debtor and the Court to focus time and resources on the Plan process while avoiding prejudice to HarbourVest.

23. Nonetheless, it is worth underscoring that the time pressure here was manufactured by the Debtor—it did not have to file a baseless objection it was unprepared to defend. It could instead have deferred litigation on the HarbourVest Claims and filed an objection later in the case (but for its desire to wrongfully strip HarbourVest, a major economic stakeholder, of its rightful say in the Plan process without a hearing). Or, the Debtor could have timely engaged with and provided a substantive response to HarbourVest’s detailed support of its claim filed weeks ago. The Debtor has done neither, however, and it would be unfair to permit the Debtor to strip HarbourVest of its voting rights based on an entirely unsupported objection that it is not timely pressing forward. Bankruptcy Rule 3018(a) “was designed to give all creditors, *even those holding disputed claims*, the opportunity to vote.” *In re Century Glove, Inc.*, 88 B.R. 45, 46 (Bankr. D. Del. 1988) (emphasis added).

24. HarbourVest has presented substantial and credible evidence and arguments in support of the validity and amount of its more than \$100 million damages directly caused by Highland's behavior. These damages are appropriately recoverable for the HarbourVest Claims.<sup>10</sup> In addition, HarbourVest's RICO claim entitles it to treble damages, which are properly considered in the claims estimation process. *See In re Hydrox Chem. Co.*, 194 B.R. 617 (Bankr. N.D. Ill. 1996) (estimating value of claim for Rule 3018 purposes based off of trebled RICO damages). Thus, for purposes of this Rule 3018 motion and without prejudice to its right to adduce additional evidence in the future regarding its damages, HarbourVest respectfully requests that its claims be estimated at \$300 million for voting purposes.

25. To date, the Debtor has provided no evidence, no factual assertions, and no analysis of the HarbourVest Claims under the applicable standard, to rebut the prima facie case that HarbourVest has put forward on its claims. To the contrary, Highland has unjustly attempted to disenfranchise HarbourVest on the eve of confirmation of the Plan by filing an objection to the HarbourVest Claims that does not satisfy the Debtor's minimal burden to provide sufficient evidence that an actual dispute exists as to the validity or amount of HarbourVest's Claims. Under the circumstances present here, the Court should exercise its discretion to temporarily allow the HarbourVest Claims in their full face amount for purposes of voting on the Plan. Allowing HarbourVest to vote the full face value of its claims comports with the spirit of the Bankruptcy Code, which encourages creditor voting and participation in the reorganization process. *In re Amarex Inc.*, 61 B.R. 301, 303 (Bankr. W.D. Okla. 1985) (“[T]o allow [the disputed claims] to vote on the plans, even though some may be eventually disallowed

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<sup>10</sup> *See supra* nn. 3–8.

for purposes of distribution, is more in keeping with the spirit of Chapter 11 which encourages creditor vote [sic] and participation in the reorganization process”).

26. In sum, the HarbourVest Claims should be entitled to temporary allowance for purposes of voting on the Plan because: (i) HarbourVest’s filing of proofs of claim constitutes prima facie evidence of the validity of the Claims and HarbourVest’s Response—now filed more than a month ago—provides credible and detailed descriptions of the HarbourVest Claims and remains unrebutted; (ii) the Debtor’s Objection is procedurally and substantively deficient, and (iii) even if the Debtor’s Objection were not flawed, it would have been filed with insufficient time and insufficient specificity to be addressed prior to the deadline for voting on the Plan. Allowing the full amount of the HarbourVest Claims for voting purposes simply restores the status quo that would have obtained if Highland had not engaged in yet another scheme—this time to deprive a major creditor of its voting rights—and had instead only filed objections it was prepared to defend, when it was prepared to do so. This is the precise circumstance for which temporary allowance of claims was created.

### **RESERVATION OF RIGHTS**

27. The liquidation of the HarbourVest Claims is only for voting on the Plan and shall not constitute or be construed as an admission by HarbourVest of any limitation on the ultimate allowed amount of the HarbourVest Claims or the classification of such claims. HarbourVest does not waive, and expressly reserves, all rights, arguments, counterarguments, and defenses, including, without limitation, the right to contest in any court of competent jurisdiction any objection to the basis and/or validity of the ultimate amounts of the HarbourVest Claims.

### NOTICE

28. HarbourVest will provide notice of this Motion to: (a) the Debtor; (b) counsel to the Debtor; (c) the United States Trustee; and (d) all parties that have filed a notice of appearance and request for service of papers pursuant to Local Bankruptcy Rule 2002. In light of the nature of the relief requested herein, HarbourVest respectfully submits that such notice is sufficient and that no other or further notice is necessary.

### NO PRIOR WRITTEN REQUEST

29. No prior written request for the relief sought herein has been made to this Court or any other court.

### CONCLUSION

WHEREFORE, for the reasons set forth herein, HarbourVest respectfully requests that this Court enter an order granting the relief requested in the Motion and temporarily allowing the HarbourVest Claims for voting on the Plan and granting such other and further relief as the Court deems just and proper.

*[Signatures on Next Page]*

Dated: Dallas, Texas

October 18, 2020

Respectfully submitted,

*/s/ Vickie L. Driver*

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HarbourVest Skew Base AIF L.P., and  
HarbourVest Partners L.P., on behalf of funds  
and accounts under management*

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

----- X  
In re: : Chapter 11  
: :  
HIGHLAND CAPITAL MANAGEMENT, L.P., : Case No. 19-34054  
: :  
Debtor. : :  
: :  
----- X

**ORDER SUSTAINING MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A)  
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY  
ALLOWANCE OF CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT  
THE PLAN**

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CAME ON to be considered the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. [1207] (the “**Motion**”), which was filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”). As more fully set forth in the Motion, this Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; that consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; that due and proper notice of the Motion has been provided to the necessary parties; that no other or further notice need be provided; that the relief sought in the Motion is in the best interests of the Debtor<sup>1</sup>, their creditors, and all parties in interest; that HarbourVest has established just cause for the relief requested in the Motion; and that, upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is hereby SUSTAINED; and it is further

ORDERED that claim Nos. 143, 147, 149, 150, 153, and 154 are temporarily allowed in the aggregate amount of \$300,000,000.00; and it is further

ORDERED that notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim; (b) a waiver of any party’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section

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<sup>1</sup> All capitalized terms uses but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

365 of the Bankruptcy Code; or (e) a waiver of the Debtor's or HarbourVest's rights under the Bankruptcy Code or any other applicable law.

**### End of Order ###**

Submitted by:

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

----- X  
In re: :  
: Chapter 11  
: :  
: Case No. 19-34054  
: :  
: Hearing Date: November 10,  
: 2020  
: Objection Deadline: November  
: 8, 2020  
----- X

**HIGHLAND CAPITAL MANAGEMENT, L.P.,**  
Debtor.

**DECLARATION OF MICHAEL PUGATCH IN SUPPORT OF MOTION OF  
HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF CLAIMS FOR  
PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

**Dondero Ex. G**



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001270

I, Michael J. Pugatch, declare as follows:

1. I am a managing director of HarbourVest Partners, LLC. I submit this Declaration in support of the *Motion Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* filed on behalf of HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “HarbourVest”) being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge.

2. HarbourVest is a passive minority investor in Highland CLO Funds (“HCLOF”), a vehicle managed by Highland Capital Management LP (“Highland”). HarbourVest initially invested \$73,522,928 for a roughly 49% interest in HCLOF, on November 15, 2017. On February 9, 2018, HarbourVest contributed an additional \$4,998,501 following a capital call. To date, HarbourVest has received three dividends from HCLOF, each totaling \$1,570,429.

3. The unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228. HarbourVest’s expected proceeds from the original HCLOF investment were projected to exceed \$135 million.

4. Highland has charged over \$15 million in attorneys’ fees for HCLOF, Highland, Acis, Highland HCF, and others, to HCLOF. We, as shareholders, were made to pay these entities’ legal fees. HarbourVest’s share of these fees stands at more than \$7.5 million (as of June 30, 2020).

5. HarbourVest’s own legal fees spent protecting its interests have reached more than \$1 million to date, which include legal fees associated with HarbourVest responding to Rule

2004 discovery requests seeking documents and a deposition from HarbourVest in the Acis bankruptcy, monitoring the Acis bankruptcy for false statements regarding HarbourVest, assessment of legal claims and damages to HarbourVest attributable to Highland's conduct, as well as protecting HarbourVest's rights in the Highland bankruptcy, including through filing proofs of claim regarding HarbourVest's claims. These fees continue to accrue.

*[Remainder of page left intentionally blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 18, 2020  
Needham, MA, USA

By: /s/ Michael J. Pugatch  
Michael J. Pugatch  
Managing Director  
HarbourVest Partners, LLC

**Exhibits H – M**

To be submitted under seal in accordance with the Court's Protective Order

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 6**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

*Vol. 1*

1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)	
Vol. 2 000450	12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
000466	01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
000481	01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
000491	01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
000501	01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
000502	01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
000505	01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

**CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
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*Counsel for Highland Capital Management, L.P.*

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

-----  
In re: §  
§ Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> §  
§ Case No. 19-34054-sgj11  
Debtor. §  
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**DEBTOR’S WITNESS AND EXHIBIT LIST WITH  
RESPECT TO HEARING TO BE HELD ON JANUARY 14, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following witness and exhibit list with respect to the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent*

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

*Therewith* [Docket No. 1625] which the Court has set for hearing at 9:30 a.m. (Central Time) on January 14, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

**A. Witnesses:**

1. James Seery, Jr.
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**B. Exhibits:**

Letter	Exhibit	Offered	Admitted
A.	HarbourVest 2017 Global Fund L.P. Claim No. 143		
B.	HarbourVest 2017 Global AIF L.P. Claim No. 147		
C.	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149		
D.	HarbourVest Dover Street IX Investment L.P. Claim No. 150		
E.	HV International VIII Secondary L.P. Claim No. 153		
F.	HarbourVest Skew Base AIF L.P. Claim No. 154		
G.	Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 906]		
H.	HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 1057]		
I.	Plaintiff’s Application for Temporary Restraining Order ( <i>Terry v. Acis Capital Mgmt, L.P.</i> , Case No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018)) [Docket No. 1057-2]		
J.	Transcript of Hearing held on January 24, 2018 ( <i>Terry v. Acis Capital Mgmt, L.P.</i> , Case No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018)) [Docket No. 1057-2]		

Letter	Exhibit	Offered	Admitted
K.	Joint Objection of Alleged Debtors to the Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Impose, <i>Inter Alia</i> , 11 U.S.C. § 363 ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), Docket No. 16) [Docket No. 1057-2]		
L.	Transcript of Hearing held on February 7, 2018, ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11, Docket No. 28) [Docket No. 1057-2]		
M.	Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018)) [Docket No. 1057-3]		
N.	Temporary Restraining Order ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. June 6, 2018), Docket No. 256)) [Docket No. 1057-3]		
O.	Preliminary Injunction Order ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), Docket No. 21)) [Docket No. 1057-3]		
P.	Highland CLO Funding, Ltd.'s Motion to Dissolve Preliminary Injunction and Lift Automatic Stay ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018)) [Docket No. 1057-3]		
Q.	Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims, ( <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), Docket No. 23) [Docket No. 1057-3]		
R.	Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim) ( <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), Docket No. 157) [Docket No. 1057-4]		
S.	Heather Bestwick Deposition Transcript ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Nov. 26, 2018)) [Docket No. 1057-4]		
T.	William Scott Deposition Transcript ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018)) [Docket No. 1057-4]		
U.	Declaration of Michael Pugatch [Docket No. 1208]		
V.	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance		

Letter	Exhibit	Offered	Admitted
	of Claims for Purposes of Voting to Accept or Reject the Plan [Docket No. 1207]		
W.	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018) [Docket No. 113])		
X.	Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan ( <i>In re Acis Capital Mgmt.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), Docket No. 827)		
Y.	Highland CLO Funding Articles of Incorporation		
Z.	Highland CLO Funding Members Agreement		
AA.	Highland CLO Funding Offering Memorandum		
BB.	Highland CLO Funding Portfolio Management Agreement		
CC.	Highland CLO Funding Subscription and Transfer Agreement		
DD.	Liquidation Analysis [Docket No. 1473]		
EE.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
FF.	Any document entered or filed in the Debtor’s chapter 11 bankruptcy case, including any exhibits thereto		
GG.	All exhibits necessary for impeachment and/or rebuttal purposes		
HH.	All exhibits identified by or offered by any other party at the Hearing		

Dated: January 11, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

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**COUNSEL FOR HARBOURVEST**

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

**In re:** §  
§ **Chapter 11**  
§  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** § **Case No. 19-34054-sgj-11**  
§  
**Debtor.** §

**HARBOURVEST’S WITNESS AND EXHIBIT LIST**

Pursuant to Local Rule 9014-1(c), HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”), a creditor and party-in-interest in the above-referenced chapter 11 case, hereby files this Witness and Exhibit List, and designates the following witnesses and exhibits for use in connection with the hearing to be conducted on January 14, 2021 at 9:30 a.m. to consider the following:

- *Debtor’s Motion for Entry of an Order Approving Settlement HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 1625] (the “HarbourVest 9019”).*

**WITNESSES**

HarbourVest may call any one or more of the following witnesses at the Hearing:

<b><u>No.</u></b>	<b><u>Name</u></b>
1.	Michael Pugatch, Managing Director, HarbourVest Partners, LLC.
2.	All witnesses listed by any other party, whether or not called to testify.
3.	All witnesses needed to authenticate or identify exhibits.
	HarbourVest reserves the right to amend and supplement this witness list.

**EXHIBITS**

HarbourVest may use one or more of the following exhibits at the Hearing:

<b><u>No.</u></b>	<b><u>Description</u></b>
1.	Any pleadings, reports, or other documents filed in the Bankruptcy Case Nos. 19-34054 (Highland Capital Management, L.P. bankruptcy case), 18-30264 (Acis Capital Management, L.P.), 18-30265 (Acis Capital Management, L.P.), and any appeal related to the foregoing bankruptcy cases (including Case Nos. 19-10846 & 19-10847 pending in the United States Court of Appeals for the Fifth Circuit), and any adversary proceedings related to the foregoing bankruptcy cases.
2.	November 15, 2017 Portfolio Management Agreement between Highland CLO Funding, Ltd. and Highland HCF Advisor, Ltd.
3.	Articles of Incorporation of Highland CLO Funding, Ltd., Registered on March 30, 2015 and adopted by special resolution passed on November 15, 2017.
4.	November 15, 2017 Members Agreement between Highland CLO Funding, Ltd., the Members party thereto, and Highland HCF Advisor, Ltd.
5.	November 15, 2017 Highland CLO Funding, Ltd. Offering Memorandum.
6.	November 15, 2017 Subscription and Transfer Agreement for Ordinary Shares between Highland CLO Funding, Ltd., Highland HCF Advisor, Ltd., CLO Holdco, Ltd. and HarbourVest.
7.	HarbourVest 2017 Global Fund L.P. proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P. bankruptcy case), Claim No. 143.
8.	HarbourVest 2017 Global AIF L.P. proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P. bankruptcy case), Claim No. 147.
9.	HarbourVest Partners L.P. (on behalf of funds and accounts under management) proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P.

	bankruptcy case), Claim No. 149.
10.	HarbourVest Dover Street IX Investment L.P. proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P. bankruptcy case), Claim No. 150.
11.	HV International VIII Secondary L.P. proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P. bankruptcy case), Claim No. 153.
12.	HarbourVest Skew Base AIF L.P. proof of claim in the Bankruptcy Case No. 19-34054 (Highland Capital Management, L.P. bankruptcy case), Claim No. 154.
13.	Findings of Fact & Conclusions of L. in Supp. of Ord. for Relief Issued After Trial on Contested Involuntary Bankr. Pets., <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018), ECF No. 118.
14.	Bench Ruling & Mem. Of L. in Supp. of: (A) Final Approval of Disclosure Statement; & (B) Confirmation of Ch. 11 Tr.'s Third Am. Joint Plan, <i>In re Acis Capital Mgmt.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), ECF No. 827.
15.	Chapter 11 Notice of Appointment of Tr. and of Amount of Bond, <i>In re Acis Capital Mgmt.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. May 14, 2018), ECF No. 213.
16.	Joint Obj. of Alleged Debtors to Emergency Mot. of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(F), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C. § 363, <i>In re Acis Capital Mgmt, L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), ECF No. 16.
17.	Transcript of Hearing held on February 7, 2018, <i>In re Acis Capital Mgmt, L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 12, 2018), ECF No. 28.
18.	Transcript of Hearing held on March 23, 2018, <i>In re Acis Capital Mgmt, L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Mar. 27, 2018), ECF No. 99.
19.	Verified Original Compl. & Application for TRO & Prelim. Inj., <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018).
20.	Transcript of Status Conference, <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11, (Bankr. N.D. Tex. May 31, 2018).
21.	Temporary Restraining Order, <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11, (Bankr. N.D. Tex. June 6, 2018), ECF No. 256.
22.	Highland CLO Funding, Ltd.'s Mot. to Dissolve Prelim. Inj. & Lift Automatic Stay, <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018).
23.	Prelim. Inj. Order, <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), ECF No. 21.
24.	Letter from M Maloney, King & Spalding LLP, to B. Shaw, Rogge Dunn Group (Mar.

	20, 2019).
25.	Def.'s Answer, Affirmative Defenses, Counterclaims, & Third Party Claims, <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), ECF No. 23.
26.	Second Am. Compl., <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. No. 18- 03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157.
27.	Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas, <i>In re Highland Capital Mgmt, L.P.</i> , No. 19-12239-css (Bankr. D. Del. Dec. 4, 2019), ECF No. 184.
28.	Bestwick Dep. Tr., <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018).
29.	W. Scott Dep. Tr., <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018).
30.	<i>Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> [Docket No. 906].
31.	<i>HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims</i> [Docket No. 1057].
32.	<i>Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> [Docket No. 1207].
33.	<i>Declaration of Michael Pugatch in Support of Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> [Docket No. 1208].
34.	August 15, 2017 6:10 p.m. Email from H. Bradley Eden to D. Willard.
35.	Highland Legal Summaries, attachment to August 15, 2017 6:10 p.m. Email from H. Bradley Eden to D. Willard.
36.	November 29, 2017 5:33 p.m. Email from Hunter Covitz to D. Willard, M. Pugatch, and N. Bellisario.
37.	November 28, 2017 Letter from James Dondero to Gerard Baker, attachment to November 29, 2017 5:33 p.m. Email from Hunter Covitz to D. Willard, M. Pugatch, and N. Bellisario.
38.	Mot. for 2004 Exam., <i>In re Acis Capital Mgmt., L.P.</i> , No. 18-30264-sgj11 (Bankr. N.D. Tex. Oct. 10, 2018).

39.	Highland CLO Funding, Ltd. Annual Report and Audited Financial Statements for the Year Ended December 31, 2017.
40.	Highland CLO Funding, Ltd. Annual Report and Audited Financial Statements for the Year Ended December 31, 2018.
41.	Highland CLO Funding, Ltd. Annual Report and Audited Financial Statements for the Year Ended December 31, 2019.
42.	Highland CLO Funding, Ltd. Annual Report and Audited Financial Statements for the Year Ended December 31, 2020.
	Any exhibit listed by any other party.
	Rebuttal exhibits.
	HarbourVest reserves the right to amend and supplement this exhibit list.

**RESERVATION OF RIGHTS**

The foregoing witness and exhibit list is being submitted based on information reasonably available to HarbourVest at this time and without waving any objection as to relevance, materiality, or admissibility of evidence in this contested matter. HarbourVest reserves the right at any time to revise, correct, supplement or clarify this witness and exhibit list.

Dated: January 11, 2021

**CROWE & DUNLEVY, P.C.**

By: /s/ Vickie L. Driver

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VIII Secondary L.P., HarbourVest Skew Base AIF  
L.P., and HarbourVest Partners L.P., on behalf of  
funds and accounts under management*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served upon all parties receiving notice via the Court's ECF noticing system on this the 11th day of January, 2021.

*/s/ Vickie L. Driver* \_\_\_\_\_

Vickie L. Driver

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*Counsel for Highland Capital Management, L.P.*

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

-----  
In re: §  
§ Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> §  
§ Case No. 19-34054-sgj11  
Debtor. §  
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**DEBTOR’S SECOND AMENDED WITNESS AND EXHIBIT LIST WITH  
RESPECT TO HEARING TO BE HELD ON JANUARY 14, 2021**

Highland Capital Management, L.P. (the “Debtor”) submits the following witness and exhibit list with respect to the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent*

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

*Therewith* [Docket No. 1625] which the Court has set for hearing at 9:30 a.m. (Central Time) on January 14, 2021 (the “Hearing”) in the above-styled bankruptcy case (the “Bankruptcy Case”).

**A. Witnesses:**

1. James Seery, Jr.
2. Any witness identified by or called by any other party; and
3. Any witness necessary for rebuttal.

**B. Exhibits:**

Letter	Exhibit	Offered	Admitted
A.	HarbourVest 2017 Global Fund L.P. Claim No. 143		
B.	HarbourVest 2017 Global AIF L.P. Claim No. 147		
C.	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149		
D.	HarbourVest Dover Street IX Investment L.P. Claim No. 150		
E.	HV International VIII Secondary L.P. Claim No. 153		
F.	HarbourVest Skew Base AIF L.P. Claim No. 154		
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H.	HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims [Docket No. 1057]		
I.	Plaintiff’s Application for Temporary Restraining Order ( <i>Terry v. Acis Capital Mgmt, L.P.</i> , Case No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018)) [Docket No. 1057-2]		
J.	Transcript of Hearing held on January 24, 2018 ( <i>Terry v. Acis Capital Mgmt, L.P.</i> , Case No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018)) [Docket No. 1057-2]		

Letter	Exhibit	Offered	Admitted
K.	Joint Objection of Alleged Debtors to the Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Impose, <i>Inter Alia</i> , 11 U.S.C. § 363 ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), Docket No. 16) [Docket No. 1057-2]		
L.	Transcript of Hearing held on February 7, 2018, ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11, Docket No. 28) [Docket No. 1057-2]		
M.	Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018)) [Docket No. 1057-3]		
N.	Temporary Restraining Order ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. June 6, 2018), Docket No. 256) [Docket No. 1057-3]		
O.	Preliminary Injunction Order ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), Docket No. 21) [Docket No. 1057-3]		
P.	Highland CLO Funding, Ltd.'s Motion to Dissolve Preliminary Injunction and Lift Automatic Stay ( <i>Phelan v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018)) [Docket No. 1057-3]		
Q.	Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims, ( <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), Docket No. 23) [Docket No. 1057-3]		
R.	Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim) ( <i>Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.</i> , Adv. Proc. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), Docket No. 157) [Docket No. 1057-4]		
S.	Heather Bestwick Deposition Transcript ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Nov. 26, 2018)) [Docket No. 1057-4]		
T.	William Scott Deposition Transcript ( <i>In re Acis Capital Mgmt, L.P.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018)) [Docket No. 1057-4]		
U.	Declaration of Michael Pugatch [Docket No. 1208]		
V.	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance		

Letter	Exhibit	Offered	Admitted
	of Claims for Purposes of Voting to Accept or Reject the Plan [Docket No. 1207]		
W.	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018) [Docket No. 113])		
X.	Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan ( <i>In re Acis Capital Mgmt.</i> , Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), Docket No. 827)		
Y.	Highland CLO Funding Articles of Incorporation [ <b>TO BE OFFERED UNDER SEAL</b> ]		
Z.	Highland CLO Funding Members Agreement [ <b>TO BE OFFERED UNDER SEAL</b> ]		
AA.	Highland CLO Funding Offering Memorandum [ <b>TO BE OFFERED UNDER SEAL</b> ]		
BB.	Highland CLO Funding Portfolio Management Agreement [ <b>TO BE OFFERED UNDER SEAL</b> ]		
CC.	Highland CLO Funding Subscription and Transfer Agreement [ <b>TO BE OFFERED UNDER SEAL</b> ]		
DD.	Liquidation Analysis [Docket No. 1473]		
EE.	Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Docket No. 1631]		
FF.	Any document entered or filed in the Adversary Proceeding, including any exhibits thereto		
GG.	Any document entered or filed in the Debtor’s chapter 11 bankruptcy case, including any exhibits thereto		
HH.	All exhibits necessary for impeachment and/or rebuttal purposes		
II.	All exhibits identified by or offered by any other party at the Hearing		

Dated: January 13, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

---

Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
John A. Morris (NY Bar No. 2405397)  
Gregory V. Demo (NY Bar 5371992)  
Hayley R. Winograd (NY Bar No. 5612569)  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
E-mail: jpomerantz@pszjlaw.com  
ikharasch@pszjlaw.com  
jmorris@pszjlaw.com  
gdemo@pszjlaw.com

-and-

**HAYWARD PLLC**

/s/ Zachery Z. Annable  
Melissa S. Hayward  
Texas Bar No. 24044908  
MHayward@HaywardFirm.com  
Zachery Z. Annable  
Texas Bar No. 24053075  
ZAnnable@HaywardFirm.com  
10501 N. Central Expy, Ste. 106  
Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*

**EXHIBIT EE**

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
John A. Morris (NY Bar No. 266326) (*admitted pro hac vice*)  
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)  
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)  
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HAYWARD & ASSOCIATES PLLC  
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10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
Telephone: (972) 755-7100  
Facsimile: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

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

-----  
In re: §  
§ Chapter 11  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> §  
§ Case No. 19-34054-sgj11  
§  
Debtor. §  
-----

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF THE DEBTOR’S MOTION  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
(CLAIM NOS. 143, 147, 149, 150, 153, 154) AND AUTHORIZING ACTIONS  
CONSISTENT THEREWITH**

I, John A. Morris, pursuant to 28 U.S.C. § 1746(a), under penalty of perjury, declare as follows:

<sup>1</sup> The last four digits of the Debtor’s taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

1. I am a partner in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to the above-referenced Debtor, and I submit this Declaration in support of the *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion") being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as Exhibit 1 is a true and correct copy of the *Settlement Agreement*, executed as of December 23, 2020.

3. Attached as Exhibit 2 is a true and correct copy of Proof of Claim No. 143.

4. Attached as Exhibit 3 is a true and correct copy of Proof of Claim No. 147.

5. Attached as Exhibit 4 is a true and correct copy of Proof of Claim No. 149.

6. Attached as Exhibit 5 is a true and correct copy of Proof of Claim No. 150.

7. Attached as Exhibit 6 is a true and correct copy of Proof of Claim No. 153.

8. Attached as Exhibit 7 is a true and correct copy of Proof of Claim No. 154.

Dated: December 24, 2020

/s/ John A. Morris  
John A. Morris

**EXHIBIT 1**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”) and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. **Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to 11 U.S.C. § 363), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
One Financial Center  
Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

**IT IS HEREBY AGREED.**

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its  
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed  
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General  
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,  
its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

# Exhibit A

**TRANSFER AGREEMENT**  
**FOR ORDINARY SHARES OF**  
**HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [redacted], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
  - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
  - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
  - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
  - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
  - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
  - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
  - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
  - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
  - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

  - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
  - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.

- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*

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

**TRANSFeree:**

**HCMLP Investments, LLC**

By: Highland Capital Management, L.P.

Its: Member

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: Chief Executive Officer

**PORTFOLIO MANAGER:**

**Highland HCF Advisor, Ltd.**

By: \_\_\_\_\_

Name: James P. Seery, Jr.

Title: President

**FUND:**

**Highland CLO Funding, Ltd.**

By: \_\_\_\_\_

Name:

Title:

*[Additional Signatures on Following Page]*

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

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

## EXHIBIT 2

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global Fund L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
 Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harbo

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
	(Empty)	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 3

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page   Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 4

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? [X] No [ ] Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges? [ ] No [ ] Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. See Annex

9. Is all or part of the claim secured? [X] No [ ] Yes. The claim is secured by a lien on property. Nature or property: [ ] Real estate: If the claim is secured by the debtor's principle residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim. [ ] Motor vehicle [ ] Other. Describe: Basis for perfection: Value of property: \$ Amount of the claim that is secured: \$ Amount of the claim that is unsecured: \$ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ Annual Interest Rate (when case was filed) % [ ] Fixed [ ] Variable

10. Is this claim based on a lease? [X] No [ ] Yes. Amount necessary to cure any default as of the date of the petition. \$

11. Is this claim subject to a right of setoff? [X] No [ ] Yes. Identify the property:

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

**Print the name of the person who is completing and signing this claim:**

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 5

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Dover Street IX Investment L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_%  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 6

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HV International VIII Secondary L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**  
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

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I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 7

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
 (State)

Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.  
 Name of the current creditor (the person or entity to be paid for this claim)  
 Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest Skew Base AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
 Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
 MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_





UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings

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in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

BTXN 208 (rev. 07/09)

IN RE: Highland Capital Management, L.P.

Motion To Compromise Controversy #1625

Case # 19-34054-sgj11

DEBTOR

**TYPE OF HEARING**

Highland Capital Management, L.P.

VS

James D. Dondero

**PLAINTIFF / MOVANT**

**DEFENDANT / RESPONDENT**

John A. Morris / Erica S. Weisgerber

James Wilson

**ATTORNEY**

**ATTORNEY**

SEE EXHIBIT LIST

**EXHIBITS**

DEFENDANT'S EXHIBIT #N ADMITTED NOTE\* (ONLY PORTION OF EXHIBIT #N ADMITTED)

PLAINTIFF / MOVANT EXHIBIT'S #A THROUGH #EE

Michael Edmond

January 14, 2021

Stacey G. Jernigan

REPORTED BY

HEARING DATE

JUDGE PRESIDING

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global Fund L.P.  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harb

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest 2017 Global AIF L.P.  
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest 2017 Global AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
 Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
 \_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HarbourVest Partners L.P. on behalf of funds and accounts under management</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	See summary page	See summary page
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>2129096000</u>	Contact phone <u>6173483773</u>
	Contact email <u>eweisgerber@debevoise.com</u>	Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex		<b>Last 4 Digits:</b> No <b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.  
 United States Bankruptcy Court for the: Northern District of Texas  
 (State)  
 Case number 19-34054

**Official Form 410  
 Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HarbourVest Dover Street IX Investment L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	See summary page	See summary page
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	
	Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

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7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

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9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

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10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

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11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

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other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HV International VIII Secondary L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.	<u>See summary page</u>
	Contact phone <u>2129096000</u>	Contact phone <u>6173483773</u>
	Contact email <u>eweisgerber@debevoise.com</u>	Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HarbourVest Skew Base AIF L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>HarbourVest Skew Base AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.	<u>See summary page</u>
	Contact phone <u>2129096000</u>	Contact phone <u>6173483773</u>
	Contact email <u>eweisgerber@debevoise.com</u>	Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv <b>Company:</b> Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

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in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**EXHIBIT A**  
**(Proposed Order)**

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

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Debtor.	)	<b>Re: Docket No. ____</b>
	)	

**ORDER SUSTAINING FIRST OMNIBUS OBJECTION TO CERTAIN  
(A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-  
FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY  
CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

Having considered the *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* (the "Objection"),<sup>2</sup> the claims listed on Schedules 1-7 attached hereto, any responses thereto, and the arguments of counsel, the Court finds that (i) notice of the Objection was good and sufficient upon the particular circumstances and that no other or further notice need be given; (ii) the Objection is a core proceeding under 28 U.S.C. § 157(b)(2); (iii) each holder of a claim listed on Schedules 1-7 attached hereto was properly and timely served with a copy of the Objection, the proposed form of this Order, the accompanying schedules, and the notice of hearing on the Objection; (iv) any entity known to have an interest in the claims subject to the Objection has been afforded reasonable opportunity to respond to, or be heard regarding, the relief requested in the Objection; and (v) the relief requested in the Objection is in the best interests of the Debtor's creditors, its estate, and other

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

<sup>2</sup> Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Omnibus Objection.

parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.
2. Each of the claims listed as a Duplicative Claim on **Schedule 1** hereto is disallowed and expunged in its entirety.
3. Each of the claims listed as an Overstated Claim on **Schedule 2** hereto is reduced and allowed in the amount as stated on Schedule 2.
4. The claim listed as a Late-Filed Claim on **Schedule 3** hereto is disallowed and expunged in its entirety.
5. Each of the claims listed as a Satisfied Claim on **Schedule 4** hereto is disallowed and expunged in its entirety.
6. Each of the claims listed as a No-Liability Claim on **Schedule 5** and **Schedule 6** hereto is disallowed and expunged in its entirety.
7. Each of the claims listed as an Insufficient-Documentation Claim on **Schedule 7** hereto is disallowed and expunged in its entirety.
8. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.
9. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims and any other claims (filed or not) which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.
10. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** through **Schedule 7** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

11. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

**###END OF ORDER###**

*Highland Capital Management, L.P.*

*Case No. 19-34054-sgj11*

*Schedule 1 - Duplicate Claims*

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Surviving Claim No.	Objection Page No. Reference
1	Daniel Sheehan and Associates, PLLC	40	3/10/2020	\$ 32,433.75	Claim 47	7
2	Dun & Bradstreet	18	12/27/2019	\$ 5,746.40	Claim 25	7
3	Eastern Point Trust Company, Inc.	21	12/23/2019	\$ 34,875.91	Claim 52	7

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 2 - Overstated Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Proposed Amount	Objection Page No. Reference
1	Collin County Tax Assessor/Collector	34	2/24/2020	\$ 524,24	Claim #34 includes an estimated fee of \$300.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 224,24	7
2	Collin County Tax Assessor/Collector	35	2/24/2020	\$ 2,391.91	Claim #34 includes an estimated fee of \$400.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 1,991.91	7
3	Dallas County	6	11/6/2019	\$ 62,694.94	Claim #6 includes tax statements for Highland Capital (5 Center Ave, Little Falls, NJ 07242). The Debtor is not affiliated with that party.	\$ 60,592.37	7
4	Opus 2 International Inc	10	11/21/2019	\$ 51,156.88	Claim #10 includes \$11,943 of interest charges. Interest charges are not defined in The Amendment To Opus 2 Internationals Work Order signed on 9/19/2013 between an employee of the Debtor and Opus 2 International, Inc.	\$ 39,214.00	7

**Highland Capital Management, L.P.**

**Case No. 19-34054-sgj11**

**Schedule 3 - Late Filed Claims**

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No Reference
1	Parmentier, Andrew	181	5/13/2020	\$ 150,000.00	Claim #181 was filed past the April 8, 2020 bar date.	7

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 4 - Satisfied Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	4CAST Inc	12	11/26/2019	\$ 16,500.00	Paid via wire on 2/14/2020	7
2	Advent Software Inc	29	12/30/2019	\$ 8,378.68	Paid via wire on 3/20/2020	7
3	ConvergeOne, Inc.	61	03/24/2020	\$ 23,518.15	Paid via wire on 5/19/2020	7
4	Denton County	Scheduled	12/13/2019	\$ 557.14	Paid online on 2/5/2020	7
5	Internal Revenue Service	179	04/27/2020	\$ 10,386.87	IRS assessed a late tax deposit penalty for the claim amount; Payroll provider Paylocity informed Debtor the penalty was removed.	7
6	Kaufman County	9	11/06/2019	\$ 12,081.17	Paid online on 2/4/2020	7
7	Maples and Calder	Scheduled	12/13/2019	\$ 25,800.11	Paid via wire on 5/29/2020	7
8	McLagen Partners, Inc.	74	04/06/2020	\$ 16,400.00	Paid via wire on 4/22/2020	7
9	Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation	76	04/03/2020	\$ 7,436.56	Paid by NexBank via check	7
10	Moody's Analytics, Inc.	91	04/08/2020	\$ 5,728.05	Paid on 6/8/20 - Reference # 1259769	7
11	Quintairos, Prieto Wood & Boyer	Scheduled	12/13/2019	\$ 8,608.17	Paid via wire on 5/13/2020	7

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 5 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Advisors Equity Group, LLC	111	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
2	Eagle Equity Advisors, LLC	110	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
3	HCRE Partner, LLC	146	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
4	Highland Capital Management Fund Advisors,	95	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
5	Highland Capital Management Fund Advisors,	119	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
6	Highland Capital Management Services, Inc.	175	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
7	Highland Capital Management Services, Inc.	176	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
8	Highland Energy MLP Fund	102	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
9	Highland Fixed Income Fund	109	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
10	Highland Floating Rate Fund	125	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
11	Highland Funds I	106	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
12	Highland Funds II	114	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
13	Highland Global Allocation Fund	98	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
14	Highland Healthcare Opportunities Fund	116	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
15	Highland iBoxx Senior Loan ETF	122	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
16	Highland Income Fund HFRO	105	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
17	Highland Long/Short Equity Fund	112	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
18	Highland Merger Arbitrage Fund	132	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
19	Highland Opportunistic Credit Fund	100	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
20	Highland Small-Cap Equity Fund	127	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
21	Highland Socially Responsible Equity Fund	115	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
22	Highland Tax-Exempt Fund	101	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
23	Highland Total Return Fund	126	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
24	NexBank SSB	178	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
25	NexPoint Advisors, L.P.	104	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
26	NexPoint Advisors, L.P.	108	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
27	NexPoint Capital, Inc.	107	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
28	NexPoint Capital, Inc.	140	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
29	NexPoint Discount Strategies Fund	117	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
30	NexPoint Energy and Material Opportunities	124	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
31	NexPoint Event-Driven Fund	123	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
32	NexPoint Healthcare Opportunities Fund	121	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
33	NexPoint Latin America Opportunities Fund	130	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
34	NexPoint Real Estate Strategies Fund	118	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
35	NexPoint Strategic Opportunities Fund	103	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
36	The Dugaboy Investment Trust	131	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
37	The Dugaboy Investment Trust	177	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8

Highland Capital Management, L.P.  
Case No. 19-34054-sgj11  
Schedule 6 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Callan, Bentley	157	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim is for a stock appreciation unit related to a Non-Debtor party	7/8
2	City of Garland	19	12/16/2019	\$ 254,58	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
3	Clay Callan	162	04/08/2020	\$ 55,125.60	No liability on the Debtor's books and records	7/8
4	Eastern Point Trust Company, Inc.	52	03/18/2020	\$ 34,875.91	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
5	Garland Independent School District	20	12/16/2019	\$ 459.81	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
6	Grayson County	3	11/06/2019	\$ 1,882.01	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
7	HarbourVest 2017 Global Fund L.P.	143	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
8	HarbourVest 2017 Global AIF L.P.	147	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
9	HarbourVest Partners L.P. on behalf of funds and accounts under management	149	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
10	HarbourVest Dover Street IX Investment L.P.	150	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
11	HarbourVest Skew Base AIF L.P.	154	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
12	Hartman Wanzor LLP	42	03/10/2020	\$ 701.25	No liability on the Debtor's books and records; claim appears to be filed against Non-Debtor estate	7/8
13	Irving, ISD	5	11/06/2019	\$ 827.96	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
14	John Morris	60	03/23/2020	\$ 500,000.00	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
15	John R. Watkins	89	04/07/2020	\$ 322,701.12	No liability on the Debtor's books and records; Never an employee of the Debtor and not an obligation of the Debtor	7/8
16	Linear Technologies, Inc.	4	11/06/2019	\$ 489.94	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
17	Mass. Dept. of Revenue	45	03/13/2020	\$ 1,352.46	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
18	Mediant Communications Inc.	15	12/02/2019	\$ 1,755.57	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
19	Oklahoma Tax Commission	28	02/03/2020	\$ 2,706.93	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
20	Park, Jun	73	04/06/2020	\$ 32,676.61	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
21	Paul N. Adkins	65	03/30/2020	\$ 23,957.95	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
22	Paul N. Adkins	66	03/31/2020	\$ 249,230.48	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
23	Tarrant County	2	11/06/2019	\$ 8,267.52	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
24	Theodore N. Dameris	85	04/07/2020	Unliquidated	No liability on the Debtor's books and records; claimant does not list an proceeding that they are named as a deponent, witness, party, or any other type of participant in a proceeding.	7/8
25	Theodore N. Dameris	174	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim related to pension and should be asserted against pension, not the Debtor	7/8
26	Zang, Weijun	170	04/09/2020	\$ 25,000.00	No liability on the Debtor's books and records; individual not employed at time of bonus payout and not entitled to receive bonus	7/8

*Highland Capital Management, L.P.*  
Case No. 19-34054-sgj11  
Schedule 7 - Insufficient Documentation Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Anish Tailor	56	03/20/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
2	Boyce-Field, Mollie	43	03/12/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
3	Charles Byrne	44	03/13/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
4	Donald Salvino	41	03/10/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
5	Garcia, Ericka	71	04/03/2020	\$ 2,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
6	Garman Turner Gordon	161	04/08/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
7	Joe Kingsley	171	04/10/2020	BLANK	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
8	Mason, Frederic	63	03/25/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
9	TDA Associates, Inc.	55	03/20/2020	\$ 7,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
10	Wilkinson Center	54	03/20/2020	\$ -	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8

PACHULSKI STANG ZIEHL & JONES LLP  
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*Counsel for the Debtor and Debtor-in-Possession*

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
 )  
Debtor. )  
 )  
\_\_\_\_\_ )

**DEBTOR’S FIRST OMNIBUS OBJECTION TO CERTAIN  
(A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS;  
(C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-  
LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

**\*\*\*CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR  
NAMES AND CLAIMS IN THE SCHEDULES ATTACHED  
TO THE PROPOSED ORDER ON THIS OBJECTION\*\*\***

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

**A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT  
[HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH](http://www.kccllc.net/hcmlp/creditor/search)  
OR BY EMAIL REQUEST TO [JONEILL@PSZJLAW.COM](mailto:joneill@pszjlaw.com)**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON  
SEPTEMBER 10, 2020 AT 2:30 P.M. CENTRAL TIME.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST  
RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED  
BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH  
THE CLERK OF THE UNITED STATES BANKRUPTCY COURT  
AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS  
75242-1496 BEFORE CLOSE OF BUSINESS ON SEPTEMBER 1,  
2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM  
THE DATE OF SERVICE HEREOF. YOU MUST SERVE A  
COPY OF YOUR RESPONSE ON THE PERSON WHO SENT  
YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT  
THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF  
REQUESTED.**

Highland Capital Management, L.P. (the “Debtor”), by and through its undersigned counsel, hereby files this omnibus objection (the “Objection”), seeking entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), (i) disallowing certain duplicate claims listed on **Schedule 1** to the Order (the “Duplicate Claims”), (ii) reducing and allowing certain overstated claims listed on **Schedule 2** (the “Overstated Claims”) in amounts which comport with the Debtor’s books and records, (iii) disallowing certain claims that were filed after the applicable bar date listed on **Schedule 3** to the Order (the “Late-Filed Claims”), (iv) disallowing certain claims that have already been satisfied listed on **Schedule 4** to the Order (the “Satisfied Claims”), (v) disallowing certain claims for which the Debtor’s books and records show no liability listed on **Schedules 5 and 6** to the Order (the “No-Liability Claims”), and (vi) disallowing claims which contain insufficient documentation listed on **Schedule 7** to the Order (the “Insufficient-Documentation Claims,” and together with the Duplicate Claims, the

Overstated Claims, the Late-Filed Claims, the Satisfied Claims, and the No-Liability Claims, the “Disputed Claims”). In support of this Objection, the Debtor respectfully represents as follows:

### **I. JURISDICTION**

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

### **II. BACKGROUND**

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s bankruptcy case to this Court [Docket No. 186].<sup>2</sup>

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<sup>2</sup> All docket numbers refer to the docket maintained by this Court.

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the “Bar Date Order”). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the “General Bar Date”). For Governmental Units, the Bar Date Order fixed the deadline to file proofs of claim as April 13, 2020 at 5:00 p.m. (prevailing Central Time). The Bar Date Order also set April 23, 2020 as the deadline to file claims for investors in funds managed by the Debtor (the “Fund Investor Bar Date”). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

8. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the “Bar Date Notice”). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See* Certificate of Service [Docket No. 530].

9. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

### **The Claims Resolution Process**

10. In the ordinary course of business, the Debtor maintains books and records (the “Books and Records”) that reflect, *inter alia*, the Debtor’s liabilities and the amounts owed to its creditors.

11. The Debtor’s register of claims (the “Claims Register”), prepared and maintained by Kurtzman Carson Consultants LLC (“KCC”)—the court-appointed notice and claims agent in this case—reflects that, as of the date of this Objection, 194 proofs of claim have been filed in the Debtor’s chapter 11 case.

12. The Debtor and its professionals have been reviewing and analyzing claims. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction, and/or reclassification.

### **III. RELIEF REQUESTED**

13. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, (i) disallowing the Duplicate Claims listed on Schedule 1 to the Order, (ii) reducing and allowing the Overstated Claims listed on Schedule 2 to the Order in amounts which comport with the Books and Records; (iii) disallowing the Late-Filed Claims listed on Schedule 3 to the Order, (iv) disallowing the Satisfied Claims listed on Schedule 4 to the Order, (v) disallowing the No-Liability Claims listed on Schedules 5 and 6 to the Order, and (vi) disallowing the Insufficient-Documentation Claims listed on Schedule 7 to the Order.

### **IV. OBJECTIONS**

14. Section 502(a) of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any

claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), 1107(a); *see also Int'l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.)*, 922 F.2d 659, 661-62 (11th Cir. 1991).

15. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Texas Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at \*2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima facie* validity, however, “[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery.” *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at \*8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes “at least one of the allegations that is essential to the claim’s legal sufficiency.” *In re Am. Reit, Inc.*, 07-40308, 2008 WL 1771914, at \*3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). “The ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . .” 11 U.S.C. § 502(b)(1).

**The Disputed Claims Should Be Disallowed and Expunged or Reduced**

17. For the reasons set forth below, the Disputed Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

A. Duplicate Claims

18. The Debtor has identified 3 proofs of claim—listed on Schedule 1 to the Order—where each claimant filed multiple proofs of claim representing a single obligation of the Debtor. The Debtor is requesting that the listed Duplicate Claims be disallowed such that only the surviving claims listed on Schedule 1 remain, subject to any other objection the Debtor may bring in the future. Disallowing and expunging these claims will prevent the claimants from receiving multiple recoveries for a single claim.

B. Claims to be Reduced and Allowed

19. The Debtor has examined the 4 proofs of claim listed on Schedule 2 to the Order and has determined that the amounts listed on the claims exceed the liability listed for each claimant on the Debtor's Books and Records. The Debtor is requesting that the amount of each claim be reduced so that it correctly reflects the amount of the Debtor's books and records.

C. Late-Filed Claims

20. The Debtor has identified 1 proof of claim listed on Schedule 3 to the Order that was filed after the passage of the applicable Bar Date.

D. Satisfied Claims

21. The Debtor has identified 11 proofs of claim listed on Schedule 4 to the Order that, according to the Debtor's books and records, were fully satisfied in the ordinary course of business. Disallowing and expunging such claims, therefore, will prevent the claimants from obtaining double-recovery on account of their claims.

E. No-Liability Claims

22. The Debtor has identified 63 proofs of claim listed on Schedules 5 and 6 to the Order that can be characterized as "No-Liability Claims"—*i.e.*, claims that erroneously assert a

liability that is not reflected in the Debtor's books and records. Certain claims listed on Schedule 5 to the Order appear to be protective claims for claimants asserting claims related to agreements with the Debtor. No amount is asserted on these claims and, although the claimants have indicated they would supplement the claims within ninety (90) days, that time has passed and no amendment or supplement has been filed and no additional documentation has been provided to support the claims. Each claim listed on Schedule 6 to the Order erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor. The Debtor has reviewed each No-Liability Claim listed on Schedules 5 and 6 to the Order and all supporting information and documentation provided therewith, made reasonable efforts to research each No-Liability Claim, and determined that the Debtor is not liable for such No-Liability Claims. Accordingly, the Debtor requests that each No-Liability Claim be disallowed and expunged.

#### F. Insufficient-Documentation Claims

23. The Debtor was not able to determine the validity of the 10 claims listed on Schedule 7 to the Order because such claims were not filed with sufficient accompanying documentation and provided no explanation for the bases of the claims. Additionally, no liability for these claims appears on the Debtor's books and records. Accordingly, the Debtor requests that the Insufficient-Documentation Claims be disallowed and expunged because the claimants have failed to carry their burden to support their claims.

#### V. RESPONSES TO OBJECTIONS

24. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **September 1, 2020 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office

of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

**Pachulski Stang Ziehl & Jones LLP**  
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Ira D. Kharasch  
Gregory V. Demo  
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[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[joneill@pszjlaw.com](mailto:joneill@pszjlaw.com)

-and-

**Hayward & Associates PLLC**  
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[mhayward@haywardfirm.com](mailto:mhayward@haywardfirm.com)  
[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)

25. Every Response to this Objection must contain, at a minimum, the following information:

- i. a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;
- ii. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;
- iii. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- iv. any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

- v. the name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

26. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

#### **VI. REPLIES TO RESPONSES**

27. Consistent with Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

#### **VII. SEPARATE CONTESTED MATTERS**

28. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

#### **VIII. RESERVATION OF RIGHTS**

29. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims.

30. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

**IX. NOTICE**

31. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

**X. COMPLIANCE WITH LOCAL RULES**

32. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: July 30, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

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*/s/ Zachery Z. Annable*

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

-----	<b>X</b>	
	:	
In re:	:	Chapter 11
	:	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	:	Case No. 19-34054
	:	
Debtor.	:	
	:	
-----	<b>X</b>	

**HARBOURVEST RESPONSE TO DEBTOR’S FIRST OMNIBUS OBJECTION TO  
CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-FILED  
CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND  
(F) INSUFFICIENT-DOCUMENTATION CLAIMS**

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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) file this Response (the “**Response**”) to the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**”), filed by Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”), and respectfully state as follows:

### **Overview**

1. HarbourVest’s claims against Highland arise out of its November 15, 2017 investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s actions preceding and following the Investment caused serious injury to HarbourVest, leading to damages well in excess of \$100 million. On April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”).

2. After HarbourVest filed its Proofs of Claim, Highland filed the Claim Objection—an omnibus objection to 92 claims. Despite being a bare-bones, omnibus objection, the Claim Objection ostensibly contains substantive (though paper-thin) objections to dozens of claims, including HarbourVest’s, tucked in among procedural and technical objections to other claims.

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not objected to by Highland, but is included herein out of an abundance of caution.

3. The Claim Objection states that “each claim listed on Schedule 6 to the Order [including the HarbourVest Claims] erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor.” Claim Obj. ¶ 22.<sup>2</sup> Schedule 6 further lists the HarbourVest Claims as purportedly having “[n]o liability on the Debtor’s books and records.” Claim Obj. Sched. 6. That is the entirety of Highland’s objection with respect to the HarbourVest Claims. Highland makes no attempt to rebut *any* of the factual or legal bases of the well-founded HarbourVest Claims, and indeed filed the Claim Objection before even meaningfully engaging with HarbourVest regarding the HarbourVest Claims.<sup>3</sup>

4. In addition to being deficient on its face and procedurally improper, the Claim Objection is simply inaccurate. As described below, the HarbourVest Claims are indeed obligations of Highland, and Highland is well aware of the factual bases for them—namely, the misrepresentations, omissions, and other misconduct of Highland both prior to and during HarbourVest’s Investment. Highland’s failure to book a liability associated with the damages its fraud and misconduct caused is no defense to the liability itself.

5. The Claim Objection does not rebut HarbourVest’s *prima facie* case for its Claims and fails on its face. For the avoidance of doubt, however, this Response provides additional details regarding the HarbourVest Claims<sup>4</sup>—details of which Highland is well aware, clearly establishing HarbourVest’s right to significant damages from Highland’s misconduct and fraudulent inducement of HarbourVest’s Investment in a fund that has merely served as a pawn

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<sup>2</sup> All citations herein to “A\_\_” refer to Appendix A, filed concurrently herewith. Due to their length, certain documents contained in the Appendix have been provided in excerpted form only. Full copies are available upon request.

<sup>3</sup> To the extent that Highland raises any substantive objections in a reply to this Response, HarbourVest expressly reserves its rights to move to strike and/or submit additional briefing as appropriate.

<sup>4</sup> HarbourVest is supplementing its Proofs of Claim with these additional details.

in Highland's feud with a former employee (who Highland also defrauded). The Claim Objection should be overruled, and the HarbourVest Claims should be allowed.

### **Factual Background**

6. The events giving rise to HarbourVest's claims begin in June 2016, when Highland terminated the employment of Joshua Terry ("**Terry**"), the employee who managed Highland's CLO business and served as CLO manager for Acis Capital Management L.P. ("**Acis LP**").<sup>5</sup> Litigation ensued between Terry and Highland in or around September 2016, with Terry claiming his termination was unlawful. 4/13/2018 Involuntary Ruling at 4.

7. Around that time, on October 7, 2016, Acis LP sold Highland a participation interest in its expected future cash flow in CLO Collateral Management Agreements for \$666,655 plus a \$12,666,446 note payable from Highland to Acis LP (the "**Highland Note**"). *Id.* at 17. On May 31, 2017, a \$3,370,694 payment was made on the Highland Note. *Id.*

8. By summer 2017, HarbourVest was engaged in preliminary discussions with Highland regarding the Investment. On September 8, 2017, Highland sent HarbourVest a draft term sheet, which identified the target fund as "Acis Loan Funding, Ltd." and the fund's portfolio manager as Acis LP. As described below, during the course of negotiations, Highland unilaterally changed the name of the target fund (referred to herein as HCLOF) from "Acis Loan Funding, Ltd." to "Highland CLO Funding, Ltd." and swapped out Acis LP for Highland HCF Advisor, Ltd. ("**Highland HCF**") as portfolio manager, under false pretenses.

9. On October 20, 2017, Terry won an arbitration award of \$7,949,749.15 plus post-award interest against Acis (the "**Arbitration Award**"). 4/13/2018 Involuntary Ruling, at 4.

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<sup>5</sup> Findings of Fact & Conclusions of L. in Supp. of Ord. for Relief Issued After Trial on Contested Involuntary Bankr. Pets. at 3-4, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018), ECF No. 118 (hereinafter the "4/13/2018 Involuntary Ruling").

HarbourVest did not become aware of many of the facts described herein until long after their occurrence. HarbourVest's investigation of its claims and the surrounding factual circumstances is continuing.

Shortly thereafter, Highland orchestrated several transfers (the “**Transfers**”) that siphoned assets away from Acis.

10. On October 24, 2017, HCLOF acquired HCLOF shares owned by Acis LP for \$991,180.13. *Id.* at 17–18. As this Court previously described: “[n]o credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was ‘toxic’ in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.” *Id.* at 18.

11. Thereafter, on October 27, 2017, Acis’s portfolio management rights for HCLOF were transferred to Highland HCF. *Id.* at 19. Highland HCF entered into a Portfolio Management Agreement with HCLOF that superseded and replaced the HCLOF portfolio management agreements with Acis. *Id.* at 19. On November 3, 2017, Acis LP transferred its interest in the Highland Note to Highland CLO Management, Ltd. *Id.* at 19–20. The balance owing on the Note was over \$9 million, but Acis received no consideration for the transfer. 1/31/2019 Confirmation Ruling, at 20–21, n.37.

12. During diligence and negotiations preceding HarbourVest’s Investment, Highland hid from HarbourVest its effort to strip Acis of assets. When Highland changed HCLOF’s portfolio manager from an Acis-branded entity to a Highland-branded entity, in addition to other structural changes, Highland stated that its reason for doing so was “reputational harm” to Acis LP from the Terry Arbitration Award.

13. Further concealing its true motive—denuding Acis of value—Highland informed HarbourVest that, in lieu of redemptions, resetting the CLOs was necessary and that it would be easier to reset under the “Highland” CLO brand than the Acis CLO brand. Through November

2017, Highland continued its misrepresentations and omissions regarding the Arbitration Award and structural changes to the HCLOF investment to conceal the true purpose of these maneuvers and their implications for the Investment. In reliance on these misrepresentations, HarbourVest finalized the Investment on November 15, 2017.

14. Highland’s misrepresentations continued after the initial Investment was made. On November 27, 2017, in an email to HarbourVest attaching a Wall Street Journal article regarding the Terry Arbitration Award, Highland again assuaged HarbourVest’s concerns regarding the dispute with Terry, claiming it “has no impact on our investment activities.”

15. On December 18, 2017, a final judgment confirming the Terry Arbitration Award was entered in state court. 4/13/2018 Involuntary Ruling, at 4. On the same day, Mark Okada (a Highland founder) and Dugaboy Investment Trust (a family trust of Highland founder Jim Dondero) conveyed their limited partnership interests in Acis LP, 25% and 74.9%, respectively, to Neutra, Ltd. (“**Neutra**”), a company controlled by Highland.<sup>6</sup>

16. On December 19, 2017, Acis LP and Highland CLO Holdings Ltd. (“**Highland Holdings**”) entered into 2017-7 Assignment and Transfer Agreement, which transferred to Highland Holdings all of Acis LP’s interest in the Master Sub-Advisory Agreement and Staff and Services Agreement to manage Acis CLO 2017-7’s portfolio to Highland Holdings. 4/13/2018 Involuntary Ruling, at 21. The agreement also transferred to Highland Holdings all of Acis LP’s indirect equity interests in Acis CLO Management, allegedly for forgiveness of \$2.8 million owed by Acis LP to Highland under the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. *Id.*

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<sup>6</sup> Bench Ruling & Mem. Of L. in Supp. of: (A) Final Approval of Disclosure Statement; & (B) Confirmation of Ch. 11 Tr.’s Third Am. Joint Plan at 16, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), ECF No. 827 (hereinafter “1/31/2019 Confirmation Ruling”); 4/13/2018 Involuntary Ruling at 22.

17. On January 24, 2018, after Mr. Terry became aware of the Transfers involving Acis LP and HCLOF, he requested a temporary restraining order from the Texas state court that confirmed his arbitration award. Plaintiff's Application for TRO, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A156. The state court ordered, with the agreement of Acis, that no CLO management contracts or money would be transferred away from Acis for a period of time. Transcript of Hearing held on January 24, 2018 at 42-43, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A225–26.

18. On January 30, 2018, Terry filed involuntary bankruptcy petitions (together, the "**Acis Bankruptcy**") against Acis LP and its general partner, Acis Capital Management G.P. LLC ("**Acis GP**") , stating that the ongoing transfers and restructuring efforts were part of an "orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value." 4/13/2018 Involuntary Ruling, at 23. On April 13, 2018, this Court issued a ruling in the Acis Bankruptcy concluding that the involuntary bankruptcy case was appropriately filed and that a "chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP" *Id.*, at 53. On May 14, 2018, Robin Phelan was appointed as trustee (the "**Acis Trustee**") to oversee the Acis Bankruptcy.<sup>7</sup>

19. Finally called to account for the Transfers, Highland again defaulted to its *modus operandi*: deception. Highland made numerous fraudulent statements, including to this Court, accusing HarbourVest of causing the Transfers that denuded Acis LP, including the following:

- **Prior to the appointment of the Acis Trustee, Highland-controlled Acis falsely claimed that HarbourVest invested in HCLOF only on the condition that Acis would not have anything to do with the CLOs going forward, and that HarbourVest would demand its money back if a reset transaction was done with Acis:**

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<sup>7</sup> Chapter 11 Notice of Appointment of Tr. and of Amount of Bond, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. May 14, 2018), ECF No. 213, A230.

- “In May 2017, a private equity firm expressed an interest in making a \$150 million investment in [HCLOF]. [HCLOF] was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by [HarbourVest] in making its investment was that [HCLOF] would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. [HCLOF] issued this instruction requested by [HarbourVest] on October 6, 2017 (two weeks *prior* to the arbitration award).”<sup>8</sup>
- **Highland witnesses claimed that HarbourVest said, with absolute certainty, that it had no interest in doing business with Acis because the Acis brand was toxic, including:**
  - Highland General Counsel Scott Ellington testified that HarbourVest had communicated to Highland that the Acis brand was “so toxic that it’s impossible to sell the bonds with Acis as the manager,” that “nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO” and that they said “categorically, with absolute certainty, if there’s any relation to Acis, the Acis brand, the Acis structure, we have no interest in doing business with you at all.”<sup>9</sup>
  - Mr. Ellington further testified that HarbourVest had “demanded” that Highland “call the deal and terminate the [collateral management agreements] or transfer the [collateral management agreements]” and that “their only directive was call and get rid of Acis or get rid of Acis or we’re not doing the deal through a reset.”<sup>10</sup>
  - Highland CEO Jim Dondero claimed that the “Boston investor” deal was “all dependent upon getting as far away from Acis as possible and a new collateral manager.”<sup>11</sup>
- **Highland witnesses claimed that HarbourVest had the ability to control and dictate the terms of any reset transactions, including:**

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<sup>8</sup> Joint Obj. of Alleged Debtors to Emergency Mot. of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(F), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C. § 363 at ¶ 31, *In re Acis Capital Mgmt, L.P.* No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), ECF No. 16 (emphasis in original), A247.

<sup>9</sup> Transcript of Hearing held on February 7, 2018, at 55–57, No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 12, 2018), ECF No. 28 (hereinafter “2/7/2018 Acis Bankruptcy Transcript”) (Testimony of Highland General Counsel Scott Ellington), A271–73.

<sup>10</sup> 2/7/2018 Acis Bankruptcy Transcript at 202–04, A276–78.

<sup>11</sup> Transcript of Hearing held on March 23, 2018 at 143–44, No. 18-30264-sgj11 (Bankr. N.D. Tex. Mar. 27, 2018), ECF No. 99 (Testimony of Highland CEO Jim Dondero), A288–89; *see also* 1/31/2019 Confirmation Ruling at 27, n. 56.

- Mr. Ellington testified that because HarbourVest “would be putting in additional capital in connection with any reset CLOs, it had the ability to ‘start calling the shots’ and dictate the terms of any reset transactions.” 2/7/2018 Acis Bankruptcy Transcript at 226, A281.

20. These and other statements led the Acis Trustee to investigate HarbourVest as the alleged perpetrator of the Transfers. Ultimately, the Acis Trustee served HarbourVest with broad Rule 2004 discovery requests seeking extensive information related to the Investment and a deposition of a corporate representative. HarbourVest complied with the Acis Trustee’s requests, producing significant documentation and sitting for a deposition in the Acis Bankruptcy.

21. The HarbourVest investigation was not the only expensive sideshow that Highland’s litigious behavior caused in the Acis Bankruptcy. At each step of the case, Highland and a veritable parade of its affiliates (Neutra, HCLOF, Highland HCF, CLO Holdco) filed objections and motions impeding the orderly progress of Acis’s chapter 11 proceedings. To make matters worse, HarbourVest was effectively forced to foot the bill: many of the legal fees incurred by Highland and its affiliates were funded from the coffers of HCLOF, depleting the value of HarbourVest’s Investment.

22. Despite Highland’s assurance that the Terry Arbitration Award and related restructuring efforts would have no impact on Highland’s investment activities or HarbourVest’s Investment, Highland’s misconduct and fraudulent Transfers necessitated a variety of injunctions that significantly impaired both the ability of HCLOF to operate as expected and the value of HarbourVest’s investment. The below timeline details some of the constraints on HCLOF caused by Highland’s misconduct and the additional litigation generated by it:

- a. On April 30, 2018, HCLOF sent five notices requesting optional redemption, ordering a liquidation of the CLOs.<sup>12</sup>
- b. On May 22, 2018, the Acis Trustee warned that HCLOF's attempted optional redemption notices violated the automatic stay.<sup>13</sup>
- c. On May 30, 2018, Highland and HCLOF initiated adversary proceedings alleging that the Acis Trustee breached the applicable portfolio management agreements by failing to effectuate optional redemptions pursuant to the notices.<sup>14</sup>
- d. On May 31, 2018, this Court issued a *sue sponte* temporary restraining order in the Acis Bankruptcy preventing any action in furtherance of the optional redemptions or other liquidation of the Acis CLOs.<sup>15</sup>
- e. On June 14, 2018, HCLOF withdrew the optional redemption notices.<sup>16</sup>
- f. On June 15, 2018, the TRO expired and HCLOF gave notice to the Acis Trustee that it was requesting an optional redemption. *Id.* at 3-4. However, the request was ultimately withdrawn on July 6, 2018.<sup>17</sup>
- g. On June 21, 2018, the Acis Trustee filed an adversary proceeding against Highland seeking an injunction preventing Highland/HCLOF from taking steps towards a redemption.<sup>18</sup>
- h. On July 10, 2018, this Court issued an injunction preventing optional redemptions while the Acis Trustee attempted to confirm a plan or otherwise resolve the Acis Bankruptcy.<sup>19</sup>
- i. On August 30, 2018, this Court denied confirmation of the First Amended Joint Plan for the Debtors and ruled that the preliminary injunction must stay in place.

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<sup>12</sup> Verified Original Compl. & Application for TRO & Prelim. Inj. at 14, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018) (hereinafter "Acis Trustee Complaint"), A304.

<sup>13</sup> *Id.* at 14, 33.

<sup>14</sup> *Highland Capital Mgmt, L.P. v. Phelan*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex.).

<sup>15</sup> Status Conference, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. May 31, 2018) ("Court issued Section 105 extraordinary TRO"); *see also* Temporary Restraining Order, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. June 6, 2018), ECF No. 256, A330.

<sup>16</sup> Acis Trustee Complaint at 3, A293.

<sup>17</sup> Highland CLO Funding, Ltd.'s Mot. to Dissolve Prelim. Inj. & Lift Automatic Stay at 5, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018), A344.

<sup>18</sup> *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex.).

<sup>19</sup> Prelim. Inj. Order at 10, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), ECF No. 21, A376.

- j. On March 20, 2019, following confirmation, HCLOF sent a letter to Acis LP stating that it is “neither interested in pursuing, nor able to pursue, a reset transaction.”<sup>20</sup>

Highland’s fraudulent scheme resulted in severe constraints on the HCLOF investment, including on its ability to redeem, refinance or reset the applicable CLOs, which is and was a critical element of maintaining and growing the value of the Investment. Rather than attempt to mitigate losses, Highland doubled down, further entrenching itself in its litigation positions.

23. Highland concealed its Transfer scheme from HarbourVest before the Investment through a series of fraudulent actions, omissions, and misrepresentations, concealing the truth to lock HarbourVest into a long-term, illiquid investment that was—as a result of Highland’s improper behavior—destined to fail. Had HarbourVest been properly informed of the full extent of behind-the-scenes transfers occurring involving Acis and HCLOF, and the true reasons they were made, it would never have made the Investment, and therefore would have avoided the severe price of being tangled up in Highland’s web.

24. One need look no farther than the rulings and filings in the Acis Bankruptcy to reach the conclusion that Highland’s behavior was improper, illegal, and indeed, fraudulent:

- April 13, 2018: The Court ruled that Joshua Terry filed involuntary bankruptcy petitions against Acis LP and Acis GP due to a good faith belief that these transfers were part of an “*orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value.*” 4/13/2018 Involuntary Ruling, at 23.
- July 2, 2018: The Acis Trustee filed counterclaims against Highland, HCLOF, Highland HCF, Highland CLO Management, Ltd., and Highland Holdings *alleging they orchestrated a systematic transfer of value away from Acis to other Highland entities* after Terry’s termination in 2016 through the period when the Terry Arbitration Award was issued to make Acis judgment-proof.<sup>21</sup>

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<sup>20</sup> Letter from M Maloney, King & Spalding LLP, to B. Shaw, Rogge Dunn Group (Mar. 20, 2019), A383.

<sup>21</sup> Def.’s Answer, Affirmative Defenses, Counterclaims, & Third Party Claims at 17-18, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), ECF No. 23, A403–04.

- Aug. 30, 2018: Judge Jernigan ruled that preliminary injunction must stay in place because the “*evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value.*” 8/30/2018 Plan Ruling at 6.
- January 31, 2019: This Court confirmed Acis’s Third Amended Plan and concluded that: “The record contains substantial evidence of both *intentional and constructive fraudulent transfers* with regard to the Equity/ALF PMA and other assets. The *numerous prepetition transfers* that occurred around the time of and after the Terry Arbitration Award *appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors’ creditors.* Highland’s only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis’s brand was toxic in the market place. However, *these business justifications were not supported (and, in fact, were contradicted) by the evidence.*” 1/31/2019 Confirmation Ruling, at 27.
- June 20, 2019: The Acis Trustee filed an amended complaint asserting among other things, *claims for intentional and constructive fraudulent transfer based on the prepetition transfers involving Acis.*<sup>22</sup>

25. On October 16, 2019, Highland itself filed for bankruptcy in Delaware, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del.), and on December 4, 2019, on motion of the Official Committee of Unsecured Creditors, its case was transferred to this Court.<sup>23</sup>

26. On April 8, 2020, due to its damages sustained from the misconduct described above, HarbourVest filed its Proofs of Claim against Highland.

### Basis for Relief

#### The Claim Objection Is Improper and Should Be Denied

27. HarbourVest’s Proofs of Claim have *prima facie* validity, and the Debtor must produce evidence sufficient to overcome this presumption. *See* 11 U.S.C. §§ 501, 502 (2020); Fed. R. Bankr. P. 3001(f) (2020) (“A proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim”); *see also*

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<sup>22</sup> Second Am. Compl. at 42-84, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157, A466–508.

<sup>23</sup> Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del. Dec. 4, 2019), ECF No. 184, A534.

*Matter of Fid. Holding Co.*, 837 F.2d 696 (5th Cir. 1988) (“a correctly-filed proof of claim establishes a *prima facie* case against the debtor’s assets”); *In re Armstrong*, 320 B.R. 97, 102 (Bankr. N.D. Tex. 2005) (same). “Conclusory statements are insufficient to rebut [Rule] 3001(f)’s presumption.” *In re Today's Destiny, Inc.*, No. 05-90080, 2008 WL 5479109, at \*4 (Bankr. S.D. Tex. Nov. 26, 2008). Instead, the objecting party must put forth “evidence at least equal in probative force to that offered by the proof of claim.” *Id.* (citations omitted).

28. Highland’s Claim Objection fails to put forward any evidence regarding the HarbourVest Claims. It is a mere denial of the validity of the HarbourVest Claims, based on Highland’s own say-so. It fails to refute—or even address—the legal sufficiency of the HarbourVest Claims. Highland cannot evade substantial claims by one of its largest creditors based on its illegal conduct with a one-sentence, unsupported, and blanket denial. The Claim Objection should be overruled as to HarbourVest’s Proofs of Claim as failing to satisfy even the most minimal legal requirements to object to a claim.

29. The Claim Objection is also procedurally improper. While styled as an “omnibus” objection pursuant to Bankruptcy Rule 3007(d), Highland’s “no liability” objection has no basis at all in the rule.<sup>24</sup> This is not just a procedural nicety. Highland’s attempt to style its conclusory-but-substantive denial of liability as a procedural objection buried in an omnibus objection underscores Highland’s lack of substantive defenses on the merits of the claims in addition to its disregard for the bankruptcy process.

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<sup>24</sup> Federal Rule of Bankruptcy Procedure 3007(d) provides that “objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or (8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.”

**The HarbourVest Claims Are Valid and Should Be Allowed**

30. Highland has failed to carry its burden to rebut the *prima facie* case for the HarbourVest Claims. Accordingly, the HarbourVest Claims should be allowed in full. For clarity of the record, the HarbourVest Claims are described in detail below.

31. In general, the HarbourVest Claims result from (i) Highland's material misrepresentations and omissions relating to the Investment, including the existence and purpose of Highland's scheme to denude Acis and avoid payment of the Arbitration Award; (ii) Highland's gross mismanagement of the HCLOF Investment; (iii) Highland's misuse of fund assets and improper charges to HCLOF; and (iv) Highland's continued fraudulent conduct and misrepresentations during the Acis bankruptcy. Specifically, based on the above-described facts, HarbourVest has claims for, among other things: Fraud, Fraudulent Concealment, Fraudulent Inducement, Fraudulent Misrepresentation, Negligent Misrepresentation; Breach of Fiduciary Duties; Misuse of Fund Assets; U.S. State and Federal Securities Law Claims; Violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("**RICO**"); and Unfair Prejudice under the Guernsey Companies Law.

**A. Fraud, Fraudulent Inducement, Fraudulent Concealment, Fraudulent Misrepresentation, and Negligent Misrepresentation**

32. A plaintiff pleading common law *fraud* must show (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. 41 Tex. Jur. 3d Fraud & Deceit § 8 (Aug. 2020); *see also JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). *Fraudulent inducement* occurs

when, through fraud, a defendant induces another to enter into a contract through the use of fraudulent misrepresentations. 41 Tex. Jur. 3d Fraud & Deceit § 8; *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018).

33. Similarly, claims for *fraudulent concealment* or *fraud by omission* will lie where (1) the defendant concealed from or failed to disclose material facts to the plaintiff that the defendant had a duty to disclose; (2) the defendant knew the plaintiff was ignorant of the facts and the plaintiff did not have an equal opportunity to discover the facts; (3) the defendant was deliberately silent when the defendant had a duty to speak; (4) by failing to disclose the facts, the defendant intended to induce the plaintiff to take some action or refrain from acting; (5) the plaintiff relied on the defendant's nondisclosure; and (6) the plaintiff was injured as a result of acting without the undisclosed facts. 41 Tex. Jur. 3d Fraud & Deceit § 16.

34. Similarly, under Guernsey law, a plaintiff may have a claim for *fraudulent misrepresentation* against a defendant that makes statements that he knows to be (or is reckless as to whether they are) false with the intent that they shall be acted on by another, who suffers damages as a result of reliance on those statements. *Derry v. Peek* (1889) 14 AC (HL) 337 (appeal taken from Eng.), A14. Damages extend to the loss actually suffered by the person as a result of the misrepresentation. *Doyle v. Olby (Ironmongers) Ltd.* (1969) 2 W.L.R. 673, A59.

35. *Negligent misrepresentation* is established when (1) the defendant made a representation in the course of the defendant's business; (2) the defendant supplied false information for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffered pecuniary loss by justifiably relying on the representation. 41 Tex. Jur. 3d Fraud & Deceit § 10. Liability for negligent misstatements may also be asserted under Guernsey

law where shareholders suffer financial loss as a result of acquiring shares in reliance on any misstatements made carelessly, if the defendant owes the shareholder a duty of care.<sup>25</sup> *Hall v. Cable & Wireless Plc* (2009) EWHC 1793 (Comm), A75.

36. Highland's conduct prior to the Investment presents a textbook case of fraud, fraudulent inducement, and fraudulent concealment and fraud by omission. As Highland and HarbourVest were negotiating the terms of the Investment, Highland both concealed and misrepresented the nature of the Transfers undertaken to deprive Acis of assets and Highland's true intentions with respect to the Terry dispute and Arbitration Award. These facts were material: indeed, HarbourVest expressed concern and requested further information regarding the Transfers, the Arbitration Award, and their implications for HCLOF and the Investment's closing date was delayed. The nature and intent behind the Transfers, and Highland's plan to use HCLOF to fund its feud with Terry, were material facts misrepresented and concealed from HarbourVest in order to induce HarbourVest to invest with HCLOF.

37. Highland's multiple, purposeful, knowing, reckless, and/or negligent misrepresentations and omissions include:

- Highland never informed HarbourVest that Highland had no intention of paying the Arbitration Award and was undertaking steps to ensure that Mr. Terry could not collect on his judgment;
- Highland did not inform HarbourVest that it undertook the Transfers to siphon assets away from Acis LP and that such transfers would prevent Mr. Terry from collecting on the Arbitration Award. Instead, Highland simply did not inform HarbourVest and represented to HarbourVest that the reason for changing the portfolio manager for HCLOF was because Acis was "toxic" in the industry and alleged reputational issues relating to Acis would detrimentally affect the HCLOF investment;

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<sup>25</sup> As discussed below, during the course of the Investment, Highland owed fiduciary duties to HarbourVest as a "shadow director" or "de facto" director of HCLOF.

- Highland indicated to HarbourVest that the dispute with Mr. Terry (which appeared on a litigation schedule presented to HarbourVest during diligence) would have no impact on investment activities;
- Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs, notwithstanding that Highland was using HCLOF as part of its scheme to avoid paying the Arbitration Award.

38. Even assuming Highland's statements did not rise to the level of fraud (though they do), such statements were at minimum made negligently by Highland.

39. In reliance on Highland's misrepresentations and omissions, HarbourVest invested in HCLOF. Had these misrepresentations and omissions not occurred, HarbourVest would not have made the Investment.

40. HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution. This enormous decline can be traced directly back to the fraudulent Transfer scheme that Highland hid from HarbourVest behind a smokescreen of misstatements and omissions, and Highland's subsequent conduct in connection therewith. The situation has been further compounded by HCLOF's use to fund Highland's litigation and HarbourVest incurring its own out-of-pocket fees and expenses from the fallout.

**B. Breach of Fiduciary Duties and Misuse of Fund Assets**

41. Under Guernsey law, Highland constituted both a "shadow director" and a de facto director of HCLOF. A shadow director is a person in accordance with whose directions or instructions the directors of the company are accustomed to act. Companies (Guernsey) Law 2008 § 132(1). A "de facto" director is a person or entity that similarly has practical decision-making control over a company under Guernsey law. *Carlyle Capital Corporation Ltd. v. Conway & Others*, Royal Court of Guernsey, 4 September 2017, Judgment 38/2017, A2. As a

shadow director and/or de facto director, Highland owed fiduciary duties to HarbourVest, which it breached by the conduct described herein.

42. At all times, Highland exercised complete control over HCLOF and over its Guernsey directors. Highland directed HCLOF's nominal directors, who acted in accordance with Highland's instructions, and Highland itself acted on behalf of HCLOF. Indeed, this Court has previously recognized evidence demonstrating that HCLOF operated at the behest of Highland, not its nominal directors:

- “It was enormously clear to the court. . . that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere ‘figureheads’ for HCLOF Guernsey and they defer to Highland entirely to tell them what to do, what to say, and when.” 1/31/2019 Confirmation Ruling, at 14.
- HCLOF Guernsey was “absolutely, beyond any reasonable doubt, controlled by Highland.” 1/31/2019 Confirmation Ruling, at 17.
- The evidence was overwhelming that “(a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey’s behalf...[Bill Scott] confirmed that all investment decisions were made by Highland.” 1/31/2019 Confirmation Ruling, at 46.
- Ms. Bestwick “testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey) or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey). She reiterated that she only talks to Highland employees. . . . She testified that she learned of the Terry Arbitration Award in mid-April 2018 (some six months after the fact) and ‘[y]ou’d have to ask Highland’ why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were ‘heavily reliant on our service providers, and that means Highland.’ With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.” 1/31/2019 Confirmation Ruling, at 43–44.
- Highland’s expert, “Mr. Castro, testified that the ‘actual humans’ who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF). Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the

HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.” 1/31/2019 Confirmation Ruling, at 23.

43. Highland’s complete control of HCLOF is further confirmed by the deposition testimony of HCLOF’s nominal directors. In a deposition in the Acis Bankruptcy, HCLOF’s then-Director Heather Bestwick testified that:

- She first learned about the Terry arbitration award from Highland in April 2018 and did not need to do any further independent verification because the directors relied on Highland to keep them updated.<sup>26</sup>
- She was unable to remember a time she disagreed with Mr. Scott or Highland. *Id.* at 48:10–49:12, A539.
- Highland is involved in any substantive conversation about HCLOF, and Bestwick relied on Highland’s advice and judgment as to what was in the best interest of investors. *Id.* 50:10–24, 58:12–59:20, 67:13–68:7, 138:4–21 & 172:9–173:6, A540, 542, 544, 552 & 560.
- She lacked a command of the fees that Acis and Highland were receiving from HCLOF, and did not know whether Highland Capital might have differing interests from Highland HCF. *Id.* at 99:10–100:11 & 155:13–20, A547, 556.
- Conversations with Highland were the extent of the due diligence done with respect to a new portfolio manager. *Id.* 200:14–201:20, A562.

44. Similarly, HCLOF then-Director William Scott testified that:

- The directors had “no knowledge” of litigation with Terry or the arbitration award until 2018; the litigation did not cause him to second-guess his relationship with Highland.<sup>27</sup>
- The directors went with the counsel selected by Highland to represent HCLOF. *Id.* at 91:25–94:25, A566–67.
- Investment decisions for HCLOF are formulated by Highland; the role of the directors is just to “police” the performance of the service providers, and he has never disagreed with Ms. Bestwick or Highland on HCLOF matters. *Id.* at 102:16–104:1, 105:22–107:17, A570–71.

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<sup>26</sup> Bestwick Dep. Tr. 60:18–61:19, 130:14–131:12, 133:4–133:21, 135:21–136:2, 136:17–137:5, 138:17–21, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A542–43, 550–52.

<sup>27</sup> W. Scott Dep. Tr. 135:9–136:24, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A574.

- He did not take any steps to investigate the Terry situation; he got all information he knows about it from Highland. *Id.* at 140:13–145:5, A575–76.
- Highland has not made key information available to the directors of HCLOF. *Id.* at 263:20–265:23, A584. Scott himself lacked information about the various Transfers in 2017 that were conducted by Highland. *Id.* at 214:19–216:14, 220:6–221:11, A579–80.

45. As a “shadow director” or “de facto” director of HCLOF, Highland breached several duties, including its duty of care, its duty to exercise powers for a proper purpose, its duty to avoid/mitigate conflicts of interest, and its duty to act in good faith and in the best interests of the company. Highland breached its fiduciary duties as a shadow/ de facto director as set out below.

46. Highland is liable for breach of fiduciary duty for its continued misrepresentations and omissions relating to the Arbitration Award and the Transfers, including following HarbourVest’s Investment, its conduct of litigation relating to Mr. Terry and the Acis Bankruptcy, and its mismanagement of HCLOF following the Investment.

47. This includes the massive legal fees that were charged to HCLOF by Highland and Highland-related entities in furtherance of Highland’s scheme. Since at least 2018, immense and unwarranted legal fees were borne by HCLOF’s investors for Highland’s scorched-earth litigation relating to Terry and the Acis Bankruptcy, including significant litigation costs that were not in the interests of HCLOF.

48. As this Court noted, the Acis Bankruptcy proceedings “have been astonishingly contentious,” with Highland, HCLOF, and Neutra “in ‘lockstep’ with one another in objecting to virtually every position taken by the Chapter 11 Trustee,” and the Highland entities “have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.” 1/31/2019 Confirmation Ruling, at 3, 11. This extensive litigation has spanned multiple jurisdictions (United States and Guernsey) and venues (state

court, federal bankruptcy court, federal district and appellate courts), and included appeals of nearly every substantive ruling during the Acis Bankruptcy. HCLOF's investors—including HarbourVest—bore millions of dollars of legal fees incurred by numerous parties, including attorneys' fees for (i) HCLOF, (ii) Highland, (iii) Acis, (iv) Highland HCF and (v) various affiliated persons, entities and experts.

49. No justifiable basis existed for Highland to cause HCLOF to pay Highland-related parties' expenses and fees arising from the Acis Bankruptcy. Those fees were grossly inappropriate, excessive, and unreasonable, caused by Highland's own malfeasance, and they are not covered under the HCLOF governing documents.

50. On this point, it is worth underscoring that, to HarbourVest's knowledge, HCLOF has, to date, incurred more than **\$15 million** in legal fees since 2018, much of which appears to be related to fighting an **\$8 million** Arbitration Award. Even if such fees could appropriately be charged to HCLOF (and they cannot), the amount of legal fees incurred is grossly unreasonable. Highland's use of HCLOF assets to pay these astounding legal fees creates liability for its misuse of fund assets in gross breach of its duties as a sub-advisor and as a shadow / de facto director.

51. In addition to the improper legal expenses, Highland's gross mismanagement of HCLOF includes Highland (i) directing the Trustee to sell numerous loans during the Acis Bankruptcy and (ii) failing to reset the CLOs and or consider alternatives in light of the court-ordered injunction on resets.<sup>28</sup>

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<sup>28</sup> See, e.g., Acis Trustee Complaint at 29, n. 46 (“Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a ‘refinance’ or ‘reset’ transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption.”), A319; Second Am. Compl. at 24–28, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157 (Highland Capital “grossly mismanaged the CLOs” when it “failed to purchase a single loan for the CLOs . . . [and] in an apparent tactical move to accumulate cash in the CLOs . . . ordered that the Trustee sell numerous loans.” When the Trustee found new parties to perform services under the Sub Agreements, Highland Capital “offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that

**C. Securities Claims**

52. HarbourVest also has state and federal securities fraud claims against Highland.

53. Under the Texas Securities Act (the “**TSA**”), “[a] person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security.” Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) (West). Hence, “to recover under the TSA, a buyer of a security must prove that the security was sold by means of (1) an untrue statement of material fact or (2) an omission to state a material fact that is necessary in order to make the statements made not misleading.” *Kubbernus v. ECAL Partners, Ltd.*, 574 S.W.3d 444, 480 (Tex. App. 2018). A plaintiff need not show reliance, loss causation, or damages under the TSA. *See id.*; *In re Skyport Glob. Commc'ns, Inc.*, No. 08-36737, 2011 WL 111427, at \*47 (Bankr. S.D. Tex. Jan. 13, 2011). In addition to primary violators, “[a] person who directly or indirectly controls a seller, buyer, or issuer of a security” or “who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security,” is liable under the TSA “jointly and severally with the seller, buyer, or issuer and to the same extent as if he were the seller, buyer, or issuer.” Tex. Rev. Civ. Stat. Ann. art. 581-33 (F) (West).

54. Section 10(b) of the Securities Exchange Act makes it unlawful for any person “[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative

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Highland had grossly overcharged Acis.”), A448–52; 1/31/19 Confirmation Ruling at 29–30 (“[I]n this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan. Mr. Scott, a director of HCLOF Guernsey, testified that HCLOF Guernsey can sell its interest in the subordinated notes in the market.”); 1/31/19 Confirmation Ruling at 20 (“[A]fter Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level.”).

or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.” 15 U.S.C. § 78j(b). And Rule 10b-5, promulgated by the SEC under the authority of Section 10(b), makes it unlawful for “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” to “employ any device, scheme, or artifice to defraud”; “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading”; or “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.” 17 C.F.R. § 240.10b-5.

55. The Supreme Court has recognized an implied private cause of action to enforce Section 10(b) and its implementing regulation, Rule 10b-5. *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37 (2011). To state a claim under Section 10(b) and Rule 10b-5 based on an alleged misrepresentation or omission, a plaintiff must show “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Id.* (citations omitted). Joint and several liability for violations of Section 10(b) and Rule 10b-5 extends to “[e]very person who, directly or indirectly, controls any person liable under” Section 10(b) and Rule 10b-5 “to the same extent as such controlled person.” 15 U.S.C. § 78t(a).

56. Here, Highland, in connection with its sale of HCLOF shares to HarbourVest, made material misrepresentations and omitted material facts, as detailed above. That is sufficient to state a claim under the TSA. Those material misrepresentations and omitted

material facts likewise state a claim under federal law for the recovery of damages caused by Highland's fraud, because they were made with the intent to deceive HarbourVest, were relied upon by HarbourVest, and caused substantial losses to HarbourVest's investment.

**D. RICO Claims**

57. RICO makes it unlawful, among other things, for a person associated with an enterprise to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. *See* 18 U.S.C. § 1962(c). Under RICO, any person injured in his business or property by reason of such a violation may recover treble damages and reasonable attorney's fees. *See* 18 U.S.C. § 1964(c).

58. Here, Highland engaged in a pattern of racketeering activity involving numerous predicate acts over multiple years, including mail, wire, and bankruptcy fraud, as part of a scheme to defraud Terry, obstruct the enforcement of his judgment, and obtain investor funding to further finance the scheme. Highland committed these violations through its control of and conduct of the affairs of multiple enterprises, including Acis.

59. In furtherance of that scheme, Highland committed further predicate acts of fraud and bankruptcy fraud as described at length herein, including when, prior to the appointment of the Acis Trustee, Highland caused Acis to make false statements with respect to HarbourVest in the Acis bankruptcy proceedings. *See* 18 U.S.C. § 152(2), (3). Highland's statements were made with knowledge of their falsity and caused HarbourVest significant damages as detailed above, including significant and unwarranted fees and expenses from the Acis Trustee's investigation, and Highland is liable for its pattern of deceptive and fraudulent behavior.

**E. Unfair Prejudice**

60. HarbourVest also has claims against Highland for unfair prejudice under Guernsey law. Under Section 349 of the Companies (Guernsey) Law 2008, shareholders may

apply for relief where the affairs of a company have been conducted in a manner that is unfairly prejudicial to the applicant. § 349(1)(a). To succeed on such an application, the applicant need show only that: (1) the acts or omissions of which he complains of were acts of the Company, including acts taken by the board or a shadow director; (2) the conduct of those affairs has caused prejudice to the applicant's interests as a member of the Company, and (3) the prejudice is unfair. *Prodefin Trading Ltd. v. Midland Res. Holding Ltd.*, Royal Court of Guernsey, 14 February 2017, Judgment 7/2017, A91.

61. The court's remedial powers for an unfair prejudice claim are broad. Section 350 of the Guernsey Companies Law provides: "[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of." Such relief may include ordering a buyout of the applicant's interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; see also *Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523, A117. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420, A140.

62. HarbourVest has been unfairly prejudiced by the full range of Highland's actions and behavior described above, including (i) the fraudulent Transfers immediately preceding and following the Investment, as well as misrepresentations and omissions regarding those Transfers and the Arbitration Award; (ii) breaches of fiduciary duty by Highland as shadow or de facto director of the Company; (iii) misuse of fund assets and legal fee charges to HCLOF; (iv) mismanagement of the HCLOF investment by Highland; and (v) Highland's false statements about HarbourVest, including to this Court, accusing HarbourVest of perpetrating the Transfers.

Such actions warrant relief based upon what the value of HarbourVest's interests in HCLOF *would have been* had Highland not engaged in such misconduct—a value that far exceeds the Investment's current value.

**Prayer for Relief**

63. HarbourVest respectfully requests: (i) this Court deny and overrule the Claim Objection with respect to HarbourVest's Proof of Claim, (ii) sustain and allow HarbourVest's Proofs of Claim, and (iii) grant HarbourVest such other and further relief to which it may be justly entitled, both at law and in equity.

Dated: Dallas, Texas  
September 11, 2020

/s/ Vickie L. Driver  
Vickie L. Driver (No. 24026886)  
Crowe & Dunlevy, P.C.

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HarbourVest Partners L.P., on behalf of funds and  
accounts under management*

CAUSE NO. DC-17-15244

JOSHUA N. TERRY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
ACIS CAPITAL MANAGEMENT, L.P. and	§	
ACIS CAPITAL MANAGEMENT GP, LLC,	§	
	§	
Defendants.	§	44 <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF’S APPLICATION  
FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Joshua N. Terry (“Mr. Terry”) files this Application for Temporary Restraining Order against Defendants Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP”) (collectively “Acis”), and shows the Court as follows:

**SUMMARY OF APPLICATION**

Acis is in the midst of an audacious scheme to transfer *all* of its assets to Cayman affiliates to avoid satisfaction of Mr. Terry’s judgment. Acis fought hard to avoid post-judgment discovery because it had something big and bad to hide. Starting shortly after the \$8 million arbitration award was entered against it, Acis has **fraudulently transferred assets in excess of \$16.6 million** to several affiliated entities in the Cayman Islands, including:

- A \$10 million promissory note from an affiliate, Highland Capital Management, L.P. (“Highland”), to a Cayman affiliate (14 days after the Final Award);
- An interest in several entities worth in excess of \$6.6 million (the day after the Court entered the Judgment).

Based on documents produced two days ago by Acis pursuant to Court order, it is clear that Acis is poised to fraudulently transfer its most significant assets: management contracts worth well in excess of \$30 million, again to another Cayman affiliate. If that transfer occurs, Acis will

have few, if any, assets. Mr. Terry requests the Court enter a temporary restraining order restraining Acis from taking any further action to transfer the management contracts, or any of Acis' other assets.

#### RELEVANT FACTS

1. From September 6-15, 2017, an arbitration panel consisting of Hon. Harlan Martin (former), Hon. Glen M. Ashworth (Ret.), and Hon. Mark Whittington (Ret.) (the "Arbitration Panel") held a final hearing in Dallas County.

2. On October 20, 2017, the Arbitration Panel issued its Final Award in the Arbitration (the "Final Award") against Acis.

3. On October 24, 2017 (4 days after the Panel issued the Final Award), an employee of Highland and representative of Acis, Frank Waterhouse, executed an agreement for Acis which reflects a sale of Acis' interest in its risk retention vehicle, Acis Loan Funding, Ltd. ("Acis Loan Funding"). A true and correct copy of that agreement is attached hereto as **Exhibit 1**.

4. On October 27, 2017 (7 days after the Panel issued the Final Award), James Dondero signed an agreement transferring management of Acis Loan Funding from Acis to Highland HCF Advisor Ltd., a Cayman entity ("Highland Cayman 1") for *no consideration*. That transfer deprived Acis of the value to which it was entitled. A true and correct copy of that agreement is attached hereto as **Exhibit 2**. When Mr. Terry was a partner in Acis, Acis was the portfolio manager of Acis Loan Funding. That contractual arrangement between Acis and Acis Loan Funding was a valuable asset of Acis, as was Acis' ownership interest in Acis Loan Funding.

5. On October 31, 2017, counsel for Acis, Jamie Welton, called Rogge Dunn on the telephone. *See* Declaration of Rogge Dunn attached hereto as **Exhibit 3**. In that call, Mr. Welton stated that Acis is "judgment proof."

6. On the same day, October 31, 2017 (11 days after the Panel issued the Final Award), Dondero caused a filing in the Registry of the island nation of Guernsey (one of the Channel

Islands in the English Channel). In that filing, Acis Loan Funding was renamed “Highland CLO Funding, Ltd.”

7. On November 3, 2017, Acis, Highland, and Highland CLO Management Ltd., another Cayman entity (“Highland Cayman 2”), entered into an Agreement for Assignment and Transfer of Promissory Note (the “Note Transfer”), a true and correct copy of which is attached hereto as **Exhibit 4**. The Note Transfer affected a \$10 million promissory note by Highland in favor of Acis, a true and correct copy of which is attached hereto as **Exhibit 5** (the “Highland Note”). Among other things, the Note Transfer transferred the Highland Note, for *no consideration*, from Acis to Highland Cayman 2.

8. Significantly, the Note Transfer also purports to initiate the transfer of management contracts to Highland Cayman 2 for the CLOs listed on Schedule A to a prior agreement, a true and correct copy of which is attached as **Exhibit 6** (the “Management Contracts”). Acis is to receive *no* consideration for transferring its most significant assets, the Management Contracts.

9. On November 6, 2017, Terry filed this action to confirm the Final Award.

10. When Terry was a partner in Acis a year and a half ago, Acis had assets in excess of \$40 million, and *no* liabilities or liens against its property.

11. On November 22, 2017, Mr. Terry filed his Motion for Expedited Discovery.

12. On December 18, 2017, the Court entered its (i) Order Confirming Arbitration Award, (ii) Final Judgment, and (iii) Order Granting Expedited Discovery.

13. On December 19, 2017, Acis transferred \$6.6 million of additional assets to Highland CLO Holdings, Ltd., another Cayman entity (“Highland Cayman 3”), purportedly in exchange for forgiveness of a receivable. A true and correct copy of that agreement is attached hereto as **Exhibit 7**.

14. Also on December 19, 2017, the partners of Acis transferred their partnership interest to yet another Cayman entity, Neutra, Ltd. (“Highland Cayman 4”). A true and correct copy of that agreement is attached hereto as **Exhibit 8**.

15. On January 22, 2018, Acis produced documents and answered discovery that revealed much of the foregoing.

### ARGUMENT & AUTHORITY

Post-judgment injunctive relief is provided for in the Texas Civil Practices and Remedies Code and the Texas Rules of Appellate Procedure. TEX. CIV. PRAC. & REM. CODE § 52.006(e); TEX. R. APP. P. 24.2(d).

The standard for post-judgment injunctive relief is simple: a determination of “whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment.” *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d 222, 227 (Tex. App.—San Antonio 2006, no pet.); *Sargeant v. Al Saleh*, 512 S.W.3d 399, 409 (Tex. App.—Corpus Christi 2016, no pet.) (“In the post-judgment context, the question is only whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment.”) (internal quotations omitted). “Evidence of the actual dissipation or transfer of assets is *not* necessary to meet this standard.” *Sargeant*, 512 S.W.3d at 409 (emphasis added); *Miga v. Jensen*, 02-11-00074-CV, 2012 WL 745329, at \*11 (Tex. App.—Fort Worth Mar. 8, 2012, no pet.).

Attached as **Exhibit 9** is the Declaration of Joshua N. Terry, which details the following, among other things:

- Mr. Terry ran Acis’ day-to-day operations from 2011 until he was wrongfully terminated in June 2016;
- Mr. Terry is well-versed in the CLO industry, where he worked since 2005. Mr. Terry has earned the right to use the Chartered Financial Analyst designation. From my experience, education, and training, I became familiar with the common and legitimate business practices of CLO managers in the industry, as well as the value of CLO management contracts.

- In 2015, Mr. Terry valued Acis in excess of \$70 million, a conclusion that was accepted by David Klos, a Highland employee;
- On February 28, 2012, Highland sold four European CLO management contracts to The Carlyle Group for \$43.6 million in an arms-length transaction. Those four CLO management contracts are *less* valuable than the five Management Contracts Acis owns and which it now seeks to transfer for *no* consideration;
- The Management Contracts are the most substantial asset of Acis and are valued in excess of \$30 million;
- There is no legitimate business purpose for Acis to transfer the Management Contracts for no consideration;
- There is no legitimate business purpose for Acis to transfer the Highland Note for no consideration;
- It is not in the normal course of Acis' business to transfer all of its Management Contracts for no consideration, or to transfer the Highland Note for no consideration;
- If Acis transfers the Management Contracts, Acis will not have assets adequate to satisfy the Judgment.<sup>1</sup>

The standard for post-judgment injunctive relief is not only met in this case, but is far exceeded. Indeed, there is direct and compelling evidence that Acis *actually* transferred and dissipated assets, and intends to transfer more. Consequently, Mr. Terry clearly met his burden to show transfers or dissipation is “likely.” The Court should enter a temporary restraining order pending a hearing on a temporary injunction.

### CONCLUSION

Counsel for Acis represented to the Court and to counsel for Mr. Terry that Acis had not, and was not, transferring assets. The documents Acis produced two days ago—which they fought so hard to withhold—tell a very different story. This Court has the “inherent power to enforce its judgments.” *Harleaux v. Harleaux*, 154 S.W.3d 925, 928 (Tex. App.—Dallas 2005, no pet.). One

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<sup>1</sup> If and when Acis attempts to supersede the Judgment, Terry will request the Court include all of the fraudulently-transferred assets in any calculation of Acis' net worth.

means by which a Court can enforce its judgment is through injunctive relief, and injunctive relief is certainly appropriate under the circumstances. Mr. Terry requests the Court enter a temporary restraining order prohibiting Acis from taking any further action to transfer the Management Contracts and any other assets, set a hearing on a preliminary injunction, and for such other relief to which Mr. Terry is entitled.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFF  
JOSHUA N. TERRY**

L.R. 2.02 CERTIFICATION

I hereby certify that at or near the time I file this Application, I am notifying Defendants via ECF that Mr. Terry intends to present his Application for Temporary Restraining Order and Proposed Order at least 2 hours before they are to be presented to the Court. I also certify that to the best of my knowledge, this case is not subject to transfer under Local Rule 1.06.



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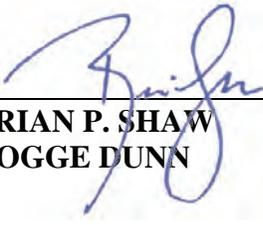
BRIAN P. SHAW

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing instrument was served on all counsel of record on the 24th day of January, 2018 as follows:

Gary Cruciani  
Michael P. Fritz  
Nicholas Mathews  
Carson D. Young  
MCKOOL SMITH  
300 Crescent Court  
Suite 1500  
Dallas, Texas 75201

- VIA ECF**
- VIA OVERNIGHT**
- VIA REGULAR MAIL**
- VIA HAND DELIVERY**
- VIA FAX:**
- VIA EMAIL:**

  
\_\_\_\_\_  
**BRIAN P. SHAW**  
**ROGGE DUNN**



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**Acis Loan Funding, Ltd. (the Company)**

**Registration number 60120**

**Written resolutions of the shareholders of the Company passed in accordance with section 175(2)(b) of the Companies (Guernsey) Law, 2008 (the Law)**

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**PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT BEFORE SIGNING YOUR APPROVAL OF THE RESOLUTIONS SET OUT BELOW.**

Pursuant to section 182 of the Law, the directors of the Company propose that the resolutions set out below be passed as **special resolutions** of the Company and, accordingly, we resolve that:

1. **THAT**, in accordance with section 314(2) of the Companies (Guernsey) Law, 2008, as amended, the Company be and is hereby specifically empowered, authorised and directed to acquire 966,679 ordinary shares of no par value in the capital of the Company for an aggregate sum of USD 991,180.13, pursuant to the terms of the contract (a copy of which is attached to this resolution) (the **Contract**) to be entered into between the Company and Acis Capital management, L.P. acting by its general partner Acis Capital Management GP, LLC following the passing of this special resolution, the form of which Contract be and is hereby approved. The authority conferred by this special resolution shall expire on 30 October 2017.

The following definitions apply in, and form part of, the above resolutions.

**Circulation Date** means the date on which copies of these written resolutions are sent to shareholders (or, if copies are sent to shareholders on different days, the first of those days).

We are the shareholders of the Company on the Circulation Date.

**Signatures**



.....  
Grant Scott, Director, for and on behalf of  
**CLO HoldCo, Ltd.**

.....  
Frank Waterhouse, Treasurer, for and on behalf of  
**Acis Capital Management, L.P.**  
acting by its general partner,  
Acis Capital Management GP, LLC

Shares voted in favour: ALL

Shares voted in favour: ALL

Date: 24 October 2017

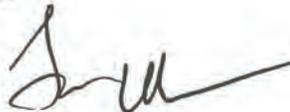
Date: .....

Location: Raleigh, NC

Location: .....

We are the shareholders of the Company on the Circulation Date.

**Signatures**



.....  
Grant Scott, Director, for and on behalf of  
**CLO HoldCo, Ltd.**

.....  
Frank Waterhouse, Treasurer, for and on behalf of  
**Acis Capital Management, L.P.**  
acting by its general partner,  
Acis Capital Management GP, LLC

Shares voted in favour: ALL

Shares voted in favour: ALL

Date: .....

Date: 24 October 2017

Location: .....

Location: Dallas, Tx

**Notes to the written resolutions**

1. If you agree to the above resolutions, please signify your agreement by signing and dating this document where indicated above, indicating either the number of shares that you vote in favour of the above resolutions or that you vote all shares in favour of the above resolutions, and returning it to the Company within 28 days from the Circulation Date, as follows:
  - (a) by delivering it by hand or by posting it to First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ marked for the attention of Mr Timothy Wilson; and
  - (b) by sending it as an attachment to an e-mail at [tim.wilson@ais.statestreet.com](mailto:tim.wilson@ais.statestreet.com).A shareholder's agreement to a written resolution, once signified, may not be revoked.
2. If you do not agree to the above resolutions you do not need to do anything.
3. A written resolution is passed when the requisite majority of eligible shareholders have signified their agreement to it and will lapse if it is not passed by the end of the 28 day period from and including the Circulation Date.
4. In the case of joint holders of shares, only the vote of the holder whose name appears first in the register of members will be counted by the Company.
5. These written resolutions may be signed in counterpart.



## PORTFOLIO MANAGEMENT AGREEMENT

THIS PORTFOLIO MANAGEMENT AGREEMENT (this "*Agreement*"), dated to be effective from 27 October 2017 (the "*Effective Date*") is entered into by and between **Acis Loan Funding, Ltd.**, a closed-ended investment company limited by shares incorporated under the laws of Guernsey with registered number 60120, (the "*Company*") and **Highland HCF Advisor, Ltd.**, a company organized under the laws of the Cayman Islands (the "*Portfolio Manager*" or "*Highland*"). Acis Capital Management, L.P., a limited partnership organized under the laws of the State of Delaware (the "*Predecessor Portfolio Manager*"), joins in the execution and delivery of this Agreement solely for the purpose of consenting and agreeing to Section 1 hereof.

### RECITALS

WHEREAS, the Company and the Predecessor Portfolio Manager entered into that certain Portfolio Management Agreement, dated to be effective from December 22, 2016 (the "*Predecessor Portfolio Management Agreement*"); and

WHEREAS, the Company desires to supersede and replace the Predecessor Portfolio Management Agreement in its entirety with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Termination of the Portfolio Services Agreement. Effective as of the Effective Date, (x) the Predecessor Portfolio Management Agreement is hereby cancelled and terminated in its entirety and shall have no further force or effect; (y) each party thereto releases the other party from all claims, suits or causes of action arising out of or relating to the Predecessor Portfolio Management Agreement and (z) each party hereby ratifies all prior transactions effected in accordance with the Predecessor Portfolio Management Agreement.

2. Appointment of the Portfolio Manager. The Portfolio Manager shall act as the investment manager to the Company and shall manage the investment and reinvestment of the

cash, Financial Instruments (as defined in Section 5 below) and other properties comprising the assets and liabilities of the Company, in each case, subject to and in accordance with the investment policy of the Company (the "*Investment Policy*").

3. Additional Portfolio Services. The Portfolio Manager shall discuss with the directors of the Company (the "*Directors*") the investment objectives of the Company and assist the Directors to develop, monitor and update the Company's Investment Policy; shall identify and present information to the Directors with respect to potential investments available to the Company in furtherance of the Investment Policy, including (without limitation) credit and market research and analysis in connection with the origination or acquisition of such investments; shall provide such assistance with respect to the administration and valuation of the Company's investment portfolio as the Directors shall reasonably require; and shall make available to the Company such personnel and resources as are necessary in connection with the foregoing services.

4. Custody. The Financial Instruments (as defined in Section 5 below) shall be held in the custody of State Street Custodial Services (Ireland) Limited or one or more banks selected by the Company (each such bank, a "*Custodian*"). The Company will notify the Portfolio Manager promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the Company. At no time shall the Portfolio Manager have possession of or maintain custody over any of the Financial Instruments. The Portfolio Manager shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

5. Authority of the Portfolio Manager. Subject at all times to (i) provisions of applicable law, and (ii) the Investment Policy, the Portfolio Manager shall have the authority for and in the name of the Company to:

(a) invest, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded

or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) senior secured loans, (ii) notes representing tranches of debt ("*CLO Notes*") issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a "*CLO*"), (iii) preference shares, income notes or other equity instruments issued by CLO issuers, (iv) equity interests or loans in asset management companies, (v) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (vi) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (vii) spot and forward currency transactions and (viii) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "*Financial Instruments*"), and the sale of Financial Instruments short and covering such sales;

(b) engage in such other lawful Financial Instruments transactions as the Portfolio Manager may from time to time determine;

(c) provide credit and market research and analysis in connection with the investments and ongoing management of the Company and direct the formulation of investment policies and strategies for the Company;

(d) purchase Financial Instruments and hold them for investment;

(e) enter into contracts for or in connection with investments in Financial Instruments;

(f) invest in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;

(g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Company and/or its subsidiaries;

(h) lend, either with or without security, any Financial Instruments, funds or other properties of the Company, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Company;

(i) open, maintain and close accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;

(j) open, maintain and close accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combine purchase or sale orders on behalf of the Company with orders for other accounts to which the Portfolio Manager or any of its affiliates provides investment services ("*Other Accounts*") and allocate the Financial Instruments or other assets so purchased

or sold, on an average-price basis or in any other manner deemed fair and equitable to the Portfolio Manager in its sole discretion, among such accounts:

(l) enter into arrangements with brokers to open "average price" accounts wherein orders placed during a trading day are placed on behalf of the Company and Other Accounts and are allocated among such accounts using an average price;

(m) organize one or more corporations and other entities formed to hold record title, as nominee for the Company (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Company;

(n) cause the Company to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Portfolio Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engage and/or provide personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants, investment bankers and any human resources as may be necessary for the Company to conduct any matters related to its portfolio of assets on behalf of or for the Company);

(p) provide certain support and assistance (including back office and middle office functions) to the Company; and

(q) vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

6. Policies of the Company. The activities engaged in by the Portfolio Manager shall be subject to the policies and control of the Company, including (without limitation) the Investment Policy.

The Portfolio Manager shall submit such periodic reports, recommendations, research and analytic material to the Company regarding the Investment Policy, the Company's investment portfolio and the Portfolio Manager's activities hereunder as the Company may

reasonably request and a representative of the Portfolio Manager shall be available to meet with the Company (whether in person or by telephone) as reasonably requested by the Company.

In furtherance of the foregoing, the Company hereby appoints the Portfolio Manager as the Company's attorney-in-fact, with full power of authority to act in the Company's name and on its behalf with respect to the matters set forth in Section 5 above.

7. Status of the Portfolio Manager. The Portfolio Manager shall, for all purposes, be an independent contractor and not an employee of the Company, and nothing herein shall be construed as making the Company a partner, member or co-venturer with the Portfolio Manager or any of its affiliates or clients. The Portfolio Manager shall have no authority to act for, represent, bind or obligate the Company except as specifically provided herein.

8. Reimbursement by the Company. The Portfolio Manager may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the Company with respect to the Company and/or its subsidiaries (any such appointee, a "*Sub-Services Provider*"), including, but not limited to, any affiliate of the Portfolio Manager, but payment for any such services shall be assumed by the Portfolio Manager, and the Company shall not have any liability therefor, *provided, however*, that the Portfolio Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Company, and the Company shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom, including any irrecoverable VAT arising on such costs and expenses.

9. Expenses.

(a) The Company shall pay or reimburse the Portfolio Manager and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-

related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Company, any taxes imposed upon the Company (including, but not limited to, any irrecoverable VAT arising on such costs and expenses), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Portfolio Manager. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Portfolio Manager's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Company are paid by the Portfolio Manager or by any Sub-Services Provider, the Company shall reimburse the Portfolio Manager (or the relevant Sub-Services Provider, as applicable) for such expenses so long as such expenses are determined on an arm's length basis.

10. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Portfolio Manager, its managers, directors, officers, partners, shareholders, agents and employees, or any of their respective affiliates and their respective managers, directors, officers, partners, shareholders, agents and employees (including parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable (whether directly or indirectly, in contract or in tort or otherwise) to the Company or any of its subsidiaries or anyone for liabilities incurred by the Company as a result of or arising out of or in connection with the performance by the Portfolio Manager under this Agreement, or for any

losses or damages resulting from any failure to satisfy the Standard of Care (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any such liabilities were incurred by reasons of acts or omissions constituting bad faith, fraud, willful misconduct or gross negligence (with such term given its meaning under New York law) or reckless disregard of the duties and obligations of the Portfolio Manager (as determined by a non-appealable judgment of a court of competent jurisdiction), (a "*Portfolio Manager Breach*").

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Company shall indemnify and hold harmless Covered Persons, from and against any and all claims, liabilities, damages, losses, costs and expenses ("*Losses*"), including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Covered Person and arise out of or in connection with the business of the Company, any investment made under or in connection with this Agreement, or the performance by the Covered Person of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person in connection with the Company, provided that a Covered Person shall not be entitled to indemnification hereunder to the extent the Covered Person's conduct constitutes a Portfolio

Manager Breach. The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Covered Person's conduct constituted a Portfolio Manager Breach.

(c) Expenses incurred by an Covered Person in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately that the Covered Person is not entitled to be indemnified hereunder.

(f) The right of any Covered Person to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Portfolio Manager and each Covered Person will generally not be liable to the Company for any act or omission (or alleged act or omission), absent a Portfolio Manager Breach, and the Company will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the Company, absent a Portfolio Manager Breach. As a result of these provisions, the Company (not the Portfolio Manager or any other Covered Person) will be responsible for any Losses resulting

from trading errors and similar human errors, absent a Portfolio Manager Breach or the inability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Portfolio Manager and its affiliates on behalf of the Company, the Company acknowledges that trading errors (and similar errors) will occur and that the Company will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Portfolio Manager or its affiliates.

11. Activities of the Portfolio Manager and Others. The Portfolio Manager, and its affiliates may engage, simultaneously with their portfolio servicing and management activities on behalf of the Company, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Company. Notwithstanding the foregoing, the Portfolio Manager and its affiliates shall devote as much time and resources to the performance of its obligations hereunder as the Portfolio Manager deems necessary and appropriate. In addition, the Portfolio Manager or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, any guidance provided by the Portfolio Manager to the Company. The Portfolio Manager may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from guidance given to, or securities recommended for, the Company, even though their investment objectives may be the same or similar. The Portfolio Manager may recommend transactions in securities and other assets in which the Portfolio Manager has an interest, including securities or other assets issued by affiliates of the Portfolio Manager. The Company acknowledges that it has received a copy of Part 2 of the Portfolio Manager's Form ADV, which further describes conflicts of interest, including the Portfolio Manager, its affiliates and their respective advised accounts.

12. Standard of Care. Under this Agreement, the Portfolio Manager agrees to perform its obligations hereunder, with reasonable care (a) using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets

that it manages for itself and others having similar investment objectives and restrictions, and (b) to the extent not inconsistent with the foregoing, in a manner consistent with the Portfolio Manager's customary standards, policies and procedures (the "*Standard of Care*"); provided that the Portfolio Manager shall not be liable for any loss or damages resulting from any failure to satisfy the Standard of Care except to the extent any act or omission of the Portfolio Manager constitutes a Portfolio Manager Breach. The Standard of Care may change from time to time to reflect changes by the Portfolio Manager to its customary standards, policies and procedures provided that such customary standards, policies and procedures are at least as rigorous as the foregoing.

13. Term; Termination.

(a) This Agreement shall remain in effect through an initial term concluding August 10, 2018 and shall be automatically extended for additional three-year terms thereafter, *provided, however,* this Agreement may be terminated in the event of: (A) the Company determining in good faith that the Company or the portfolio has become required to register as an investment company under the provisions of the Investment Company Act of 1940, as amended (the "*Investment Company Act*") (where there is no available exemption), and the Company has given prior notice to the Portfolio Manager of such requirement, (B) the date on which the portfolio has been liquidated in full and the Company's financing arrangements have been terminated or redeemed in full, (C) such other date as agreed between the Company and the Portfolio Manager and (D) under subsection (b) of this Section 13 or Section 14 of this Agreement.

(b) Notwithstanding any other provision hereof to the contrary but subject to the provisions of clause (d) below, this Agreement may be terminated without cause by the Portfolio Manager, and the Portfolio Manager may resign, upon at least ninety (90) days' (or such shorter notice as is acceptable to the Company) written notice to the Company. The resignation shall not be effective until the date as of which a successor adviser has been appointed. The Portfolio Manager may immediately resign by providing written notice to the Company upon the failure of the Company to comply in any material respect with any investment policy or investment objective to which it is bound to comply, a willful breach or knowing violation by the Company

of a material provision of this Agreement or the occurrence of insolvency proceedings in respect of the Company.

(c) Notwithstanding the provisions of clause (b) above, no resignation or removal of the Portfolio Manager or termination of this Agreement pursuant to such clause shall be effective until the date as of which a successor Portfolio Manager shall have been appointed and approved in accordance with Section 13(d) and has accepted all of the Portfolio Manager's duties and obligations pursuant to this Agreement in writing and has assumed such duties and obligations.

(d) Any termination, removal or resignation of the Portfolio Manager shall be effective only upon (a) the appointment by the Company of a successor Portfolio Manager that is an established institution which (i) has demonstrated an ability to professionally and competently perform duties reasonably comparable to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager hereunder and under the terms of the offering memorandum dated August 10, 2015 (as amended from time to time, the "*Offering Memorandum*") applicable to the Portfolio Manager, (iii) shall not cause the Company to become required to register under the provisions of the Investment Company Act and (iv) shall not result in the imposition of any entity-level or withholding tax on the Company or cause any other material adverse tax consequences to the Company and (b) written acceptance of appointment by such successor Portfolio Manager. The Company shall use its commercially reasonable efforts to appoint a successor Portfolio Manager to assume the duties and obligations of the removed or resigning Portfolio Manager. The Company, the Custodians and the successor Portfolio Manager shall take such action (or cause the outgoing Portfolio Manager to take such action) consistent with this Agreement and the terms of the Offering Memorandum applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession. In the event that a successor has not been appointed or has not assumed the duties of the Portfolio Manager in writing within a 60-day period the Portfolio Manager or the Company may petition a court of competent jurisdiction for the appointment of a successor Portfolio Manager, which appointment will not require the consent of, or be subject to the approval or

disapproval of, the Company (so long as such court appointed successor meets the requirements of clauses (a)(i) through (iv) above).

(e) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Company shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Company may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 13(d) above). Upon resignation or removal of the Portfolio Manager in accordance with this Section 13 or Section 14 of this Agreement, as applicable, and upon acceptance by a successor Portfolio Manager of appointment, all authority and power of the Portfolio Manager under this Agreement and the Offering Memorandum, shall automatically and without further action pass to and be vested in the successor Portfolio Manager.

(f) For so long as Highland HCF Advisor, Ltd. or an Affiliate thereof is the Portfolio Manager, the Company shall be permitted to use the "Highland" name; provided that, if the Portfolio Manager ceases to be Highland HCF Advisor, Ltd. or an Affiliate thereof, the Company shall use commercially reasonable efforts to change its name to remove all reference to the name "Highland" therefrom. In addition, the Portfolio Manager, without the consent of the Company, may change the name of the Portfolio Manager.

14. Termination by the Company for Cause. This Agreement may be terminated, and the Portfolio Manager may be removed for Cause (as defined below) by the Company upon ten (10) days' prior written notice to the Portfolio Manager. No such termination or removal shall be effective until the date as of which a successor Portfolio Manager shall have agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and as specified in the Offering Memorandum. "Cause" shall mean any one of the following events:

(a) the Portfolio Manager willfully violates, or takes any action that it knows breaches any material provision of this Agreement or the Offering Memorandum applicable

to it in bad faith (not including a willful and intentional breach that results from a good faith dispute regarding reasonable alternative courses of action or interpretation of instructions);

(b) the Portfolio Manager breaches in any respect any provision of this Agreement or any terms of the Offering Memorandum applicable to it (other than as covered by clause (a) and except for any such violations or breaches that have not had, or could not, either individually or in the aggregate, reasonably be expected to have, a material adverse effect on the Company) and fails to cure such breach within 30 days of the Company receiving notice of such breach, unless, if such breach is remediable, the Portfolio Manager has taken action that the Portfolio Manager believes in good faith will remedy such breach, and such action does remedy such breach, within sixty (60) days after the Company receives notice thereof;

(c) the Portfolio Manager is wound up or dissolved or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer; or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, its creditors generally, (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for sixty (60) days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for sixty (60) days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for sixty (60) days;

(d) the occurrence of an act by the Portfolio Manager that constitutes fraud or criminal activity in the performance of its obligations under this Agreement (as determined pursuant to a final adjudication by a court of competent jurisdiction), or the Portfolio Manager being indicted for a criminal offense materially related to its business of providing asset management services; or

(e) any senior executive officer of the Portfolio Manager (in the performance of his or her investment management duties) is convicted for a criminal offense materially related to the business of the Portfolio Manager providing asset management services and continues to have responsibility for the performance by the Portfolio Manager hereunder for a period of ten (10) days after such conviction.

If any of the events specified in the definition of "Cause" in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Company upon the Portfolio Manager's becoming aware of the occurrence of such event. The Company may waive any event described in (a), (b), (d), or (e) above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Miscellaneous

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Portfolio Manager, to:

Highland HCF Advisor, Ltd.  
Maples Corporate Services Limited  
PO Box 309  
Ugland House  
Grand Cayman, KY1-1104  
Cayman Islands

If to the Company, to:  
Acis Loan Funding, Ltd.

1st Floor  
Dorey Court Admiral Park St Peter Port  
Channel Islands  
Guernsey  
GY1 3BG  
Attention: Sharon Wrench  
Telephone Number: +44 (0) 1481 704543  
Facsimile Number: +44 (0) 1481 715602

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Company. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Company, the Portfolio Manager, each Covered Person and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (e.g., officers, partners and personnel of the Portfolio Manager and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; *provided, however,* that the Portfolio Manager may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(c) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws the Cayman Islands that are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement and all contemplated transactions, in any forum other than the courts sitting in the Cayman Islands, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in such courts.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10 and 15 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons' firm or company may require in the context thereof.

(k) Arm's-Length Agreement. The Company has approved this Agreement and reviewed the activities described in Section 11 and in Highland Capital Management, L.P.'s Form ADV and the risks related thereto.

*[Signature Page to Follow]*

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: [Signature]  
Name: MANUEL S. SANTI  
Title: Director

HIGHLAND HCF ADVISOR, LTD.

By: \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, L.L.C. its General Partner

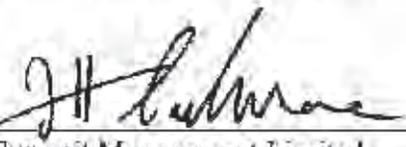
By: \_\_\_\_\_  
Name: James DiMadero  
Title: President

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: \_\_\_\_\_  
Name:  
Title: Director

HIGHLAND HCF ADVISOR, LTD.

By:  \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: \_\_\_\_\_  
Name:  
Title: Director

HIGHLAND HCF ADVISOR, LTD.

By: \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By:  \_\_\_\_\_  
Name: James Dondero  
Title: President



CAUSE NO. DC-17-15244

JOSHUA N. TERRY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
ACIS CAPITAL MANAGEMENT, L.P. and	§	
ACIS CAPITAL MANAGEMENT GP, LLC,	§	
	§	
Defendants.	§	44 <sup>th</sup> JUDICIAL DISTRICT

**DECLARATION OF ROGGE DUNN**

STATE OF TEXAS	§
	§
COUNTY OF DALLAS	§

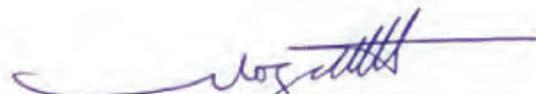
1. My name is Rogge Dunn.
2. I am both qualified and competent to give this declaration, and I have personal knowledge of the facts stated herein based upon my experience, as well as my personal involvement in the matters discussed herein. I have never been convicted of a felony.
3. I am counsel for Plaintiff in the above-referenced matter.<sup>1</sup>
4. On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone.

In that call, Mr. Welton stated that Acis is “judgment proof.”

**JURAT**

My name is Rogge Dunn. My date of birth is 1/22/57, and my address is 1201 Elm St., Suite 5200, Dallas, Teas 75270. I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed pursuant to Tex. Civ. Prac. & Rem. Code § 132.001, and any other applicable law authorizing use of an unsworn declaration.

Executed in Dallas County, State of Texas, on the 22nd day of November 2017.



\_\_\_\_\_  
Rogge Dunn, Declarant

<sup>1</sup> Plaintiff incorporates by reference the defined terms in his Motion for Expedited Discovery.



## ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "*Agreement*"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*Acis*"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*HCM*") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("*HCLOM*", and together with HCM and Acis, the "*Parties*"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "*Purchase Agreement*" and the promissory note therein, the "*Note*").

### RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "*CLOs*", the governing documents thereof, the "*CLO Documents*" and such fees, the "*Servicer Fees*");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "*HCM Stabilization Fees*" and such cash flows from HCM, the "*Stabilization Payments*");

Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "*Notification*");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "*Successor Manager*");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "*Acis Legal Expenses*"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "*Acis Administrative Expenses*" and together with the Acis Legal Expenses, the "*Acis Expenses*").

## AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession.** Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a "*Notice*" and the period between the Notice and an Appointment (as such term is defined below), the "*Post-Notice Period*").
2. **Successor Manager.** Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM's appointment as Portfolio Manager of a given CLO, an "*Appointment*").
3. **Assignment and Transfer of the Promissory Note; Stabilization Payments.**
  - a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.
  - b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
  - c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
  - d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.
4. **Expense Support.** In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis' written request, to Acis' creditors, the amount of such shortfall, provided that in no event shall HCLOM's obligations under this paragraph exceed greater than \$2 million of Acis Legal Expenses in the aggregate, or greater than \$1 million of Acis Administrative Expenses in the aggregate.
5. **Indemnity.** Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated (“*Claims*”), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys’ fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a “*Proceeding*”), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as “*Damages*”), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. “*Covered Person*” means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM’s and HCM’s respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. Miscellaneous.

- a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
- b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
- c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

- c. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):
- i. If to Acis:  
Acis Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Facsimile: 972-628-4147
  - ii. If to HCM:  
Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Facsimile: 972-628-4147
  - iii. If to HCLOM:  
Highland CLO Management, Ltd.  
PO Box 309  
Ugland House  
Grand Cayman KY1-1104  
Cayman Islands
- h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

- i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection
- j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

By: Strand Advisors, Inc., its General  
Partner

By: 

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its  
General Partner

By: 

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.



For and on behalf of Summit Management,  
Limited

Director



Exhibit 1

PROMISSORY NOTE

\$12,666,446

October \_\_, 2016

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("Maker"), hereby promises to pay to the order of Acis Capital Management, L.P., a Delaware limited partnership ("Payee"), at its office at 300 Crescent Court, Suite 700, Dallas, Texas 75201 in lawful money of the United States of America, the principal sum of TWELVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS (\$12,666,446), together with interest on the outstanding principal balance thereof from day to day remaining at the rate of three percent (3%) per annum, as provided herein.

Payments

THE UNPAID PRINCIPAL HEREOF, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST THEREON, SHALL AUTOMATICALLY BE DUE AND PAYABLE IN FULL, WITHOUT NECESSITY OF DEMAND OR NOTICE, ACCORDING TO THE AMORTIZATION TABLE ATTACHED HERETO AS EXHIBIT A.

All past due principal and interest shall bear interest from and after the date when due at a rate equal to the rate equal to the lesser of (a) eighteen percent (18.0%) per annum or (b) the Maximum Rate (as defined herein).

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a rate that exceeds the maximum rate allowed by applicable law (such rate, the "Maximum Rate") in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. If the regularly scheduled due date for any payment under this Note is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date. "Business Day" means a day, other than a Saturday, Sunday or legal holiday, on which a bank in Dallas, Texas is open for business.

Maker shall have the right to prepay this Note, in whole or in part, at any time and from time to time without premium or penalty. Amounts borrowed and repaid hereunder may not be reborrowed.

Conditions Precedent

This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until Payee has received each of the following in form and substance acceptable to Payee:

- (a) this Note executed by Maker;
- (b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Payee, and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note;
- (c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker; and

(d) such other agreements, documents, information, and other assurances as Payee may reasonably request.

**Events of Default**

Maker shall be in default under this Note upon the occurrence of any of the following events or conditions (each, an "Event of Default"):

(a) the failure of Maker to make any payment required to be made under this Note when such payment becomes due;

(b) Maker defaults in the performance of any obligation, covenant, or agreement now or hereafter made or owed by Maker to Payee, whether under this Note or any related document;

(c) any representation or warranty made by Maker to Payee in connection with this Note or any document executed or delivered in connection therewith, is false or misleading in any material respect when made;

(d) Maker shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(e) any involuntary proceeding shall be commenced against Maker seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property, in each case, that results in the entry of an order for any such relief or appointment that has not been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof;

(f) any lien, attachment, sequestration or similar proceeding against any of Maker's assets or properties other than liens in favor of Payee;

(g) any event or condition occurs that results in any indebtedness of Maker becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the holder of such indebtedness to cause any of such indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(h) the validity or enforceability of this Note shall be contested or challenged by Maker.

### Remedies

Should an Event of Default exist, Payee may but without any obligation to do so, at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, notice of intent to accelerate all or any part of the advances hereunder, notice of acceleration of all or any part of the indebtedness evidenced by this Note, or notice of any other kind, all of which Maker hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (a) terminate Payee's commitment to make any advances under this Note; (b) declare the indebtedness evidenced by this Note, or any part thereof, immediately due and payable, whereupon the same shall be due and payable (provided, however, that upon the occurrence of any event described in clause (e) of the definition of "Event of Default", such indebtedness shall become immediately due and payable in full without demand or acceleration); (c) reduce any claim to judgment; (d) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Payee to or for the credit or the account of Maker against any and all obligations, whether or not Payee exercises any other right or remedy hereunder and whether or not such obligations are then matured; (e) may cure any Event of Default, or event of nonperformance under this Note and/or (f) exercise any and all rights and remedies afforded by this Note, or by law or equity or otherwise, as Payee deems appropriate. No failure or delay of the holder hereof to exercise any of its rights or remedies shall not constitute a waiver thereof.

If the holder hereof incurs any costs or expenses in any attempt to enforce payment of all or any part of this Note, or if this Note is placed in the hands of an attorney for collection, Maker agrees to pay all such costs fees and expenses incurred, including without limitation, reasonable attorneys' fees.

### Miscellaneous

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with the applicable law of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the indebtedness under this Note (or applicable United States federal law to the extent that it permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If such law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to this Note, or if any payment by Maker results in Maker having paid any interest in excess of the amount that is permitted by such law, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance hereof (or, if the principal balance has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with all such applicable laws, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of money and other indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling provided by such applicable law. Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced hereunder to or for the account of Maker.

MAKER AND EACH SURETY, GUARANTOR, ENDORSER, AND OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE JOINTLY AND SEVERALLY WAIVE NOTICE, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST AND NON-PAYMENT OR DISHONOR, NOTICE OF ACCELERATION, NOTICE OF INTENT TO ACCELERATE, NOTICE OF INTENT TO DEMAND, DILIGENCE IN COLLECTING, GRACE, AND ALL OTHER FORMALITIES OF ANY KIND, AND CONSENT TO ALL EXTENSIONS WITHOUT NOTICE FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS,

BEFORE OR AFTER MATURITY, AND ANY IMPAIRMENT OF ANY COLLATERAL SECURING THIS NOTE, ALL WITHOUT PREJUDICE TO THE HOLDER. Without limiting the foregoing, any notice or demand upon Maker in connection with this Note shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid or (c) when properly transmitted by telecopy, in each case addressed to Maker's address for notice specified in connection with its signature below.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST MAKER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. MAKER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (I) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND (II) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ANY OTHER PARTY LIABLE HEREUNDER OR WITH RESPECT TO ANY COLLATERAL IN ANY STATE OR FEDERAL COURT IN ANY OTHER JURISDICTION. ANY ACTION OR PROCEEDING BY MAKER OR ANY OTHER PARTY LIABLE HEREUNDER AGAINST PAYEE SHALL BE BROUGHT ONLY IN A COURT LOCATED IN DALLAS COUNTY, TEXAS.

MAKER AND PAYEE EACH IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY KIND BROUGHT BY EITHER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MAKER AND PAYEE EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS NOTE OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, WHETHER OR NOT SPECIFICALLY SET FORTH THEREIN.

This Note embodies the final, entire agreement of Maker and Payee with respect to the indebtedness evidenced hereby and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating thereto and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Maker and Payee. There are no oral agreements between Maker and Payee.

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Maker's address for notice:

HIGHLAND CAPITAL MANAGEMENT, L.P.

300 Crescent Court

Suite 700

Dallas, TX 75201

Attention: Frank Waterhouse

Fax: 972-628-4147

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 7**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

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- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 | 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)	
Vol. 2 000450	12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
000466	01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
000481	01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
000491	01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
000501	01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
000502	01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
000505	01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	<p>Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)</p>
01/11/2021	1721	<p>Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,</p>

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

EXHIBIT A

Amortization Schedule

Interest Rate 3.0%

Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-



Schedule A

Participation Interests

<b>CLO Issuer</b>	<b>Total Servicer Fee</b>	<b>Servicer Fee Retention Amount</b>	<b>Acis Participation Interests</b>
Acis CLO 2013-1, Ltd.	50 bps	20 bps	30 bps
Acis CLO 2014-3, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-4, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-5, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2015-6, Ltd.	40 bps	20 bps	20 bps



## ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF INTERESTS (this "*Agreement*"), dated as of December 19, 2017 (the "*Effective Date*"), is entered into by and between ACTS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*Acis*"), and HIGHLAND CLO HOLDINGS, LTD., a Cayman Islands exempted company, ("*HICLOH*"), and together with Acis, the "*Parties*"). ACIS CLO MANAGEMENT, LLC, a Delaware series limited liability company ("*C-Moa*") joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Section 1.b., ACIS CLO Management, GP, LLC, a Delaware limited liability company ("*Holdings LP GP*"), joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Sections 1.c., 3.b.ii, and Acis CLO Management Intermediate Holdings II, LLC, a Delaware limited liability company ("*Acis Intermediate II*"), joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Section 3.b.iii.

### RECITALS

Whereas, each of Acis and Highland Capital Management, L.P., a Delaware limited partnership ("*HCM*") are parties to that certain (i) Fourth Amended and Restated Shared Services Agreement dated March 17, 2017 (the "*Shared Services Agreement*") pursuant to which HCM provides certain back- and middle-office services as well as administrative, infrastructure and other services and (ii) Third Amended and Restated Sub-Advisory Agreement dated March 17, 2017 (the "*Sub-Advisory Agreement*") pursuant to which HCM provides certain services to assist Acis in performing its obligations under portfolio management agreements, investment management agreements and the like; in each case with respect to Acis' investment management business;

Whereas, pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, there is a total of \$3,814,186 in outstanding and unreimbursed amounts owing from Acis to HCM (the "*Outstanding Receivable*");

Whereas, in connection with HCM and HICLOH entering into a shared services agreement and sub-advisor agreement, attached hereto as Exhibits A and B, respectively, HCM has transferred and assigned to HICLOH \$3,804,870 of the Outstanding Receivable (the "*Transferred Receivable*");

Whereas, in satisfaction of the Transferred Receivable, Acis proposes to transfer to HICLOH 100% of Acis' ownership interest in the assets listed in Schedule A hereto (the "*Interests*") as payment-in-kind to HICLOH to satisfy Acis' Transferred Receivable liability (the "*Interests Transfer*");

Whereas, as a result of the Interests Transfer, and in connection with HCM having notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis in each case with respect to Acis CLO 2017-7, Ltd. ("*Acis CLO-7*"), and in order to ensure the continued management of Acis CLO-7, Acis desires to transfer to HICLOH, simultaneous with the Interests Transfer, all of Acis' right, title and interest in each of the (i) Master Sub-Advisory Agreement and (ii) Staff and Services Agreement; in each case dated March 17, 2017 by and between C-Moa and Acis (the "*Acis Sub-Advisory Agreement*" and "*Acis Shared Services Agreement*", respectively, and together, the "*Acis Contracts*"), and the Acis Contracts together with the Interests, the "*Assets*" and the transfer of such Assets to HICLOH as contemplated herein, the "*Assets Transfer*"; and

Whereas, HICLOH agrees to accept the Assets hereunder in satisfaction of the Transferred Receivable pursuant to the terms herein.

## AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Transfer of Assets; Approvals.** As of the Effective Date:

- a. Acis hereby transfers 100% of Acis' right, title and interest in and to the Assets to HCLOH, and HCLOH hereby accepts all of Acis' right, title and interest in such Assets, and assumes of all of Acis' obligations, responsibilities and undertakings as specified therein as of the Effective Date;
- b. C-Moa hereby approves the transfer of all of Acis' right, title and interest to HCLOH of the:
  - i. Acis Sub-Advisory Agreement; and
  - ii. Acis Shared Services Agreement;
- c. Holdings LP GP, as general partner of Acis CLO Management Holdings, L.P., a Cayman Islands exempted limited partnership ("*Holdings LP*"), hereby approves transfer of all of Acis' right, title and interest in the limited partnership interest of Holdings, LP owned by Acis; and
- d. the Parties agree to take all subsequent steps necessary, including but not limited to executing supporting and/or ancillary documents such as transfer confirmations and joinder agreements, in connection with the transfer of the Assets, it being understood, however, that irrespective of such subsequent actions, each of the Parties' undertakings herein are irrevocable and constitute a fully enforceable agreement.

2. **Agreement to be Bound.** HCLOH hereby acknowledges that it has received and reviewed a complete copy of each of the following agreements, and as of the Effective Date shall be fully bound by, and subject to, all of the covenants, terms and conditions set forth in the following agreements, in each case, as amended, modified or supplemented from time to time, as though it were an original party thereto:

- a. Limited Liability Company Agreement of Acis CLO Management GP, LLC;
- b. First Amended and Restated Exempted Limited Partnership Agreement of Acis CLO Management Holdings, L.P.; and
- c. Limited Liability Company Agreement of Acis CLO Management Intermediate Holdings I, LLC, a Delaware limited liability company ("*Acis Intermediate I*").

3. **Withdrawals and Admissions.**

- a. As of the Effective Date, Acis hereby withdraws as a:
  - i. Member and managing member of Holdings LP GP;
  - ii. Limited partner of Holdings LP; and
  - iii. Member and managing member of Acis Intermediate I.
- b. As of the Effective Date, HCLOH is hereby admitted as:
  - i. The sole member and managing member of Holdings LP GP;
  - ii. A substitute limited partner of Holdings LP, and Holdings LP GP, in its capacity as the general partner of Holdings LP, hereby consents to such admission; and

- iii. A substitute member and the managing member of Acis Intermediate I, and Acis Intermediate II, in its capacity as a member of Acis Intermediate I, hereby consents to such admission.

4. **Representations and Warranties of Acis.** As of the Effective Date, Acis represents and warrants as follows:

- a. It has all requisite power, authority and capacity, corporate, limited partnership or otherwise, to execute, deliver and perform under this Agreement. Its execution, delivery and performance of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Acis. This Agreement is a legal, valid and binding agreement of such party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.
- b. The Assets are owned of record and beneficially by Acis, free and clear of any obligation, lien, claim, pledge, security interest, liability, charge, contingency or other encumbrance or claim of any nature. Acis has not assigned, pledged or otherwise in any manner whatsoever sold or transferred either by instrument in writing or otherwise, any right, title, interest or claim which it has or may have in the Assets or any matters arising out of, related thereto, or in connection therewith.
- c. Acis has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement.

5. **Representation and Warranties of HCLOH.** As of the Effective Date, HCLOH represents and warrants as follows:

- a. HCLOH has all requisite power, authority and capacity, corporate, individual or otherwise, to execute, deliver and perform under this Agreement. The execution, delivery and performance by HCLOH of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by HCLOH. This Agreement is a legal, valid and binding agreement of HCLOH, enforceable against each in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.
- b. HCLOH has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement.

6. **Indemnity.** Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person (as defined below) from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("**Claims**"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "**Proceeding**"), whether civil or criminal (all of such Claims, amounts and expenses referred to

therein are referred to collectively as "*Damages*"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. "*Covered Person*" means each of HCL011, C-Moa, Holdings LP GP, Holdings LP, Acis Intermediate II and Acis Intermediate I, as well as each and every one of their current and future affiliates (other than Acis), including all of such Covered Person's respective current and future managers, members, principals, partners, directors, officers, shareholders, employees, agents and successors in interest (other than Acis).

## 7. Miscellaneous.

- a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
- b. No Third Party Beneficiaries. Except for the Covered Persons, which shall be express third party beneficiaries for purposes of Section 6, and except as expressly set forth in Sections 7.h. and 7.m., for the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
- c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.
- e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

- g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):
- i. If to Acis:  
Acis Capital Management, LP  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Facsimile: 972-628-4147
  - ii. If to HICLOH:  
Highland CLO Holdings, Ltd.  
PO Box 309  
Ugland House  
Grand Cayman KY1-1104  
Cayman Islands
- h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and each of HICLOH, C-Moa, Holdings LP, Holdings LP GP, Acis Intermediate II and Acis Intermediate I shall be entitled to such relief without the necessity of proving actual damages or posting a bond.
- i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection with this Agreement and the transactions contemplated hereby.
- j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Parties.
- k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

- m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of HCLOEI, Holdings LP, C-Moa, Holdings LP GP, Acis Intermediate II or Acis Intermediate I, Acis shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its  
General Partner

By: 

Name: James Dondero

Title: President

HIGHLAND CLO HOLDINGS, LTD.

\_\_\_\_\_  
For and on behalf of Summit Management,  
Limited

Director

CONSENTED AND AGREED, solely for the purposes  
set forth in Section 1.b.:

ACIS CLO MANAGEMENT, LLC

By: Acis CLO Management Holdings, L.P., its  
Managing Member

By: Acis CLO Management GP, LLC, its General  
Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General  
Partner

By: 

Name: James Dondero

Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

ACIS CAPITAL MANAGEMENT, L.P.

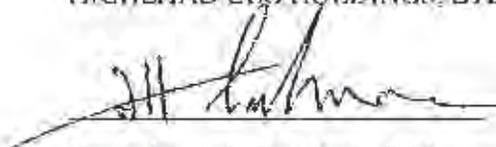
By: Acis Capital Management GP, LLC, its  
General Partner

By: \_\_\_\_\_

Name: James Dondero

Title: President

HIGHLAND CLO HOLDINGS, LTD.



For and on behalf of Summit Management,  
Limited

Director

CONSENTED AND AGREED, solely for the purposes  
set forth in Section 1.b.:

ACIS CLO MANAGEMENT, LLC

By: Acis CLO Management Holdings, L.P., its  
Managing Member

By: Acis CLO Management GP, LLC, its General  
Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General  
Partner

By: \_\_\_\_\_

Name: James Dondero

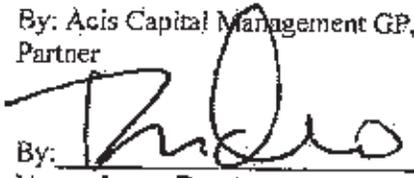
Title: President

CONSENTED AND AGREED, solely for the purposes set forth in Sections 1.c. and 3.b.ii.:

ACIS CLO MANAGEMENT GP, LLC

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General Partner

By: 

Name: James Dondero

Title: President

CONSENTED AND AGREED, solely for the purposes set forth in Section 3.b.iii.:

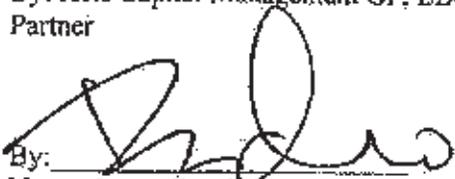
ACIS CLO MANAGEMENT INTERMEDIATE HOLDINGS II, LLC

By: Acis CLO Management Holdings, L.P., its Managing Member

By: Acis CLO Management GP, LLC, its General Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General Partner

By: 

Name: James Dondero

Title: President

SCHEDULE A

1. Limited liability company interest in:
  - a. Acis CLO Management Intermediate Holdings I, LLC
  - b. Acis CLO Management GP, LLC
  
2. Limited partnership interest in Acis CLO Management Holdings, L.P.

## ASSIGNMENT, TRANSFER AND AMENDMENT AGREEMENT

THIS ASSIGNMENT AND TRANSFER Agreement (this "*Agreement*"), dated as of December 19, 2017 (the "*Effective Date*"), is entered into by and among The Dugaboy Investment Trust, a Delaware trust ("*Dugaboy*"), Mark K. Okada, an individual ("*Mr. Okada*"), Neutra, Ltd., a Cayman Islands exempted company ("*Neutra*"), and Acis Capital Management GP, LLC, a Delaware limited liability company ("*Acis GP*"), and together with Dugaboy, Mr. Okada and Neutra, the "*Parties*"). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in (i) that certain Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P., a Delaware limited partnership ("*Acis*"), dated to be effective as of January 21, 2011 (as amended, modified or supplemented from time to time, the "*LPA*"), or (ii) that certain Amended and Restated Limited Liability Company Agreement of Acis GP, dated to be effective as of January 21, 2011 (as amended, modified or supplemented from time to time, the "*LLC Agreement*"), as applicable.

### RECITALS

WHEREAS, Dugaboy is the (i) sole member and holder of all outstanding membership interests of Acis GP (the "*Acis GP Interest*"), and (ii) the holder of a 74.9% Partnership Interest of Acis (the "*Dugaboy Acis Interest*");

WHEREAS, Mr. Okada is the holder of a 25.0% Partnership Interest of Acis (the "*Okada Acis Interest*"); and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, (i) Dugaboy desires to sell, transfer, assign and convey to Neutra, and Neutra desires to accept and assume from Dugaboy, the Acis GP Interest and the Dugaboy Acis Interest, and (ii) Mr. Okada desires to sell, transfer, assign and convey to Neutra, and Neutra desires to accept and assume from Mr. Okada, the Okada Acis Interest,

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, intending to be legally bound hereby, the Parties agree as follows:

### AGREEMENT

#### 1. Assignments and Transfers. Effective as of the Effective Date:

- a. Dugaboy hereby irrevocably sells, transfers, assigns and conveys to Neutra, and Neutra hereby accepts and assumes from Dugaboy, all right, title and interest in, to and under the Acis GP Interest and the Dugaboy Acis Interest.
- b. Mr. Okada hereby irrevocably sells, transfers, assigns and conveys to Neutra, and Neutra hereby accepts and assumes from Mr. Okada, all right, title and interest in, to and under the Okada Acis Interest.

2. **Withdrawals and Admissions.** Effective as of the Effective Date:
- Dugaboy hereby irrevocably withdraws as a Member of Acis GP and Limited Partner of Acis.
  - Mr. Okada hereby irrevocably withdraws as a Limited Partner of Acis.
  - Neutra is hereby admitted as the sole Member and Managing Member of Acis GP and a Limited Partner of Acis.
3. **Agreement to be Bound.** Neutra hereby acknowledges that it has received and reviewed a complete copy of the LPA and the LLC Agreement, and shall be fully bound by, and subject to, all of the covenants, terms and conditions of LPA and LLC Agreement as though it were an original party thereto.
4. **Amendments.** Effective as of the Effective Date:
- Exhibit A of the LPA is hereby amended and replaced in its entirety with Exhibit A attached hereto.
  - The definition of "Member" set forth in Article 11 of the LLC Agreement is hereby amended and replaced in its entirety as follows:  
"Member" means Neutra, Ltd., a Cayman Islands exempted company.
5. **Consent to Transactions.** In accordance with the LPA, Acis GP hereby consents to each of the transaction contemplated hereby.
6. **Miscellaneous.**
- Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
  - No Third Party Beneficiaries.** For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
  - Terms Confidential.** The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
  - Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

- e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- g. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and Parties shall be entitled to such relief without the necessity of proving actual damages or posting a bond.
- h. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection.
- i. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- j. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- k. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- l. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By:   
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

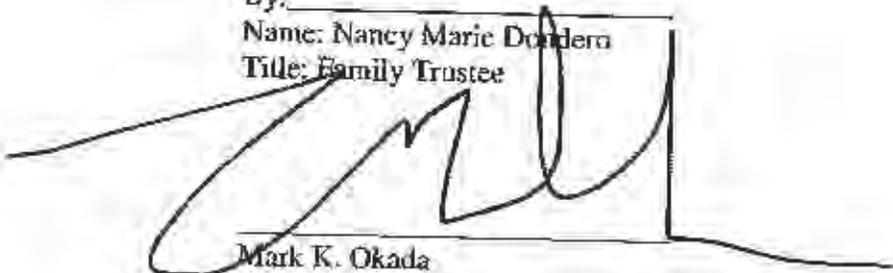
ACIS CAPITAL MANAGEMENT GP,  
LLC

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By: \_\_\_\_\_  
Name: Nancy Marie Dondora  
Title: Family Trustee



Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

ACIS CAPITAL MANAGEMENT GP,  
LLC

By: \_\_\_\_\_  
Name: James Dondora  
Title: President

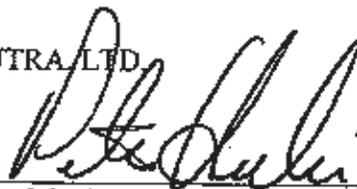
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By: \_\_\_\_\_  
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA LTD.

By:  \_\_\_\_\_  
Name: MaplesFS Directors Limited  
Title: Director  
Peter Huber  
Authorised Signatory

ACIS CAPITAL MANAGEMENT GP,  
LLC

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

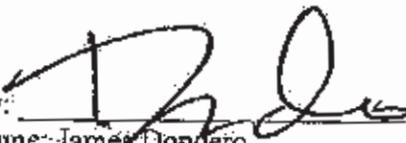
By: \_\_\_\_\_  
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

ACIS CAPITAL MANAGEMENT GP,  
LLC

By:   
Name: James Dondero  
Title: President.



CAUSE NO. DC-17-15244

JOSHUA N. TERRY,

Plaintiff,

v.

ACIS CAPITAL MANAGEMENT, L.P. and  
ACIS CAPITAL MANAGEMENT GP, LLC,

Defendants.

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IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

44<sup>th</sup> JUDICIAL DISTRICT

**DECLARATION OF JOSHUA N. TERRY**

STATE OF TEXAS

COUNTY OF DALLAS

§  
§  
§

1. My name is Joshua N. Terry.
2. I am both qualified and competent to give this declaration, and I have personal knowledge of the facts stated herein based upon my extensive experience as a partner in Acis Capital Management, L.P. (“Acis”), as well as my personal involvement in the matters discussed herein. I have never been convicted of a felony or crime of moral turpitude.
3. I give this declaration in conjunction with the filing of Plaintiff’s Application for Temporary Restraining Order (the “Application”), and all defined terms in the Application are incorporated herein.
4. Attached as Exhibits 1-2 and 4-8 are true and correct copies of documents produced by Acis pursuant to Court order or in the underlying arbitration proceeding.
5. I ran Acis’ day-to-day operations from 2011 until I was wrongfully terminated in June 2016. In my capacity as portfolio manager of Acis, I had involvement in all facets of Acis’ business operations, strategy, and finances.
6. I am well-versed in the CLO industry, where I have worked since 2005. I have earned the right to use the Chartered Financial Analyst designation. From my experience, education, and training, I became very familiar with the common and legitimate business practices of CLO managers in the industry, as well as the value of CLO management contracts.
7. In 2015, I valued Acis in excess of \$70 million, a conclusion that was accepted by David Klos, a Highland employee.
8. On February 28, 2012, Highland sold four European CLO management contracts to The Carlyle Group for \$43.6 million in an arms-length transaction. Those four CLO management

contracts are less valuable than the five Management Contracts Acis owns and which it now seeks to transfer for no consideration;

9. The Management Contracts are the most substantial asset of Acis and are valued in excess of \$30 million.

10. There is no legitimate business purpose for Acis to transfer the Management Contracts for no consideration. This transaction makes no business sense. Typically, CLO management contracts like these in the CLO industry would be transferred only for a significant amount of cash or other valuable consideration.

11. There is no legitimate business purpose for Acis to transfer the Highland Note for no consideration.

12. It is not in the normal course of Acis' business to transfer all of its Management Contracts for no consideration, or to transfer the Highland Note for no consideration.

13. If Acis transfers the Management Contracts, Acis will not have assets adequate to satisfy the Judgment.

**JURAT**

My name is Joshua N. Terry. My date of birth is 1/16/81, and my address is 25 Highland Park Village, Suite 100-848, Dallas Texas 75205. I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed pursuant to Tex. Civ. Prac. & Rem. Code § 132.001, and any other applicable law authorizing use of an unsworn declaration.

Executed in Dallas County, State of Texas, on the 23<sup>rd</sup> day of January 2018.

  
\_\_\_\_\_  
Joshua N. Terry, Declarant



REPORTER'S RECORD

VOLUME \_\_\_ OF \_\_\_

TRIAL COURT CAUSE NO. DC-17-15244-B

1  
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4  
5 JOSHUA N. TERRY, ) IN THE DISTRICT COURT  
6 Plaintiff, )  
7 VS. )  
8 ) OF DALLAS COUNTY, TEXAS  
9 ACIS CAPITAL MANAGEMENT, L.P. )  
10 and ACIS CAPITAL MANAGEMENT )  
11 GP, LLC, )  
12 Defendants. ) 44TH JUDICIAL DISTRICT

13 PLAINTIFF'S APPLICATION FOR  
14 TEMPORARY RESTRAINING ORDER  
15 which was heard on  
16 Wednesday, January 24, 2018

17  
18  
19 On the 24th day of January 2018, the following  
20 proceedings came on to be heard in the above-entitled  
21 and numbered cause before the Honorable Bonnie Lee  
22 Goldstein, Judge Presiding, held in Dallas, Dallas  
23 County, Texas.

24 Proceedings reported by machine shorthand  
25 utilizing computer-assisted realtime transcription.

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APPEARANCES:

MR. BRIAN P. SHAW  
Texas State Bar No. 24053473  
Email: Shaw@ClouseDunn.com  
CLOUSE DUNN, LLP  
1201 Elm Street, Suite 5200  
Dallas, Texas 75270-2142  
Telephone: (214) 220-3888  
Facsimile: (214) 220-3833

ATTORNEYS FOR PLAINTIFF

MR. GARY CRUCIANI  
Texas State Bar No. 5177300  
GCruciani@McKoolSmith.com  
MR. MICHAEL P. FRITZ  
Texas State Bar No. 24036599  
Email: MFritz@McKoolSmith.com  
McKool SMITH, P.C.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
Telephone: (214) 978-4000  
Facsimile: (214) 978-4044

ATTORNEYS FOR DEFENDANTS  
Acis Capital Management,  
L.P. and Acis Capital  
Management GP, LLC

\* \* \*

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INDEX TO THE  
  
PLAINTIFF'S APPLICATION FOR  
  
TEMPORARY RESTRAINING ORDER  
  
which was heard on  
  
Wednesday, January 24, 2018

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1 of these agreements.

2 THE COURT: All right. I tell you what.  
3 You all need to confer. I need to go get ahold of  
4 Jonathan, my court coordinator.

5 MR. SHAW: Thank you, Judge.

6 THE COURT: You're welcome. Off the  
7 record.

8

9 (There was a discussion off the record.)

10

11 THE COURT: Let's put this on the record,  
12 and then we will give you a date. Go ahead.

13 MR. SHAW: Judge, Brian Shaw on behalf of  
14 the plaintiff. The parties have agreed to an order for  
15 the Court.

16 The first agreement, which is -- when  
17 it comes to the order, is Acis agrees that it shall  
18 not make any change from Acis to another manager on  
19 any CLOs between now and a hearing on plaintiff's  
20 Application for Temporary Injunction, defined TI  
21 hearing.

22 Number two, Acis agrees that:

23 A. Any money received by Acis between  
24 now and the TI hearing will be preserved in an Acis  
25 bank account;

1 B. There shall be no changes to Acis'  
2 right to receive servicing fees between now and the  
3 TI hearing; and

4 C. Acis shall not divert any moneys owed  
5 to it between now and the TI hearing:

6 Plaintiff submits that is the Agreed  
7 Order that the plaintiff is submitting to the Court.

8 THE COURT: Okay. Are you going to get  
9 that to me in a document that I can actually sign?

10 MR. SHAW: We can do that. Do you have  
11 any problem with that?

12 MR. CRUCIANI: I would prefer it just  
13 be an order of the Court, as opposed to a contractual  
14 Rule 11 agreement. I agree that that is the agreement  
15 of the parties.

16 And if the Court would give its  
17 imprimatur of the agreement, that would be our  
18 preference.

19 MR. SHAW: And if we have an issue, then  
20 we will just go back and get the record.

21 THE COURT: Okay.

22 MR. SHAW: So that's fine with us.

23 THE COURT: It will be so ordered. Let's  
24 go off the record for a second.

25 (There was a discussion off the record.)

1 THE COURT: All right. This is what I'm  
2 going to allow. February 1st, you all are not coming  
3 in until 1:00. You have the morning to take the  
4 deposition briefly, two hours each side.

5 If the plaintiff chooses to retain an  
6 expert, you will have two hours with that retained  
7 expert. And then you can also have two hours with  
8 Mr. Terry so that we can go forward.

9 And you are not committed to the time at  
10 the court-ordered deposition. As soon as you can give  
11 him notification, as soon as you know you are going to  
12 have a retained expert.

13 The 29th is five days from now. Do you  
14 think you will have that by the 29th, do you believe?

15 MR. SHAW: I should. I will do  
16 everything I can to get that done by them.

17 THE COURT: All right. So if you can  
18 give them notice by the 29th, with the CV and  
19 everything that they would be entitled to.

20 MR. CRUCIANI: With the report. Right?

21 THE COURT: With the report.

22 MR. CRUCIANI: All right.

23 THE COURT: Okay. And we will set this  
24 for February 1st at 1:00 p.m., acknowledging that that  
25 gives you at least two hours and hopefully maybe a

1 little bit more than that.

2 MR. CRUCIANI: Okay.

3 MR. SHAW: Thank you for getting us in,  
4 Judge. I appreciate your time.

5 MR. CRUCIANI: We really do.

6 THE COURT: You're welcome. Thank you.  
7 We are off the record.

8

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12 (This completes the Reporter's Record  
13 of the Plaintiff's Application for  
14 Temporary Restraining Order which was  
15 heard on Wednesday, January 24, 2018.)

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

<p>In re</p> <p>ACIS CAPITAL MANAGEMENT, L.P.</p> <p>Alleged Debtor.</p>	<p>Chapter 7</p> <p>Case No. 18-30264-SGJ7</p>
<p>In re</p> <p>ACIS CAPITAL MANAGEMENT GP, LLC</p> <p>Alleged Debtor.</p>	<p>Chapter 7</p> <p>Case No. 18-30265-SGJ7</p>

**JOINT OBJECTION OF ALLEGED DEBTORS TO  
EMERGENCY MOTION OF PETITIONING CREDITOR TO ABROGATE OR  
MODIFY 11 U.S.C. § 303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE,  
INTER ALIA, 11 U.S.C. § 363**

**TO THE HONORABLE STACEY G. C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Acis Capital Management, L.P. (“**Acis LP**”) and Acis Capital Management GP, LLC (“**Acis GP**” and together with Acis LP, “**Acis**”), the alleged debtors in the above-captioned cases, hereby submit this Joint Objection (the “**Objection**”) to the *Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and*

*Impose, inter alia, 11 U.S.C. 363* [Case No. 18-30264-SGJ7, Docket No. 3; Case No. 18-30265-SGJ7, Docket No. 3] (the “**303(f) Motion**”) filed by Joshua Terry (“**Terry**”). In support of this Objection, Acis respectfully states as follows:

**I.**  
**INTRODUCTION**

1. Terry holds a state-court judgment against Acis and is one of 18 creditors of Acis. Terry initiated these involuntary chapter 7 cases—acting alone as opposed to in concert with other creditors as required by Section 303(b)(1) of Title 11 of the United States Code (the “**Bankruptcy Code**”) - as a bad-faith litigation tactic and attempt at forum shopping in the context of his longstanding dispute with Acis. Terry filed his involuntary petition against Acis LP at 11:57 p.m. on January 30 and against Acis GP on January 31 at 12:00 a.m. (the “**Involuntary Petitions**”). On January 31, Acis filed a Joint Motion to Dismiss the Involuntary Petitions (the “**Motion to Dismiss**”) and a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(d) (the “**Creditor List**”). Acis’s Motion to Dismiss establishes that the Involuntary Petitions are fatally defective because Acis has more than 12 creditors, thereby requiring a minimum of 3 creditors to join in the filing of the Involuntary Petitions. Yet, Terry was the sole creditor to file.

2. The filing of the Involuntary Petitions filings was a transparent attempt to derail two imminent events. The first was a temporary injunction hearing that was scheduled to be heard in Dallas state court on January 31 (the “**Temporary Injunction Hearing**”). The second was the closing of a \$420 million transaction involving the reissuance of CLO-3 (as detailed and defined below) (the “**\$420 Million CLO-3 Reissue Transaction**” or “**Transaction**”) that has been in the making since May 2017 and that was scheduled to close on February 1.

3. Terry sought a state-court injunction to prevent Acis from transferring a management contract (the “**Collateral Management Agreement**” or “**CMA**”) from Acis to a Highland entity as part of the Transaction. As will be explained, this CMA is central to Terry’s 303(f) Motion. The transfer of the CMA is a ministerial task that Acis is contractually required to perform and is the last remaining condition to close the \$420 Million CLO-3 Reissue Transaction. Terry has falsely and without any basis claimed that this CMA is worth multiple millions of dollars and that Acis is attempting to fraudulently transfer the CMA in order to avoid paying an \$8 million judgment (that will be appealed) that Terry recently obtained against Acis. But, as set forth below, the facts are the opposite.

4. First, contrary to Terry’s unsupported assertions, the CMA has no value. Acis has no employees, and has never had any employees. Acis has always performed the management services required of it by the CMA by subcontracting those obligations to certain Highland entities (“**Highland Servicers**”). Thus, Acis receives management fees (the “cash inflows”) but then pays fees to the Highland Servicers (the “cash outflows”) under contracts that have been in place for years. Presently, *the cash outflows under the CMA exceed the cash inflows that results in negative cash flow, and thereby rendering the CMA worthless.*

5. Second, and a point that cannot be overstated, the very relief that Terry previously sought in state court, and now seeks in this Court, would cause the CMA to be terminated pursuant to its terms and thereby also render the CMA worthless. On January 29, Terry filed an application with the state court seeking the appointment of a receiver over Acis. In this Court, Terry has filed Involuntary Petitions against Acis. However, *under paragraph 15 of the CMA, [1] the appointment of a receiver and [2] an involuntary bankruptcy petition that “remain[s] undismissed for 60 days and result[s] in an adjudication of bankruptcy or insolvency” are*

*grounds for the CMA to be terminated and for Acis to be removed “for cause” as the collateral manager upon 30 days’ notice.* On the one hand, Terry argues that the CMA is worth millions of dollars and asks this Court to preserve its value by preventing the CMA from being transferred as part of the \$420 Million CLO-3 Reissue Transaction. On the other hand, if Terry succeeds in his effort to throw Acis into bankruptcy, the CMA will be terminated and will cease to have any value. These undisputed facts expose Terry’s bad faith motive behind his state-court and bankruptcy-court filings. Ironically, the very relief requested by Terry in state court and in Bankruptcy Court regarding the CMA would itself destroy any value associated with the CMA by causing the CMA to be terminated.

6. So, why is Terry engaging in this act of self-immolation that will guarantee the CMA will be terminated and any value associated with it to be extinguished? The answer: to try to hold hostage the \$420 Million CLO-3 Reissue Transaction and extort a settlement. Terry’s motive is not to preserve the CMA as part of Acis’s assets that would be available to satisfy his judgment. As discussed herein, the CMA has no value and is going away *regardless* of whether or not the Transaction closes.

7. To fully understand the context of the 303(f) Motion, it is important to understand what transpired in the underlying litigation that resulted in the judgment that Terry obtained against Acis, which judgment Terry is now using as a pretext to throw Acis into bankruptcy and block the \$420 Million CLO-3 Reissue Transaction. Terry was an employee of Highland who was integrally involved in the formation and management of Highland’s CLO business, including CLO-3. In 2016, Highland fired Terry for cause for various acts of misconduct. Terry is *persona non grata* in the CLO industry because he secretly tape recorded his Highland

colleagues, and no one in the CLO industry wants anything to do with Terry or Acis, and the Acis name is now toxic as a result of Terry's actions.

8. Upon being terminated by Highland, Terry filed arbitration claims against six parties: Acis LP; Acis GP; Highland; Highland's two founders (James Dondero and Mark Okada); and Dugaboy Investment Trust ("Dugaboy"). Terry asserted a claim for more than \$200 million and received an \$8 million award against Acis. Terry's claims against Highland, Dondero, Okada, and Dugaboy were all dismissed. Also, Terry's claim that the promissory note transaction between Highland and Acis (the "**Promissory Note**") (the same note referenced at paragraphs 2 and 6 of the 303(f) Motion) was a fraudulent transfer, but the arbitration panel likewise rejected this claim.

9. As a result of losing on all his claims against the deep-pocketed defendants in the arbitration and losing on his fraudulent transfer claim, Terry is left with a pyrrhic victory—a largely uncollectible judgment against Acis. If that fact was not already apparent to Terry, it became so on January 29 when, pursuant to Texas state law, Acis filed a motion to post a supersedeas bond in the amount of \$495,070.50, which is equal to 50 percent of Acis's net worth as of January 29. Terry thus realized that even if he ultimately prevailed on Acis's appeal of the \$8 million judgment, Terry was never going to recover more than the approximately \$500,000 bond amount.

10. Thus, Terry has been flailing about trying to create as much mayhem as possible to see if he can succeed in a shakedown by attempting to block the \$420 Million CLO-3 Reissue Transaction from closing. Terry's filings are made in complete disregard of Terry's own self-interest (the request for a receiver and the Involuntary Petitions) and in complete disregard for

the investors in the \$420 Million CLO-3 Transaction who stand to lose tens of millions of dollars if the Transaction does not close.

11. According to Terry’s fanciful allegations, the Transaction is itself a fraudulent transfer that Highland and Acis allegedly orchestrated to deprive him of the ability to satisfy his judgment against Acis. But, as will be explained, there are numerous reissues or refinances that have taken place, and are scheduled to take place, throughout the CLO industry as a result of changing market forces—specifically, declining interest rates from the time the CLOs were first issued.

12. In fact, Highland has been engaged in efforts to restructure the Acis CLOs long before the arbitration award was issued in October 2017. Highland closed on a restructure of CLO-2 on April 10, 2017 and it began work on the restructure of CLO-3 (the CLO at issue) as far back as May 2017. Thus, contrary to Terry’s wild assertions, the \$420 Million CLO-3 Reissue Transaction is being driven by legitimate business purposes in the ordinary course of business and not by some Machiavellian scheme by Acis to “dismantle their business to the great detriment of their single largest creditor, Mr. Terry” as Terry falsely claims.

13. Another important point for the Court to consider is that Terry’s 303(f) Motion is long on hyperbole and name-calling but short on facts regarding alleged past fraudulent transfers and future fraudulent transfers. But, here are the facts. To date, there has been a single fraudulent-transfer claim that has been litigated and that is Terry’s claim in the arbitration involving the October 2016 transaction giving rise to the Promissory Note in which Highland agreed to pay \$12.6 million to Acis in return for Acis transferring to Highland the right to certain future cash flows was a fraudulent transfer.<sup>1</sup> The arbitration panel roundly rejected Terry’s

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<sup>1</sup> In his 303(f) Motion regarding a subsequent November 2017 transaction involving this same promissory note (the “**Note Transfer**”), Terry alleges that “[u]pon information and belief, Acis did not receive *sufficient consideration*

fraudulent-transfer claims, holding that “[t]he transactional documents recite business purpose and reasonable consideration for the sale.” Final Award, at 17, Exhibit No. 1, hereto.<sup>2</sup> Moreover, “Terry offer[ed] no evidence that ACIS did not receive reasonable equivalent value in the transaction or that ACIS made the transfer with ‘actual intent to hinder delay or defraud.’” *Id.* With respect to the fraudulent-transfer allegations that are littered throughout the 303(f) Motion, this Court should take such allegations with a heavy dose of salt given Terry’s prior, unsuccessful claims of fraudulent transfers.

14. To bring things full circle, given that the same relief that Terry now seeks in his 303(f) Motion—blocking the \$420 Million CLO-3 Reissuance Transaction—was scheduled to be heard by the state court judge at the Temporary Injunction Hearing on January 31, that begs the following question: Why did Terry simply not go forward with the January 31 Temporary Injunction Hearing in state court and instead file the Involuntary Petitions against Acis and file an emergency 303(f) Motion? The answer is clear: Terry knew that the handwriting was on the wall and that the state court was not going to enjoin the \$420 Million CLO-3 Reissuance Transaction from closing the next day and then Terry would lose all leverage to try to block the Transaction. Terry’s machinations did succeed in causing the closing of the Transaction to be rescheduled from February 1 to February 13. However, as the evidence will show, if this

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for the Note Transfer.” This assertion is in sharp contrast to a sworn declaration that Terry signed on January 23 in support of a temporary restraining order in which he falsely claimed based upon his “*personal knowledge*” that the November 2017 Note Transfer was for “*no consideration*.” Terry Decl. ¶11, Exhibit No.2. At a TRO hearing in state court on January 24, Acis’s counsel pointed out that this statement in Terry’s declaration was false because, among other consideration, the Note Transfer reflected a commitment by a Highland entity to pay Acis upon demand up to \$2 million in legal expenses and an additional \$1 million in administrative expenses. Thus, in his 303(f) Motion, Terry has been forced to change his tune that the Note Transfer was a fraudulent transfer based upon his “*personal knowledge*” that Acis received “*no consideration*” for the transfer to a statement that “*upon information and belief*” Acis did not receive “*sufficient consideration*” for the transfer. The sworn statement in Terry’s January 23 declaration is just one of many misleading and false statements that Terry has made and Acis intends to bring to light in its cross-examination of him at the hearing on his 303(f) Motion.

<sup>2</sup> Each Exhibit referenced herein is incorporated herein by such reference.

Transaction does not close on February 13, it will never close and will cause innocent third party investors to lose tens of millions of dollars.

15. As is detailed herein, Acis's interest in the Transaction is limited to the ministerial assignment of the CMA and not a transfer of millions of dollars of assets of Acis—as Terry suggests is happening. Moreover, Terry's requested relief is an exercise in futility because whether or not the Transaction closes Terry will be in same position. Either the Transaction goes forward or CLO-3 will liquidate. In either case, Acis no longer will manager CLO-3 and the CMA will have no value. However, if CLO-3 liquidates, the third-party investors to whom Acis owes a fiduciary duty stand to lose tens of millions of dollars. Preventing the Transaction therefore would create no additional value for Acis, while creating substantial damages for the investors and risk of claims by them against Acis (and Terry).

16. Because Section 303(f) of the Bankruptcy Code would have allowed Acis to complete the closing of the \$420 Million CLO-3 Reissue Transaction, notwithstanding the Involuntary Petitions, Terry compounded his ill-conceived litigation strategy in filing the Involuntary Petitions by filing the 303(f) Motion, which seeks to impose (before an order for relief is entered and on the strength of Involuntary Petitions which are deficient on their face) the requirements of Section 363 of the Bankruptcy Code. For the reasons set forth below, the 303(f) Motion should be denied.

## **II. HISTORICAL BACKGROUND<sup>3</sup>**

### **A. Acis, Highland, and the CLO Structure**

17. Highland is in the business of putting together and managing collateralized loan obligations (“**CLOs**”). It is one of the primary players in the CLO industry. A CLO is a legal entity that owns a basket of loans, which are managed by a collateral manager (the “**Collateral Manager**”). The Collateral Manager buys loans into, or sells them out of, the basket. The CLO has its own bondholders (lenders to the CLO) (“**Bondholders**”), and its own equity holders (“**Equity Holders**”).

18. Acis LP is the Collateral Manager for CLO-3 as well as four other distinct CLOs. Acis has absolutely no economic interest in any of the CLOs, which includes CLO-3 and the \$420 million in loans that CLO-3 holds. Rather, Acis, as Collateral Manager, provides services to the CLO and is compensated for its services in accordance with the Collateral Management Agreement or CMA. Exhibit No. 3, hereto. The duties and obligations Acis owes CLO-3, in its capacity as Collateral Manager, are governed by the CMA. Among other things, Acis’s duties as Collateral Manager include: supervising and directing the investment and reinvestment of CLO assets; monitoring the CLO assets and providing to the Issuer (the CLO) certain reports, schedules, and other data; and directing an optional redemption under the Indenture on behalf of the Issuer. CMA § 3. Additionally, Acis is obligated to “use commercially reasonable efforts to ensure that no action is taken by it” that would materially and adversely affect the Issuer.” CMA § 8.

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<sup>3</sup> The facts and statements herein will be supported by testimony and evidence presented at the hearing on the 303(f) Motion.

19. Because Acis has no employees it does not and cannot provide any services directly to the CLOs as required by the CMAs. However, the CMA allows Acis to contract with third parties to provide these services, which Acis has done. Specifically, Acis has entered into several agreements with other Highland affiliates to provide the required services. In one such agreement, a Highland affiliate provides “front-office” services that include the buying and selling of the loans that comprise the CLO (the “**Sub-Advisory Agreement**”). Pursuant to the Sub-Advisory Agreement, Highland provides to Acis, among other things, the following services: “mak[ing] recommendations to [Acis] . . . as to the general composition and allocation of the Portfolio . . . including recommendations as to the specific loans and other assets to be purchased, retained or sold”; “plac[ing] orders with respect to, and arrang[ing] for, any investment by or on behalf of [an] Account”; “identify[ing], evaluat[ing], recommend[ing] to [Acis] . . . the structure and/or terms of investment opportunities within the specific investment strategy of [Acis]”; “provid[ing] information to [Acis] . . . regarding any investments to facilitate the monitoring and servicing of such investments”; and “assist[ing] and advis[ing] [Acis] . . . with respect to credit functions including, but not limited to, credit analysis and market research and analysis.” Sub-Advisory Agreement § 1(b). Exhibit No. 4, hereto. The Sub-Advisory Agreement “shall terminate automatically with respect to any Management Agreement on the date on which (i) such Management Agreement has been terminated . . . or (ii) [Acis] is no longer acting as portfolio manager . . . whether due to removal, resignation or assignment.” *Id.* § 6(b).

20. In another agreement, a Highland affiliate provides “back-office” services that include the accounting, legal, and other administrative functions necessary in servicing the loans (the “**Shared Services Agreement**”). Under the Shared Services Agreement, Highland provides

to Acis essential services, including: “[a]ssistance and advice with respect to back- and middle-office functions including, but not limited to, accounting, payments, operations, technology and finance”; “[a]ssistance and advice with respect to legal issues, compliance support and implementation and general risk analysis”; “access to marketing team representatives to assist with the marketing of [Acis]”; “[a]ssistance relating to any reporting [Acis] is required to make”; and “[t]he provision of office space, information technology services and equipment, infrastructure and other related services requested or utilized by [Acis].” Shared Services Agreement § 2.02. Exhibit No. 5. Though these services are essential to Acis’s capacity to serve as Collateral Manager, “[e]ither party may terminate [the Shared Services] Agreement *at any time* upon at least thirty (30) days’ written notice to the other.” *Id.* § 7.01 (emphasis added).

21. The Highland affiliates have notified Acis that they no longer intend to provide services to Acis pursuant either to the Sub-Advisory Agreement or Shared Services Agreement for CLO-3. Thus, even if the Transaction did not close, that would leave Acis unable to provide the services it is required to provide as Collateral Manager, which failure constitutes a basis for removing Acis as collateral manager and terminating the CMA on 30 days’ notice. *See* CMA § 15(g) (CMA may be terminated and Acis may be removed as Collateral Manager upon 30 days’ notice due to “the inability of [Acis] to perform its duties hereunder in accordance with the standard of care specified herein due to the termination of the Service Agreements [defined as the Shared Services Agreement and Sub-Advisory Agreement].” Exhibit No. 3.

22. Terry was an employee of Highland from 2005 until June 2016 when Highland terminated Terry for cause. Terry was integrally involved in the Acis CLOs, having launched the CLOs, set up their structure, and serving as portfolio manager for several years.

23. Highland helped put together six CLOs bearing the Acis name from 2013 until 2015. These are named Acis CLO-I through Acis CLO-6. These CLOs had loan portfolios ranging in value from around \$300 million to \$550 million at the time they were initiated.

### **B. CLO Reissuances Prompted by Falling Interest Rates**

24. The loans held by the CLO pay cash when the borrowers from the CLO pay interest and principal on the loans. The borrowers send their payments to the CLO Trustee's<sup>4</sup> collections account. Each quarter, the Trustee pays out the cash in the collections account. The quarterly payments, also called the "waterfall," are made according to the priority set out in the CLO's indenture (the CLO's governing document). First, the CLO's Collateral Manager receives a fee. Second, the Bondholders are paid in order of priority: the AAA bondholders are paid first, the AA bondholders are paid, etc., until the most-junior bondholders are paid. Third, the Equity Holders—the last group to be paid in a CLO structure—receive what is left from the collections account after all the management expenses and Bondholders are paid. If there is enough cash left at the bottom of the waterfall, the Equity Holders receive a good return. If there is not enough cash, the Equity Holders may get no money for that quarter.

25. The amount of money paid to the Equity Holders in a given quarter will depend on the amount of cash paid *into* the CLO by the borrowers, less the amount that has to be paid *out* to the CLO's Bondholders for that quarter. When loan interest rates are high in the market, the borrowers pay more cash into the CLO and the Equity Holders receive a good return each quarter. CLOs created in calendar year 2014, including CLO-3, were issued when interest rates were higher than they are today. Given these lower interest rates Borrowers have refinanced their

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<sup>4</sup> The CLO Trustee is a third party, in this instance Bank of New York, which oversees the collection of loan payments from the borrowers, among other responsibilities.

loans to lower interest rates. (This is no different than a homeowner taking advantage of lower interest rates to refinance their home, which would result in the lender receiving reduced principal and interest payments). As a result, the borrowers pay less cash into the CLO each quarter than the prior quarter. This is what is currently happening with CLO-3.

26. However, the amount owed to the Bondholders does not change with interest rates. Rather, it is fixed by the indenture (the agreement under which the Bondholders loan money to the CLO), so that amount paid to the Bondholders remains constant. Therefore, as interest rates fall, there is less, and potentially no money left for the Equity Holders at the end of each quarter. The CLO industry has solved this problem by restructuring currently-existing CLOs, called a “reissue.” The reissued CLO will pay lower interest rates to the CLO’s Bondholders. This reduces the cash the CLO must pay *out* each quarter to the Bondholders, leaving more cash available to pay to the Equity Holders. As loan interest rates fall, a CLO must reissue or its Equity Holders will get no more return on their CLO equity-holdings. Last year, 125 CLOs reissued for a total of \$62 billion.<sup>5</sup> One such transaction involved Acis CLO-2 refinancing \$192 million of its loans in April 2017. This reissue or refinancing trend has continued in 2018 with 19 CLOs reissuing for a total of \$10 billion in transactions. *Id.*

27. In addition to doing a reissuance of the CLO, another option available to Equity Holders who are dissatisfied with reduced payments that they are receiving in an era of lower interest rates is to *shut down* the CLO. Pursuant to the CLO’s indenture, the Equity Holders have the right to “call” the CLO, which means to demand that the CLO sell its basket of loans into the market, distribute the remaining proceeds in one, final waterfall, and then cease operations. When a CLO is called, the loans must be liquidated on the open market within a set

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<sup>5</sup> Exhibit No. 6, is an excerpt from JP Morgan 2017-2018 CLO Weekly New Issue Datasheet dated January 29, 2018, showing the CLO market’s reissuance and refinancing activity for 2017 and 2018.

period of time, usually between one and four weeks. Though the Equity Holders often realize a substantial loss in this process, it is better than leaving their money in an investment that pays little or no returns for years to come. (Each CLO has a finite life after which it automatically terminates. In the case of CLO-3, it terminates in 2026). Acis CLO-2014-C Indenture at §1.1, Def. Payment Date, p44, and §2.7(e) re: Final Payment Date, and §9.5, re: surrender of Notes. Exhibit 7.

28. A Collateral Manager only receives management fees for as long as the CLO operates. The Collateral Manager has no control over when a CLO is reissued or called. Instead, the Collateral Manager must follow the directions of the Bondholders and the Equity Holders to whom it owes a fiduciary duty. Once the decision to either reissue or call a CLO has been made, the Collateral Manager is duty-bound to undertake all necessary actions to effectuate the directed outcome. After a CLO is called, the Collateral Manager no longer will get any management fees. Moreover, regardless of whether a CLO is reissued or called, the Collateral Manager does not receive any compensation relating to the reissuance.

### **C. The Planned Reissuance of CLO-3**

29. CLO-3 (Acis CLO 2014-3, Ltd.) was created on February 1, 2014 and terminates on February 1, 2026. CLO-3 owns a basket of loans valued at \$420 million, including loans to Delta Airlines, Dunkin Donuts, and Tribune Media. CLO-3's Bondholders and Equity Holders own the economic interest in this \$420 million basket of loans. CLO-3's Bondholders include public pension funds, insurance companies, and banks. The Equity Holder of CLO-3 is Acis

Loan Funding, Ltd. (“ALF”),<sup>6</sup> which in turn is owned by two entities: a charitable foundation and a third-party private firm (collectively, the “CLO-3 Equity Holders”).

30. When CLO-3 was created, its basket of loans had an average interest rate of 4.59%, resulting in a quarterly waterfall payment of approximately \$2 million to the CLO-3 Equity Holders. However, in recent years, the borrowers on these loans have been refinancing to a lower average interest rate (3.21%). This has resulted in falling distributions to the CLO-3 Equity Holders for each quarter. The returns to the CLO-3 Equity Holders have been as follows: \$1.4 million in the first quarter of 2017, \$1.36 million in the second quarter, \$875,000 in the third quarter, and \$1.1 million in the last quarter of 2017. The quarterly payment for the first quarter of 2018 is \$470,000, and the CLO-3 Equity Holders are expected to receive no distributions by the next waterfall, scheduled for May 2018. Like other similarly-situated CLOs, CLO-3 either needed to be reissued or called to protect the CLO-3 Equity Holders’ interests.<sup>7</sup>

31. Starting in May 2017, CLO-3 started the reissuance process on behalf of its Equity Holders. Typically, the most difficult investors to sign up are the equity holders. As previously explained, the equity is the riskiest investment because it is last in line for payment under the CLO waterfall and faces the prospect of receiving reduced or no payments (which is expected to happen with the May 2018 quarterly payment). In May 2017, a private equity firm

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<sup>6</sup> Acis Loan Funding, Ltd. recently changed its name to Highland CLO Funding, Ltd.

<sup>7</sup> Exhibit No. 8, is a copy of The Loan Syndications and Trading Association’s *2017 CLO Review, 2018 Preview: Necessity is the Mother of Invention* article (also found at <https://www.lsta.org/news-and-resources/news/2017-clo-review-2018-preview-necessity-is-the-mother-of-invention>), which makes the following relevant observations: (a) “When they weren’t doing new deals, managers were busy reducing CLO liability costs via refis or resets.” (b) “Of course, the reason that CLOs were repricing and/or resetting was because i) they could and ii) falling loan spreads meant they needed to reduce liabilities costs to keep the arbitrage working. Wells calculated that the weighted average CLO spread dropped 31 bps during 2017. Without refinancings (which simply reduce spread) and resets (which reduce spread, extend tenor and can reset tests), economics on existing CLOs simply might not work.” (c) Reissuances will become industry standard: “Ultimately, Wells concluded that we may be seeing the development of a new lifecycle for CLOs: i) issuance, ii) refinancing after the non-call expires and then iii) a reset as the end of reinvestment nears.”

expressed an interest in making a \$150 million investment in ALF (the “**\$150 Million Equity Investor**”). ALF was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by the \$150 Million Equity Investor in making its investment was that ALF would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. ALF issued this instruction requested by the \$150 Million Equity Investor on October 6, 2017 (two weeks *prior* to the arbitration award).<sup>8</sup>

32. An investment bank was required to be engaged in connection with the contemplated reissuance transaction. The investment bank’s responsibilities included securing new equity investors and new bondholders. Goldman Sachs was the first investment bank that was approached in connection with the reissue of CLO-3. Goldman Sachs recommended that all the CLOs be “called” and that the CLOs start with a fresh slate. Goldman Sachs also unambiguously communicated that Acis could not be the Collateral Manager following the reissuance of the CLOs because of Acis’ now toxic public image after the Terry dispute had so damaged the Acis brand. CLO-3’s Equity Holders agreed. As part of the reissuance, the CMA for CLO-3 would have to be assigned to a new Collateral Manager, in this instance, Highland CLO Management, LLC (the “**New Collateral Manager**”), another Highland affiliate.

33. Goldman Sachs ultimately dropped out due to the “noise” associated with Terry and the Acis brand. Thereafter, in November 2017, CLO-3 engaged a new investment bank, Mizuho, to undertake the efforts to reissue CLO-3. Mizuho worked to find new Bondholders to

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<sup>8</sup> On October 6, 2017, and again on dates subsequent thereto, ALF (on behalf of the CLO-3 Equity Holders, issued the following instruction: *In accordance with Sections 9.2 and 14.3 of the Indenture, ALF hereby directs the Issuer, the Trustee and the Portfolio Manager [Acis] to (i) effect an optional redemption on the 45<sup>th</sup> day following the date of this direction letter, and (ii) redeem each Class of Secured Notes in whole from Refinancing Proceeds, in each case, on the terms and subject to the conditions set forth in the Indenture.* Exhibit Nos. 9 - 12.

invest in the reissued CLO-3. It completed that process on January 26, 2018. On or about January 29, the Bondholders of the reissued CLO-3 agreed to purchase approximately \$375 million of new bonds issued by the reissued CLO-3. The \$375 million from the purchase of the new bonds would in turn be used to pay-off the old Bondholders in the original CLO-3. Collectively the foregoing process is referred to as the “Reissuance of CLO-3”.

34. *At this point in time, the transfer of the CMA from ACIS, LP to the New Collateral Manager, is the sole remaining formality before closing of the Reissuance of CLO-3 can occur.*<sup>9</sup> This is the transaction that Terry argues should require compliance with Section 363 of the Bankruptcy Code, and not be completed by Acis LP in accordance with Section 303(f) of the Bankruptcy Code.

35. But, based on Acis’ fiduciary duty to CLO-3’s Equity Holders, it must execute the transfer.<sup>10</sup> To do otherwise would be to put its interests before those of the CLO-3 Equity Holders. Acis has been instructed to execute the transfer of the CLO-3 Management Agreement to the New Collateral Manager. Holding-up the assignment of the CLO-3 Management Agreement will not result in Acis receiving any more value or funds. Rather, failing to act in the best interest of the CLO subjects Acis to liability to CLO-3, its Bondholders, and its Equity Holders.

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<sup>9</sup> The CMA may be assigned by either Acis or CLO-3 if certain requirements are met. Specifically, Acis may not assign any of the management agreements “without the written consent of the Issuer, at least a Majority of the Subordinated Notes . . . and at least a Majority of the Controlling Class.” CMA § 14(a). Likewise, the Issuer may not assign a management agreement “without the prior written consent of [Acis].” *Id.* § 14(c).

<sup>10</sup> As a registered investment advisor, Acis is bound to act in accordance with the Investment Advisors Act of 1940 (the “IAA”). Under the IAA, it is “unlawful for any investment advisor . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” IAA § 206. Section 206 has since been interpreted as establishing “a statutory fiduciary duty for investment advisers to act for the benefit of their clients, requiring advisers to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients.” *S.E.C. v. Treadway*, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006) (internal quotations omitted).

**D. Terry's bad-faith litigation gamesmanship to block the Reissuance of CLO-3**

36. Terry completely understands the foregoing reissue process, why it is necessary, and the devastating consequences of the reissuance not closing. Terry launched CLO-3, set up its structure, and managed its portfolio for several years. Moreover, never in the history of the CLO industry has a CLO reissuance progressed to the point of funding, and then not closed. The new Bondholders already have committed to buy \$375 million in bonds, the old Bondholders already have been assured they will be paid off, and the CLO-3 Equity Holders already have been assured that their investment will not face liquidation.

37. Knowing this, Terry sought to leverage the situation. On January 24, he filed an application for a TRO to, among other things, prevent Acis from assigning the CMA. The TRO was supported by a declaration from Terry that contained materially misleading statements and omissions, and outright falsehoods. The state court conducted a hearing that resulted in Acis and Terry reaching a short-term agreement that would remain in place until the temporary injunction that was scheduled to be heard within the week. Specifically, Acis agreed in the state court to not transfer the CMAs or remove Acis as manager until the temporary injunction hearing. Acis also informed the state court that the Reissuance of CLO-3 was in progress and, therefore, it was important to have the temporary injunction heard as soon as possible. The temporary injunction hearing was originally scheduled for February 1.

38. On January 29, Terry filed a supplemental TRO, also supported by a declaration from Terry, that Acis "*had transferred*" management of CLO-3 to a Highland entity. The TRO and Terry's supporting declaration, once again, were false. Acis had *not* transferred management of CLO-3 to a Highland entity as Acis had agreed not to transfer such rights until the temporary injunction hearing and had honored that agreement.

39. Also, on January 29, Terry filed an application for a turnover order and for appointment of a receiver (the “**Application for Receiver**”). In the Application for Receiver, Terry made false and unsubstantiated allegations that Acis had fraudulently transferred more than \$16 million in assets to affiliated entities after entry of the arbitration award in October 2016. As noted in the Introduction, under paragraph 15 of the CMA, *the appointment of a receiver would cause the CMA to be terminated and Acis to be removed as the Collateral Manager, thereby rendering the CMA worthless*. Yet, Terry inexplicably asked for the appointment of a receiver as just another litigation tactic designed to sow confusion regardless of the fatal consequences to Terry’s claims, i.e. his supposed attempts to preserve the value of the CMA.

40. At the January 29 hearing, the Court did not make any substantive rulings. Rather, at the request of Acis’s counsel and in light of the scheduled closing of the Reissuance of CLO-3 on February 1, the state court moved the temporary injunction hearing up from February 1 to January 31 to ensure that the hearing would take place prior to the scheduled February 1 closing. Also, the Court reconfirmed its prior orders that Terry would supply an expert report by noon on January 30 and that both Terry and his expert would appear for deposition for up to two hours’ each prior to the temporary injunction hearing that had been rescheduled for January 31 at 2:00 p.m.

41. On January 30, Terry provided his expert report as ordered. Later that day, Terry withdrew his expert, which resulted in the expert deposition being called off. However, Terry’s deposition remained scheduled to take place at 10:00 a.m. on January 31, the day of the temporary injunction hearing. Then, out of the blue and with no advance notice, Terry filed his Involuntary Petitions against Acis at midnight on January 30 and filed a “suggestion of

bankruptcy” with the state court. Terry’s counsel advised that in light of the bankruptcy filings that Terry would not appear for his court-ordered deposition on January 31 and would not appear at the temporary injunction hearing. In response, on January 31, Acis filed a motion to vacate the agreed order that the parties had entered on January 24 and advised Terry that Acis intended to present the motion to vacate to the state court at the 2:00 p.m. hearing.

42. The parties appeared at the 2:00 p.m. hearing on January 31. During the middle of argument, Judge Goldstein announced that Judge Jernigan was on the phone, which resulted in a recess of about one hour as Judge Goldstein took Judge Jernigan’s call. When Judge Goldstein returned to the bench after that call, she announced her view that the filing of the Involuntary Petitions deprived her of jurisdiction to make any further rulings pending action by the Bankruptcy Court.

#### **E. Closing of the Transaction is rescheduled from February 1 to February 13**

43. CLO-3 has been able to move the closing date for the Transaction from February 1 to February 13. However, this is a short-term fix that demands a permanent solution. The very pendency of these involuntary cases severely impacts CLO-3’s ability to ensure that all of the constituent parties remain committed to the transaction. Each day that passes creates greater risk for this \$420 million transaction. The new Bondholders will grow nervous about the unprecedented delay. The ratings agencies, law firms offering opinion letters, and various trustees have refused to act in the shadow of a potential bankruptcy stay. Indeed, for the Transaction to go forward on February 13, it must “price” five business days in advance, on February 8; and the pendency of these Involuntary cases likely will prevent pricing – which will likely quash the Transaction before the February 13<sup>th</sup> closing date. And the longer the

Transaction waits, the more likely that changing market conditions, such last Friday's precipitous stock market fall, will cause parties to reconsider if they want to enter into the Transaction at the previously negotiated prices. Absent the denial of the 303(f) Motion and the granting of the Motions to Dismiss,<sup>11</sup> the Reissuance of CLO-3 may never close,<sup>12</sup> to the detriment of the CLO-3 Equity Holders and Bondholders to whom Acis owes a fiduciary duty.<sup>13</sup> However, it is beyond question if the assignment of the CMA is not executed prior to February 13, CLO-3 will be called, its basket of loans liquidated, and the CLO-3 Equity Holders and other parties will incur tens of millions of dollars in losses.

44. The CLO-3 Indenture provides that the Equity Holders may "call"—*i.e.*, force the liquidation of—CLO-3 through an optional redemption of the outstanding notes. Specifically, a majority of the Equity Holders may initiate an optional redemption "on any Business Day after the Non-Call Period." CLO-3 Indenture § 9.2(a). Exhibit No. 7. The Non-Call Period for CLO-3 ended in February 2016. CLO-3 Indenture § 1.1. Exhibit No. 7. After being notified of an optional redemption, "the Portfolio Manager [Acis] in its sole discretion shall direct the sale (and the manner thereof) of all or part of the Collateral Obligations and other Assets." *Id.* § 9.2(b).

45. Even if Acis subsequently escapes bankruptcy and the appointment of a receiver, the Equity Holders in CLO-3 will nonetheless issue an optional redemption, thereby liquidating

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<sup>11</sup> In connection with the Motions to Expedite the Hearing on the Motions to Dismiss (which will be considered by the Court current with the 303(f) Motion), Acis is filing a Supplemental Brief, in support of the expedited consideration. As noted therein, it is not enough to simply deny the 303(f) Motion, thus permitting Acis to continue operations, unrestricted by Section 363 of the Bankruptcy Code, until an Order for Relief is entered or the Involuntary Cases are dismissed, as, and most important, the mere existence of the Involuntary Petitions against Acis is interfering with and causing damage to all of the CLO's managed by Acis.

<sup>12</sup> As noted in Paragraph 43, a failure to close the Reissuance of CLO-3 does not result in the continued operations as Collateral Manager by Acis. Rather, Acis is done and CLO-3 is liquidated. Thus, the *hold-up* by Terry of the Reissuance of CLO-3 has no utility for Acis, Terry or any other creditor of Acis.

<sup>13</sup> Each week the transaction is delayed costs the Equity Holders between \$50,000 and \$100,000.

all CLO-3 assets. Under such a scenario, the CMA will automatically terminate upon “the liquidation of the Assets and the final distribution of the proceeds of such liquidation to the Holders.” CMA § 13(a)(ii).

46. What appears to be lost on Terry is that regardless of whether the Reissuance of CLO-3 occurs, Acis’s fate is sealed. In short order, Acis will no longer be the Collateral Manager for CLO-3. Either the Collateral Management Agreement will be transferred pursuant to a reissuance or it will expire when CLO-3 is called and liquidated.

47. Furthermore, and as previously discussed, even if Acis is prohibited from transferring the Collateral Management Agreement, Acis will nonetheless be terminated as Collateral Manager due to (1) the bankruptcy filing, (2) a receivership requested by Terry in state court, or (3) Acis’s inability to provide management services as a result of the Highland Servicers exercising their contractual right to refuse to continue to provide services to Acis under the Sub-Advisory Agreement and Shares Services Agreement. The delay or even prevention of the assignment of the CMA to the New Collateral Manager will not result in more assets owned by Acis, and, in fact, will increase the claims against Acis (not to mention the forthcoming claims against Terry) for its breach of fiduciary duties owed to CLO-3, its Bondholders and the CLO-3 Equity Holders.

### **III.** **OBJECTIONS TO THE 303(f) MOTION**

48. The relief Terry seeks in the 303(f) Motion has no basis in law or fact and is nothing more than the latest maneuver in his scheme to exert pressure on Acis (and Highland) by jeopardizing the closing of the Reissuance of CLO-3.

49. As set forth in the Motions to Dismiss, Terry has improperly invoked the jurisdiction of this Court and did so in bad faith. Allowing Terry to compound those abuses by imposing on Acis the requirements of Section 363 of the Bankruptcy Code would not only be inequitable, but also has the potential to cause millions of dollars of damage to multiple parties, including creditors of Acis or affiliates thereof. Moreover, it would be inappropriate for this Court to condone such abuses by modifying Section 303(f) before this Court has considered the propriety of Acis being subject to Title 11 cases.

**A. Section 303(f) Permits the Alleged Debtors to Operate Unencumbered During the Gap Period**

50. Section 303(f) provides:

“Notwithstanding Section 363 of [the Bankruptcy Code,] except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.”

51. In the *Texas Rangers* case the Court confirmed the scope and rationale of Section 303(f) by quoting from *Consolidated Partners Inv. Co. v. Lake*, 152 B.R. 485, 490 (Bankr. N.D. Ohio 1993):

By virtue of § 303(f), during the gap period, the Debtor was authorized to continue such operations until an order for relief was entered as though no involuntary petition had been filed. The rationale for allowing the debtor to operate during the involuntary gap period is that prior to the entry of an order for relief, the subject of an involuntary petition should not be adversely affected by the case.”

*In re Texas Rangers Baseball Partners*, 434 B.R. 393 ( Bankr. N.D. Tex. 2010).

52. In the 303(f) Motion, Terry cites two cases for the proposition that “courts have imposed restrictions on an involuntary gap debtor’s operations to preserve and protect assets;

especially where there is a concern that a debtor may dispose of assets for less than fair value or dismantle a business for the private gain of its principals.” 303(f) Motion, at ¶¶ 18-19; *In re Texas Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010); *Wilson v. Davis (In re Wilson)*, 62 B.R. 42 (E.D. Tenn. 1985).

53. Terry’s characterization and attempts to analogize the facts of those cases is unavailing. First, in the *Wilson* case, the court did not modify Section 303(f), but simply observed that because Section 303 permits an involuntary debtor to use, acquire, or dispose of property through the time the order for relief is entered (as opposed to through the date of the involuntary filing, which the appellee had argued), that the proper date for determining the scope of an involuntary debtor’s exempt property was the date on which an order for relief was entered. *Id.* at 45-46.

54. In *Texas Rangers* the Court abrogated Section 303(f), but, the main reason for doing so was that the alleged debtors’ sole asset was *itself* a debtor in a *voluntary* chapter 11 case and that it was appropriate to impose on the involuntary debtors the same fiduciary duties as a debtor in possession because of such ownership structure. 434 B.R. at 404-405. Indeed, the Court acknowledged that section 303(f) generally permits an involuntary debtor to “proceed without court oversight[,] . . . so long as [its] conduct can be justified under the business judgment rule.” *Id.* at 405. Moreover, as acknowledged by Terry, the Court’s conclusion was very much “based on the facts and circumstances of the case.” 303(f) Motion, at ¶ 19.

55. The *Texas Rangers* Court was further concerned that the alleged debtors were not operating consistent with the fiduciary duties of a debtor-in-possession in the gap period. Thus, the Court imposed the obligations of Section 363 of the Bankruptcy Code on the alleged debtors.

Terry makes no comparison of the facts of that case to the facts of this matter in support of his 303(f) Motion – and he cannot.

56. Here, Acis is operating consistent with both Acis’s fiduciary duties and the industry trend of almost 140 CLO reissuances. As noted above, blocking the Transaction benefits neither Acis nor its creditors. In fact, the liabilities undertaken from a failure to comply will surely injure Acis, and its creditors. Further, to cause the assertion of claims against Acis is contrary to its fiduciary duties to its creditors and third parties.

57. In connection with the assignment of the CMA as part and parcel of the Reissuance of CLO-3, there is no evidence to suggest that Acis is not acting in a fashion consistent with the fiduciary responsibilities of a debtor-in-possession (were Acis to become debtors-in-possession at a later date). Rather, the unsupported allegations by Terry of pre-petition transactions undertaken by Acis fail to demonstrate in any regard that the assignment of the CMA to complete the Reissuance of CLO-3 is inappropriate.

58. As demonstrated above, Acis is, by assigning the CMA to the New Collateral Manager, performing exactly as is required of it and is complying with its fiduciary duties to CLO-3. To do otherwise would be a breach of its fiduciary duties as well as cause significant damage to innocent third parties, all of which may assert claims against Acis. Thus, by complying with its fiduciary duties to CLO-3, Acis is also complying with its fiduciary duties to its creditors (if Acis were to become debtors-in-possession).

59. The drastic remedy of imposing upon Acis obligations to comply with Section 363 during the gap period makes no sense when what is being undertaken by Acis is exactly what is in the best interests of all interested parties.

**B. Terry’s “Fraudulent Transfer” Argument is Based on an Incorrect Understanding of the CMA and the Law**

60. Boiled down to its essence, Terry’s “fraudulent transfer” argument asserts the following positions: (i) the CMA (the management agreement by which Acis manages CLO-3) is a valuable asset of Acis; (ii) Acis proposes to transfer that valuable asset to the New Collateral Manager; and (iii) the New Collateral Manager is not providing anything to Acis in exchange for the transfer of the CMA. Thus, Terry argues, the transfer of the CMA eliminates a valuable asset of Acis for no consideration.

61. The flaws in Terry’s “fraudulent transfer” argument, however, are fatal. First, the CMA has no value, as Acis’s operation thereunder results in a loss to Acis (see ¶ 4, *infra*). Second, the contractual arrangement between Acis and CLO-3 (i.e., the CMA), which has been in place since 2014, provides, among other things, that Acis will perform various services, be compensated for those services, and, most relevant here, undertake actions as instructed by CLO-3, including, in this instance, assign the contract (the CMA). Simply put, the provisions of the CMA requiring the Collateral Manager (Acis) to perform as instructed – in this instance *to transfer the CMA*, is a negotiated contractual obligation among Acis and CLO-3 that has nothing to do with the transferee (i.e., the New Collateral Manager). From the outset of the relationship among Acis and CLO-3, Acis has performed in accordance with its fiduciary duties to the CLO, its Equity Holders and its Bondholders; and has been compensated all along by CLO-3 for such performance. It is not being instructed to make the assignment – which it must do consistent with its fiduciary duties.

62. The four year long relationship among Acis and CLO-3 has included performance of the *back and forth* obligations of the parties, which has resulted in consideration flowing to and among the parties. Thus, Acis has already been compensated in anticipation of performing

its instructed obligations including assigning the CMA in further of the Transactions. There is no consideration or value flowing from Acis to the New Collateral Manager. Rather, Acis continues to perform under the terms of its existing contract (i.e., the CMA) by making the assignment as instructed CLO-3.

63. Accordingly, Terry's suggestion that the New Collateral Manager is receiving a fraudulent transfer, and that Acis is making a fraudulent transfer, is not correct. Rather, Acis simply is performing in accordance with a contractual obligation, long-ago entered into, and for which it has been, and continues to be, compensated. The transfer is not anything more than Acis's compliance with the terms of a contract – the CMA. The foregoing analysis debunks any assertion that the assignment of the CMA, a ministerial act to be performed by Acis as part and of the Reissuance of CLO-3, is a fraudulent transfer.

### **C. The Involuntary Petitions are Factually Defective**

64. As described in detail in the Motions to Dismiss, the Involuntary Petitions are subject to dismissal because they are not supported by the requisite number of creditors needed to commence an involuntary chapter 7 case under Section 303 of the Bankruptcy Code. Section 303(b)(1) of the Bankruptcy Code states, in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724 (a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . . .

11 U.S.C. § 303(b).

65. Section 303(b) contains “very specific requirements concerning the number of entities that are necessary to commence an involuntary filing.” 2 COLLIER ON BANKRUPTCY ¶ 303.14 (16th rev. ed. 2013). Those requirements are based on the policy of preventing one or more “recalcitrant creditors” from filing an involuntary case to harass a debtor. Id.

66. Perhaps the most basic of all requirements is that section 303(b)(1) requires that when a debtor has twelve or more creditors, an involuntary case may be commenced only by three or more entities. *See In re Tichy Elec. Co., Inc.*, 332 B.R. 364, 372-73 (Bankr. N.D. Iowa 2005) (citations omitted); *Sipple v. Atwood (In re Atwood)*, 124 B.R. 402, 406 (S.D. Ga. 1991) (“If there are twelve or more qualifying claims, excluding voidable claims, the debtor cannot be forced into involuntary bankruptcy by fewer than three of the qualifying creditors.”). Where a debtor has twelve or more creditors and there are less than three petitioning creditors, the case must be dismissed—section 303(b)(1) leaves no room for Court discretion.

67. Terry has the burden of demonstrating that he has satisfied the numerosity requirement under section 303(b) of the Bankruptcy Code. *Pleas Doyle & Assocs. v. James Plaza Joint Venture (In re James Plaza Joint Venture)*, 67 B.R. 445, 448 (Bankr. S.D. Tex. 1986) (“It is plaintiffs’ burden to demonstrate the number of creditors of [the] debtor’s estate.”); *In re Charon*, 94 B.R. 403, 405-06 (Bankr. E.D. Va. 1988) (petitioner has “burden of proving that it satisfied the jurisdictional requirements of § 303(b)"); 2 COLLIER ON BANKRUPTCY ¶ 303.15, at 76 (15th ed. 1988) (“When fewer than three creditors file an involuntary petition, the

alleged debtor has the burden to raise the issue that it has 12 or more creditors by filing a list pursuant to Bankruptcy Rule 1003(b). The petitioning creditor then has the burden to show that the alleged debtor actually has fewer than 12.”). *Terry cannot do so.*

68. Here, it is beyond dispute that Acis has twelve or more creditors. Ironically, substantially all of Acis’s creditors became creditors because of the pending state court action between Terry and Acis. Specifically, Acis’s creditors include numerous law firms, professionals, and experts, which are creditors of Acis LP and also creditors of Acis GP due to its role as the general partner. Acis has filed with this Court a statement pursuant to Bankruptcy Rule 1003(b) listing such creditors. *See* Case No. 18-30264-SGJ7, Docket No. 7; Case No. 18-30265-SGJ7, Docket No. 7. Exhibit No. 13. Thus, Acis has more than twelve creditors, making clear that three creditors are required to force Acis into bankruptcy pursuant to section 303(b)(1).<sup>14</sup>

69. Based on the foregoing, the Involuntary Petitions lack the statutorily required number of petitioning creditors and therefore are subject to dismissal because they are factually defective.

70. The significance of the Motion to Dismiss cannot be over emphasized. As the fatal flaw in the Involuntary Petitions – only one creditor filed the Involuntary Petitions – is so obvious, this Court should not consider the 303(f) Motion, until and unless consideration has been given to the Dismissal Motion.<sup>15</sup>

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<sup>14</sup> In addition to filing the 1003(b) Notice, Acis has provided to Terry copies of the invoices, statements and other documents evidencing and supporting each of the creditors’ asserted claims. In addition, Acis also offered to present a witness to provide a deposition (including the offer of a deposition to be conducted over the just-concluded weekend) to testify to the creditors and their claims. Terry failed to respond to this offer.

<sup>15</sup> While the Motion to Expedite the Court’s consideration of the Motions to Dismiss is being considered concurrently with the Court’s consideration of the 303(f) Motion, Acis asserts that Dismissal of the Involuntary Petitions should be heard in *advance* of the 303(f) Motion. Were the blatant disagreement and failure to comply with Section 303(b) not as obvious as it is, this Court might consider the 303(f) Motion in advance of the Motions to

**D. The 303(f) Motion is a Blatant Attempt to Pressure Acis by Threatening the Reissuance of CLO-3, in Contravention of the Intent Underlying the Bankruptcy Code’s Involuntary Provisions.**

71. Terry’s bad faith litigation strategy is clear—he intends to exert pressure on Acis (and Highland) by jeopardizing the Reissuance of CLO-3. In furtherance of that ill-conceived objective, Terry filed the 303(f) Motion, which seeks to impose the requirements of Section 363 of the Bankruptcy Code before there has been an adjudication on the merits of the propriety or validity of the Involuntary Petitions. Granting the relief requested would run completely counter to the balance Congress attempted to strike in the Bankruptcy Code’s involuntary bankruptcy provisions.

72. The filing of an involuntary petition is a drastic remedy. *See Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014). In recognition of this fact, “Congress limited the circumstances in which creditors may force a debtor into such a proceeding.” *Id.* (citing, *inter alia*, 30 Cong. Rec. S7618 (daily ed. June 19, 1984)); *see In re Landmark Distribs., Inc.*, 189 B.R. 290, 306 (Bankr. D.N.J. 1995) (“The filing of an involuntary petition by a creditor must be carefully scrutinized by the Court because such an action is extreme in nature and carries with it serious consequences to the alleged debtor, examples of which include loss of credit standing, interference with general business affairs and public embarrassment.”) (citations omitted). Congress created the Bankruptcy Code to serve “as a shield for debtors, not a sword for creditors,” *In re R.N. Salem Corp.*, 29 B.R. 424, 429 (S.D. Ohio 1983), and even the good-faith filing of an involuntary petition creates onerous circumstances for an alleged debtor. *Schmid v.*

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Dismiss. However, the immediately apparent flaw in the Involuntary Petitions warrants consideration of the Motions to Dismiss first.

*Yorke (In re Reid)*, 773 F.2d 945, 946 (7th Cir. 1985) (the filing of an involuntary petition is “an extreme remedy with serious consequences to the alleged debtor”) (citations omitted).

73. Balancing the harshness of the possibility of an entity being put into bankruptcy against its will is the protection afforded by Section 303(f) of the Bankruptcy Code. Recognizing that an alleged debtor should be afforded due process and its day in Court before being required to abide the restrictions the Bankruptcy Code imposes on its operations, Section 303(f) allows an alleged debtor to operate free of those restrictions pending an adjudication of the involuntary petition. The presumption that an alleged debtor should be free to operate its business without restriction pending adjudication of an order for relief is even more critical when the petitioning creditor, like Terry here, has acted alone in an attempt to gain an improper tactical advantage in a longstanding two-party dispute in state court.

74. As set forth in the Motion to Dismiss, the Involuntary Petitions are blatant examples of forum shopping. Terry filed the Involuntary Petitions literally on the eve on an evidentiary hearing in the state court that Terry knew would have resulted in Acis being free to close the Reissuance of CLO-3. Rather than participate in that hearing (and sit for the deposition that was to precede that hearing), Terry attempted a “Hail Mary pass” and precipitously attempted to transfer the venue of his dispute with Acis to this Court. Having done so, Terry should be forced to await the adjudication of the merits of the Involuntary Petitions (already the subject of the Motions to Dismiss, filed less than 24 hours after the Involuntary Petitions themselves) before being granted relief that is akin to a pre-determination that the Acis entities should be adjudicated debtors. To hold otherwise would offend the balancing Congress built into Section 303 and would offend notions of equity and due process.<sup>16</sup>

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<sup>16</sup> As the Motions to Dismiss demonstrate, Acis asserts that the Involuntary Petitions suffer from fatal flaws, both because the numerosity requirement of Section 303(b)(1) is not met and because the filings were made in

**IV.  
CONCLUSION**

WHEREFORE, for the reasons set forth herein, Acis respectfully requests that the Court enter an Order denying the Motion and granting such other relief as the Court deems just and proper.

Dated: February 5, 2018

Respectfully submitted,

By: /s/ Michael D. Warner

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*Attorneys for Acis Capital Management,  
L.P. and Acis Capital Management GP, LLC*

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bad faith. At a minimum, the relief Terry seeks in the 303(f) Motion should await this Court’s adjudication of the Motions to Dismiss. At most, the 303(f) Motion should be denied, without prejudice to Terry’s right to seek the same relief if these involuntary cases proceed beyond Acis’ Motions to Dismiss.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing *Joint Objection of Alleged Debtors to Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Impose, inter alia, 11 U.S.C. 363* was served upon all parties that are registered to receive electronic service through the court's ECF notice system in the above cases.

By: /s/ Michael D. Warner  
Michael D. Warner

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 18-30264-sgj7
	)	Dallas, Texas
ACIS CAPITAL MANAGEMENT, L.P.,	)	
	)	
Alleged Debtor.	)	February 7, 2018
	)	9:36 a.m.
-----	)	
	)	
ACIS CAPITAL MANAGEMENT GP, LLC,	)	Case No. 18-30265-7-sgj7
	)	
Alleged Debtor.	)	
	)	
-----	)	

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL  
MANAGEMENT, L.P. (9)

AS TO CASE NO. 18-30265-7-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL MANAGEMENT  
GP, LLC (9)

BEFORE THE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT

Transcription Services:	eScribers, LLC
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	New York, NY 10001
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.  
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19

20

Also Present:

JOSHUA TERRY  
Petitioning Creditor

21

22

SCOTT B. ELLINGTON, ESQ.  
General Counsel of Highland  
Capital Management

23

24

25

Colloquy

1 MS. PATEL: -- I haven't put on --

2 THE COURT: You may have a witness on that if it --

3 MS. PATEL: I don't know what their evidence --

4 THE COURT: Okay.

5 MS. PATEL: -- is going to be, so I may very well,  
6 yes.

7 THE COURT: All right. Well, then let's go to the  
8 other side. To expedite things, I think I made clear but  
9 maybe I didn't make clear, Mr. Cruciani, your witness can be  
10 combined testimony in response to the 303(f) as well in  
11 support of your motion to expedite. And so --

12 MR. CRUCIANI: Okay. Thank you, Your Honor. So Mr.  
13 Ellington will testify to both.

14 THE COURT: Okay.

15 MR. CRUCIANI: As relates to the motion to expedite,  
16 the actual substantive testimony on our motion to dismiss will  
17 be primarily Mr. Leventon; I understand that was kind of the  
18 next step, but that's not something we'll be doing for this  
19 particular motion, right?

20 THE COURT: Correct.

21 MR. CRUCIANI: Okay.

22 THE COURT: Um-hum.

23 MR. CRUCIANI: Yes, ma'am.

24 THE COURT: All right. So it's Mr. Ellington? Okay,  
25 welcome. If you could approach the witness stand.

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1 All right, please raise your right hand.

2 (Witness sworn)

3 THE COURT: All right, please take a seat.

4 THE WITNESS: Thank you.

5 THE CLERK: I will get them and come back here.

6 MR. CRUCIANI: Okay.

7 THE CLERK: It's very directional.

8 MR. CRUCIANI: Okay. Thank you, ma'am.

9 DIRECT EXAMINATION

10 BY MR. CRUCIANI:

11 Q. Please state your name for the record.

12 A. Scott Ellington.

13 Q. What is your position, Mr. Ellington?

14 A. I am the general counsel, chief legal officer, and  
15 partner at Highland Capital Management, L.P.

16 Q. Okay. I'd like to start with just a few things we just  
17 heard from Mr. Terry.

18 A. Okay.

19 MR. CRUCIANI: Let's put up, Omar, slide 4, please.

20 Q. Recall Mr. Terry just testified that the reason Acis is  
21 in this structure was due to the toxic brand name of Highland  
22 back in the 2012 time period?

23 A. Yes, I do.

24 Q. Now, fast-forward; today. What is, based on your  
25 dealings with the marketplace, the nature of the Acis brand

1 today --

2 MR. SHAW: Your Honor, I'm going to object on  
3 foundation. If he's going to testify that his knowledge  
4 regarding the perception is based upon hearsay, people are  
5 telling him what the perception of Acis is, it's rank hearsay.  
6 So if the basis is what others are telling him, it's hearsay  
7 and it's not admissible; there's no exception to that. So --

8 MR. CRUCIANI: It's not offered to prove the truth of  
9 the matter asserted. Doesn't matter whether they in their  
10 heart of hearts believe it. It's just what's been  
11 communicated and how they respond to that.

12 THE COURT: Okay --

13 MR. SHAW: It's --

14 THE COURT: -- overruled.

15 MR. CRUCIANI: Okay.

16 THE COURT: I'll allow it.

17 Q. Do you deal with market participants in the CLO industry?

18 A. Yes.

19 Q. Give us a general overview of the nature of those  
20 dealings

21 A. Especially around these transactions, I've dealt directly  
22 with two investment banks and with the equity holders.

23 Q. Okay. And has the subject of the Acis brand name come up  
24 in those discussions?

25 A. Countless times.

1 Q. What has been communicated to you?

2 A. That it is so toxic that it's impossible to sell the  
3 bonds with Acis as the manager, that you would not be able to  
4 raise the equity and, due to this litigation and allegations  
5 that've been in the litigations and the press, by Mr. Terry's  
6 actions, that nothing can be associated with the Acis brand  
7 and be managed as a CLO or marketed as a CLO.

8 Q. Who has communicated that to you?

9 A. Goldman Sachs, equity holders, large law firms that do  
10 structured products, CLO work for a living, and Mizuho.

11 Q. What role was Goldman Sachs slated to have in this case?

12 A. They were the investment banker that was going to  
13 refinance these CLOs.

14 Q. Who is the current investment banker?

15 A. Mizuho.

16 Q. Why is Goldman Sachs not the investment banker?

17 A. They dropped out because of the Acis name and dealing  
18 with these Acis transactions.

19 Q. How did what you were hearing about the Acis name impact  
20 the decision of whether or not Acis would continue as the  
21 collateral manager in these ventures?

22 A. The bondholders, the -- and -- existing and purchasing,  
23 and the equity holders, existing and new equity holders, said  
24 categorically, with absolute certainty, if there's any  
25 relation to Acis, the Acis brand, the Acis structure, we have

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1 no interest in doing business with you at all.

2 Q. How were these -- how was this new reissue transaction  
3 marketed? What was the document that was sent to the  
4 investors?

5 A. Was called a circular, and it lays out -- it's  
6 essentially a term sheet of how the deal will look.

7 Q. Was there any discussion in the circular about who the  
8 collateral manager would be in the new deal?

9 A. Yes.

10 Q. Who was it?

11 A. Highland Capital Loan -- it's that HCLOM -- sorry,  
12 there's just so many names; I'd have to look at the chart.

13 Q. A Highland entity?

14 A. A Highland affiliate, correct, yes.

15 Q. Not Acis?

16 A. Correct.

17 Q. Is it important that these offering circulars be  
18 accurate?

19 A. They have to be.

20 Q. What are the penalties if they're not?

21 A. Securities fraud, negligent misrep., fraud in the  
22 inducement. I mean, it's severe.

23 Q. Okay. And so the information that the investors had --  
24 what information did they have at the time they're making  
25 their investment? What were they told as to who that

1 investment manager would be?

2 A. It would be a new entity per their request.

3 Q. What would be -- would it be of any concern to you -- and  
4 if so, how -- if they changed that after the investment  
5 decision was made in part (indiscernible)?

6 A. We'd have to go and redo the circular, go out and  
7 resolicit the bond and equity tranches. It -- it would  
8 essentially be a recasting of the entire deal, and then it  
9 looks like you don't have your ducks in a row. They're more  
10 likely to not fix.

11 Q. And then what rights would the new investors have to say,  
12 well -- say, now you're telling me there's a new -- Acis is  
13 back in the play, what rights would they have in terms of  
14 going forward or not?

15 A. Rescission, various breaches, you know, lost  
16 relationship, goodwill, brand again. I mean, it's -- it's a  
17 whole host of things, probably a lot that I couldn't even  
18 think of at the top of my head.

19 Q. Okay. Another thing -- let's go to Exhibit 7, the  
20 indenture, paragraph 8.3(e), which is page 164. This is what  
21 Mr. Terry and I just got done discussing. He pointed me to  
22 this in response to my question whether there was anything in  
23 the documents that gave the collateral manager effectively a  
24 veto right over the (indiscernible) transaction. Recall that  
25 discussion?

1 A. Correct.

2 Q. Bloomberg issued some media publications as well, right?

3 A. Correct.

4 Q. There was a Dealbreaker internet post about the dispute,  
5 right?

6 A. I remember that, yes.

7 Q. Right. And this issue with Mr. Terry having recorded  
8 while he was an employee of Highland was well known to the  
9 market, right?

10 A. I would assume so.

11 Q. So despite the fact that this is common knowledge that  
12 Mr. Terry did this, you have Mr. Covitz, who's running Acis in  
13 August of 2017, well after all this stuff comes out, saying  
14 that Acis still intends to issue new CLOs, right?

15 A. Yes, that was the plan.

16 Q. And Acis is risk-retention-compliant, right?

17 A. Yes.

18 Q. And Acis has been risk-retention-compliant?

19 A. As far as I understand, yes.

20 Q. Yet now, fast forward to October or November of 2017 into  
21 the new year in 2018, all of a sudden, this noise about Mr.  
22 Terry recording is what creates the toxic nature of the Acis  
23 brand; is that right?

24 A. No, I don't think that's -- the timing is right. I think  
25 the toxicity was there, but I think the effectuation was

1 actually around this mechanism.

2 Q. You're familiar with the news article that came out in  
3 The Wall Street Journal after the award was made public, when  
4 Mr. Terry went to confirm that award, right?

5 A. Yes, I do.

6 Q. But one of the things that's changed since Mr. Covitz  
7 makes this representation in this document that's posted on  
8 Highland's website about Acis' intent to issue new CLOs as  
9 Acis and now, is that we've got an arbitration award and we've  
10 got a judgment, right?

11 A. And we have third-party investors that said we don't want  
12 to be involved in this brand; and their equity is one of the  
13 reasons that new CLOs can be launched.

14 Q. I want to follow up on that. Those third-party  
15 investors, they never told Highland or Mr. Dondero or you or  
16 Mr. Covitz that in order for them to invest that they were  
17 going to bar this new entity -- this Highland Cayman entity or  
18 the Delaware new Highland CLO entity -- from paying for the  
19 transfer of these CMAs, right?

20 A. What do you mean by "paying for the transfers"?

21 Q. Paying some amount of consideration for Acis to transfer  
22 the management contract?

23 A. No, they just said we want things to be structured in  
24 this way or we're not investing.

25 Q. Right. They didn't say hey, we'll do the deal, but as a

1 condition of doing the deal, we want you to transfer these  
2 assets -- this collateral-management agreement from Acis to  
3 Acis Cayman; and we don't want you to pay -- we don't want  
4 Acis Cayman to pay a dollar for the transfer of that CMA?

5 A. Well, I think there's two questions. I'll try to address  
6 them both.

7 It was call the deal and terminate the CMAs or transfer  
8 the CMAs. That's question one. So yes, they not only  
9 necessitated, they demanded it.

10 How we paid consideration for those transfers to Acis,  
11 they didn't have any involvement in it.

12 Q. Right. I mean, again, I may be belaboring the point, but  
13 I think it's an important one. These investors' involvement  
14 is not an impediment to Acis receiving value in exchange for  
15 the transfer of the CMAs?

16 A. I disagree.

17 Q. Tell me why?

18 A. If they do not become investors or you cannot reset or  
19 refi, the deals will be called and therefore Acis' CMAs don't  
20 have any value.

21 Q. No, no, no. What I'm saying is, everything is the same,  
22 right? The transaction that's going forward on the 13th is  
23 the same. Everything. Right?

24 A. Wrong.

25 Q. No, no. This is -- a hypothetical, what I'm saying.

1 A. Oh, I'm sorry. Okay, I misunderstood.

2 Q. All right. Everything is going forward as is, right?

3 It's going to close on the 13th. There's going to be a  
4 transfer of the collateral-management agreement. There's  
5 going to be a reset. All these things are going to happen,  
6 right, just like you planned. The one variable that's changed  
7 is that instead of Acis receiving nothing for the transfer of  
8 the collateral-management agreement, is that Acis receives  
9 something for the transfer of the collateral-management  
10 agreement to a Highland affiliate.

11 A. Correct. But they weren't going to receive anything from  
12 a refi or a reset or a call anyway.

13 Q. I understand that.

14 A. Okay.

15 Q. But there's nothing that the investors are saying that  
16 stops Highland Cayman or Highland or anybody else giving Acis  
17 value for the CMAs.

18 A. As a directive from the investors; is that what you're  
19 asking me?

20 Q. Right.

21 A. No, they have not given that directive. Their only  
22 directive was call and get rid of Acis or get rid of Acis or  
23 we're not doing the deal through a reset.

24 Q. All right, so you said that when Acis was set up that --  
25 in 2011, that that was directly analogous to what this new

1 transaction that you're doing or that Highland and its  
2 affiliates are doing with regard to the reset and the  
3 transfers of the collateral-management agreement. Do you  
4 remember that?

5 A. Yeah, the idea of Acis and -- yes.

6 Q. Right.

7 A. Correct.

8 Q. Now, when --

9 A. A new brand.

10 Q. Right. Now, when Acis was set up, Highland had existing  
11 CLOs that it managed, right?

12 A. Correct.

13 Q. None of those existing collateral-management agreements  
14 from Highland were transferred as a part of the formation of  
15 Acis to Acis, right?

16 A. I don't recall, but I think Mr. Terry earlier said one  
17 CLO was taken over and managed by Acis. I just don't remember  
18 how it was effectuated, and I didn't remember that till he  
19 said it.

20 Q. But you don't know if that CLO was originally managed by  
21 Highland or if it was managed by some other third party?

22 A. I believe he said it was managed by Highland. But  
23 again --

24 Q. I --

25 A. -- Mr. Terry would know more than me. I just can't

1 bankers didn't want to be involved with the name.

2 THE COURT: All right, late '16 or early 2017. All  
3 right. Well, how then, were you all able to do the refi on  
4 CLO 2?

5 THE WITNESS: Well, because I think CLO 2 was before  
6 things got to the point where people would say no, because  
7 there was successive articles as things developed in the  
8 litigation.

9 THE COURT: Okay. When was CLO 2, the refi closed?

10 THE WITNESS: I believe it was closed on April, but  
11 they usually take several months to effectuate. So that  
12 was -- call it -- and these are just generalizations. But  
13 let's say you start on January 2017, you'll close March or  
14 April of '17. And that process is already ongoing, just like  
15 in these resets, things were ongoing.

16 THE COURT: Well, the name got toxic late 2016 or  
17 early 2017.

18 THE WITNESS: Correct. So you had a bank willing to  
19 do it, and then it got to the point to where they didn't want  
20 to be involved in ongoing litigation. The snowball just got  
21 larger.

22 THE COURT: Well, but April 2017, there was a refi  
23 with Acis as the portfolio manager on CLO 2.

24 THE WITNESS: Correct.

25 THE COURT: I'm trying to understand why was

1 everything fine and rosy in April 2002 (sic) to have Acis in  
2 there, even though its name had gotten toxic in late 2016 or  
3 early 2017, and now just no go, no one will touch it?

4 THE WITNESS: I don't think it was rosy. I think it  
5 was tolerable. And then as things got worse and there was  
6 more mud that was slung, it became intolerable.

7 And you also have the addition of the third-party  
8 investor coming in who gets to start calling the shots.

9 THE COURT: Okay. When was the decision made to do  
10 this refi on CLO 3?

11 THE WITNESS: That began back in the May/June time  
12 frame on that particular CLO, because that's when I got  
13 involved on the due diligence calls with the third-party  
14 investor. And it wasn't just about 3; it was about resetting  
15 them all.

16 THE COURT: All. All the others.

17 THE WITNESS: And then the actual structure, Your  
18 Honor, is what dictates why they were taken out of order, just  
19 the way they economically worked.

20 THE COURT: Okay. Um-hum. Um-hum.

21 So May/June of 2017, discussion of doing a refi on  
22 all of the five remaining?

23 THE WITNESS: Yes, with the new equity investor.  
24 Then they were able to dictate this is what we want the world  
25 to look like that we'll be sticking our 150 million dollars.

1 THE COURT: Okay. When did the offering circular go  
2 out for the one you want to close February 13th?

3 THE WITNESS: I don't know the exact date, but it was  
4 sometime last fall-ish. It may have been after that. I just  
5 don't recall. Because they would be drafted; they would be  
6 changed; you had Goldman doing some; then it got changed. If  
7 anyone knows the date -- I simply don't know the date.

8 THE COURT: Okay. This is a really big deal.

9 THE WITNESS: No, I know.

10 THE COURT: And you don't know the date?

11 THE WITNESS: That's -- I know. I just don't have  
12 this memorized. Does anybody know when the offer circular  
13 went out on 3?

14 THE COURT: You don't know?

15 THE WITNESS: I can't remember now.

16 THE COURT: It wasn't -- you don't know if it was  
17 before or after October 20th, 2017?

18 THE WITNESS: Oh, I think it was after. The circular  
19 goes out when everything else is finished in terms of this is  
20 what we're going to do; this is what the terms are going to  
21 look like; this is what the structure's going to look like.

22 THE COURT: Well, it had to be after this Exhibit 22,  
23 when Goldman is saying --

24 THE WITNESS: Oh, yes, it was after --

25 THE COURT: -- we're not going to do it.



**VERIFIED ORIGINAL COMPLAINT AND APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**TO THE HONORABLE STACEY G. C. JERNIGAN, UNITED STATES BANKRUPTCY JUDGE:**

Robin Phelan (the "Trustee"), the Chapter 11 trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Debtors" or "Acis") in the above styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), files this *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* (this "Complaint") against Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF" or "ALF"),<sup>1</sup> CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and respectfully states as follows:

**I. INTRODUCTION**<sup>2</sup>

1. On May 31, 2018, as an extraordinary measure, this Court issued a temporary restraining order ("TRO"), *sua sponte*, pursuant to section 105 of the Bankruptcy Code—which the Court stated it did not take lightly—preventing all Restrained Parties from taking any action

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<sup>1</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. prior to October 30, 2017 and the defined term "HCLOF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. on and after October 30, 2017.

<sup>2</sup> Capitalized terms not defined in the Introduction have the meaning ascribed to such terms later in the Complaint.

in furtherance of an Optional Redemption for fourteen (14) days. This TRO ended on June 15 at 12:01 a.m.

2. It appears that Highland violated the TRO by selling approximately \$23 million of loans pursuant to the First Optional Redemption Notices after May 31, 2018.<sup>3</sup>

3. On June 13, 2018, the day before the hearing on the Trustee's Motion to Extend the TRO, HCLOF advised the Trustee that it would withdraw the First Optional Redemption Notices. Consequently, the Trustee advised the Court that there was no need to go forward with the Motion to Extend the TRO on the following day.

4. On June 14, 2018, HCLOF's counsel told the Court that HCLOF had withdrawn the First Optional Redemption Notices but reserved the right to reissue the notices at some future date, stating:

That process has, in fact, concluded. That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>4</sup>

Because the First Optional Redemption Notices had been withdrawn, the Trustee did not proceed with the Motion to Extend the TRO.

5. At that hearing, the Trustee informed the Court and the parties that after hearing the testimony of Mr. Scott on June 12, 2018, he was developing additional options in an attempt to accommodate HCLOF.

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<sup>3</sup> Considering Highland's current and prior actions in attempting to effectuate (and possibly completing) unauthorized trades without approval of the Trustee, the Trustee believes there is sufficient urgency to the Court hearing the application for a TRO on an emergency basis. The Trustee does not waive and reserves all rights in connection with any unauthorized trades or transfers that have occurred or may occur.

<sup>4</sup> See Docket No. 298 at p. 7, ll. 15-22, Transcript of Hearing Held June 14, 2018.

6. On June 15, 2018, the very day after the hearing on the Motion to Extend the TRO was to have taken place, and after the TRO had expired, HCLOF—without requesting relief from the stay under section 362(d) of the Bankruptcy Code or requesting authority to take such action under section 363(b) of the Bankruptcy Code—again advised the Trustee that it had directed the Issuers to effectuate the Optional Redemption on July 30, 2018.

7. On June 20, 2018, Highland presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption, and further advised the Trustee:

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.**<sup>5</sup>

8. Once again, Highland and the Highland Affiliates, through this purported Optional Redemption, without Court approval, have attempted to exert control over Acis's property, the PMAs, in violation of the automatic stay and outside the ordinary course of Acis's business. In addition, Acis, pursuant to the PMAs, controls trading of the loans in the CLOs. Consequently, the notices of optional redemption sent by HCOLF are an attempt to obtain a property right (the right to control trading of the loans in the CLOs) from Acis as well as an attempt to exercise control over contractual property rights of Acis, all in violation of section 362(a)(3) of the Bankruptcy Code.

9. This action by Highland and the Highland Affiliates represents yet another attempt in their greater scheme to systematically dismantle and strip away Acis's assets, with the

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<sup>5</sup> Emphasis in original email correspondence.

larger goal of leaving effectively nothing for its creditors. In fact, HCLOF is attempting to use rights transferred prepetition, for no value, from Acis to now strip Acis of its remaining rights.

10. By this Complaint, the Trustee seeks: (i) a temporary restraining order and preliminary injunction to preserve the status quo and protect the estates by enjoining the Defendants from taking any action in furtherance of the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129; (ii) relief pursuant to 11 U.S.C. § 362(k) for Defendants' willful violation of the automatic stay for actions taken in furtherance of the Optional Redemption; (iii) a declaratory judgment that the Optional Redemption Notices are defective and ineffective pursuant to the PMAs and the Indentures; (iv) a declaratory judgment that the Optional Redemption Notices are ineffective pursuant to 11 U.S.C. § 363(b) because such actions are outside the ordinary course of Acis's business and were taken without Court approval; and (v) a declaratory judgment that the Trustee has not violated his fiduciary duties by declining to carry out the Optional Redemption.

## **II. JURISDICTION**

11. This Court has subject matter jurisdiction over the Bankruptcy Cases and this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

12. This matter arises under the laws of the United States of America. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The Trustee hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding.

13. Venue of the Adversary Proceeding in this District is proper under 28 U.S.C. § 1409.

### III. PARTIES

14. The Trustee is an individual and may be served with pleadings and process in this Adversary Proceeding through undersigned counsel.

15. Highland is a limited partnership incorporated under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

16. HCLOF is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

17. Holdco is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at 190 Elgin Ave., George Town, Grand Cayman, Cayman Islands KY 1-9005.

18. Neutra is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

19. CLO-3 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

20. CLO-4 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

21. CLO-5 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

22. CLO-6 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

23. CLO-3 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

24. CLO-4 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

25. CLO-5 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

26. CLO-6 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

#### IV. BACKGROUND

##### A. **The Bankruptcy Cases**

##### 1. **Involuntary Petitions**

27. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Mr. Terry"), as petitioning creditor, filed involuntary petitions against both Acis LP and Acis GP, thereby

initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

28. On January 31, 2018, Mr. Terry filed the *Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C § 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C § 363* [Case No. 18-30264, Docket No. 3 & Case No. 18-30265, Docket No. 3] (the "303(f) Motion"). After a two-day hearing on February 6 and 7, 2018 (the "303(f) Hearing"), the Court found that it was proper to impose section 363 of the Bankruptcy Code<sup>6</sup> before the hearing on the Involuntary Petitions and granted the 303(f) Motion.

29. On April 13, 2018, after six days of testimony and argument, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Order for Relief").

## **2. Chapter 7 Cases Converted to Chapter 11**

30. Following entry of the Order for Relief, Diane Reed (the "Chapter 7 Trustee") was appointed the interim Chapter 7 trustee for these Bankruptcy Cases.

31. On May 4, 2018, the Chapter 7 Trustee filed the *Trustee's Expedited Motion to Convert Cases to Chapter 11* [Docket No. 171] (the "Conversion Motion").

32. On May 4, 2018, Mr. Terry filed his *Emergency Motion for an Order Appointing a Trustee for the Chapter 11 Estates of Acis Capital Management, L.P. and Acis Capital Management GP, LLC Pursuant to Bankruptcy Code Section 1104(a)* [Docket No. 173] (the "Trustee Motion").

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<sup>6</sup> 11 U.S.C § 101 *et seq.* (the "Bankruptcy Code").

33. On May 8, 2018, Highland filed its *Comments by Highland Capital Management L.P. on (A) Chapter 7 Trustee's Expedited Motion to Convert Cases to Chapter 11; and (B) Creditor Joshua Terry's Motion for an Order Appointing a Trustee for the Chapter 11 Estates for the Debtors* [Docket No. 190] (the "Comment"). The Comment states that

the requisite equity and subordinated noteholders of the CLOs have issued Optional Redemption Notices . . . . These Optional Redemption Notices mandate that the CLOs be liquidated by June 14, 2018, in accordance with the terms of the Indentures as set forth therein. There is a potential that any change in the trustees could create market risks in effectuating the liquidation of the CLOs.

Comment ¶ 11.<sup>7</sup> A true and correct copy of the Comment (including the optional redemption notices as exhibits thereto) is attached hereto as **Exhibit "A."**

34. On May 11, 2018, the Court entered its *Order Granting Trustee's Expedited Motion to Convert Cases to Chapter 11* [Docket No. 205] (the "Conversion Order").

35. Following entry of the Conversion Order, Robin Phelan was appointed Chapter 11 Trustee of the Debtors in the Bankruptcy Cases.

## **B. Highland and the Highland Affiliates' Role in these Cases**

### **1. Highland**

36. Although Highland did not appear in the Bankruptcy Cases until after the entry of the Order for Relief, Highland employees directed Acis's actions at all times before the Order for Relief. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

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<sup>7</sup> The Trustee disputes that the Optional Redemption Notices are effective.

*Id.* Additionally, the two indirect owners of Highland, James Dondero and Mark Okada, testified at the Involuntary Trial.<sup>8</sup>

**2. The Highland Affiliates**

37. As the Court is aware, Highland and its network of affiliates have numerous other connections to this case. HCLOF, Holdco, and Neutra attempted to intervene in the trial on the Involuntary Petitions.

38. HCLOF is the

holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash flow from the CLOs. It, in certain ways, controls the CLO vehicle—for example, by virtue of having the ability to make a redemption call after a certain 'no-call' period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A's). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. ('ALF'), which was incorporated under the laws of the island nation of Guernsey, was the CLO equity holder. To be clear, ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the 'ALF Portfolio Management Agreement'— not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements).

Opinion at pp. 12-13 (footnotes omitted).

**C. Additional Factual Background**

**1. The CLOs, the PMAs, and the Indentures**

39. Acis LP is the portfolio manager for funds of certain CLO's: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) CLO-3, (iii) CLO-4, (iv) CLO-5, and (v) CLO-6. *See* Opinion ¶ 24. CLO-1, CLO-3, CLO-4, CLO-5 and CLO-6 are collectively referred to herein as the "Acis CLOs."

<sup>8</sup> Opinion at p. 3, n. 4 ("Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and [O]kada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable").

40. As relevant herein, Acis LP manages the Acis CLOs through five PMAs.<sup>9</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. *See* Opinion ¶ 13. True and correct copies of the PMAs are attached hereto as **Exhibit "B."** Each of the Acis CLOs is governed by the Indentures.<sup>10</sup> True and correct copies of the Indentures are attached hereto as **Exhibit "C."**

## 2. Shared Services and Sub-Advisory Agreement

41. Acis contracts out its operations to Highland pursuant to the Third Amended and Restated Sub-Advisory Agreement by and between Acis LP and Highland, dated March 17, 2017 (the "Sub-Advisory Agreement"), and the Fourth Amended and Restated Shared Services Agreement by and between Acis LP and Highland, dated March 17, 2017 (the "Shared Services Agreement"). These agreements are terminable by Acis on 30-days' notice, without cause. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of

<sup>9</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

<sup>10</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures."

companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at p. 14 (footnotes omitted).

### 3. The ALF PMA Transfer

42. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to another Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "ALF PMA"). The ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

(i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) **vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.**

ALF PMA § 5(a)-(q) (emphasis added). A true and correct of the ALF PMA is attached hereto as

#### **Exhibit "D."**

43. While ALF did not have authority to terminate the ALF PMA, Acis LP could terminate the ALF PMA without cause upon at least ninety (90) days' notice. *See* ALF PMA § 13(a)-(c). Still, the ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." *See* ALF PMA § 14(a)-(e).

44. On October 27, 2017, just seven days after Mr. Terry's arbitration award, Acis LP effectively terminated its own portfolio management rights under the ALF PMA and transferred its authority and those valuable portfolio management rights—for no value—to Highland HCF Advisors, Ltd. ("Highland HCF").

45. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which cancelled and terminated the ALF PMA and empowered Highland HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct of the October 2017 PMA is attached hereto as **Exhibit "E."**

46. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at p. 19 (footnotes omitted).

47. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, (without expressing its business judgment to this transfer) Acis LP simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA.

48. Without this ALF PMA Transfer, which transferred Acis LP's rights under the ALF PMA to Highland HCF, HCLOF could not have attempted to direct and effectuate an optional redemption, and deplete Acis's assets, as it is now attempting to do.

#### 4. The First Optional Redemption Notices

49. On April 30, 2018, HCLOF sent five notices purportedly requesting optional redemption pursuant to the Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").<sup>11</sup> True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit "F."**

50. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, the Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights and, effectively, the PMAs.

51. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit "G."**

<sup>11</sup> Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

**D. Highland Litigation and TRO**

52. On May 30, 2018, Highland and HCLOF filed Adversary No. 18-03078, styled *Highland Capital Management, L.P. and Highland CLO Funding, Ltd. v. Robin Phelan, Chapter 11 Trustee*, in this Court (the "Highland Adversary"). The Highland Adversary alleges, among other things, that the Trustee, by failing to effectuate the Optional Redemption pursuant to the First Optional Redemption Notices, breached the PMAs.

53. On May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including all of Acis's creditors in full.

54. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a TRO, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

55. On June 6, 2018 the Court entered its *Temporary Restraining Order*, whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

56. On June 8, 2018, the Trustee filed the *Emergency Motion to Approve Break-Up Fee, Expense Reimbursement, and Replacement Sub-Advisory and Shared Services Provider, Oaktree Capital Management, L.P.* (the "Motion to Approve Break-Up Fee"). See Docket No. 263.

57. As described in the Motion to Approve Break-Up Fee, the Trustee has executed a Commitment Letter (the "Commitment Letter") with Oaktree Capital Management, L.P. ("Oaktree") whereby Oaktree would: (i) obtain the subordinated equity rights in CLO-3, CLO-4, CLO-5, and CLO-6 after payment in full to HCLOF of a premium above the value of those rights; (ii) obtain Acis LP's rights, title and interests in the respective PMAs for enough to pay the creditors of Acis in full; and (iii) replace Highland as provider of the services currently provided by Highland under the Sub-Advisory Agreement and the Shared Services Agreement, at a fraction of the cost currently being charged by Highland (the "Oaktree Transaction"). A true and correct copy of the Commitment Letter is attached hereto as **Exhibit "H."**

58. The Oaktree Transaction, if consummated, would provide a return to all holders of the subordinated notes *in excess* of what they would receive in an optional redemption and pay all Acis's allowed creditors in full.<sup>12</sup> The Trustee intends to effectuate the Oaktree Transaction via a Chapter 11 plan.

59. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. See Docket No. 275.

60. Also on June 11, 2018, HCLOF filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). See Docket. No. 271. This pleading did not mention that Highland apparently violated

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<sup>12</sup> Based upon current projected and known claims and also based on expeditious plan confirmation.

the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its TRO on May 31.

**E. The Second Optional Redemption Notices**

61. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, HCLOF advised the Trustee that HCLOF would withdraw the First Optional Redemption Notices. HCLOF's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit "I"** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that HCLOF was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

62. On June 14, 2018, counsel for HCLOF advised the Court that HCLOF had withdrawn the First Optional Redemption Notices. Counsel for HCLOF further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>13</sup>

63. On June 15, 2018, at 12:01 a.m., the TRO expired.

64. Later on June 15, 2018, despite the fact that HCLOF had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, HCLOF gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional

<sup>13</sup> See Docket No. 298 at p. 7, ll. 16-22, Transcript of Hearing Held June 14, 2018.

Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit "J"** and are incorporated herein for all purposes.

65. By the Second Optional Redemption Notices, HCLOF directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

66. On June 20, 2018, Highland presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland further stated:

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.**<sup>14</sup>

**V. CAUSES OF ACTION**

***Count 1: Temporary Restraining Order and Preliminary Injunction***

67. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

68. Absent affirmative relief from the automatic stay, any action to effectuate the Optional Redemption by way of the Optional Redemption Notices violates the automatic stay because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."<sup>15</sup> Further, any action taken by the Defendants to effectuate the Optional Redemption is outside the ordinary course of Acis's

<sup>14</sup> Emphasis in original email correspondence.  
<sup>15</sup> 11 U.S.C. § 362(a)(3).

business, and therefore requires Court approval.<sup>16</sup> Acis's rights under the PMAs are valuable, and if Acis were to lose such rights, immediate and irreparable harm would result to Acis's creditors and third parties with financial interests in Acis's bankruptcy estates because confirmation of a plan of reorganization funded by Oaktree pursuant to the Oaktree Transaction would be impossible. In addition to the Oaktree Transaction, the Trustee has received proposals from other qualified parties to fund alternative plans of reorganization which may include a reset of the CLOs and continuance of Acis as the portfolio manager of the CLOs. In addition, HCLOF is using rights fraudulently transferred from Acis to effectuate the Optional Redemptions. Therefore, pursuant to Bankruptcy Rule 7001(7) and Civil Rule 65, incorporated by Bankruptcy Rule 7065, the Trustee seeks a temporary restraining order and preliminary injunction, to prohibit the Defendants from taking any further actions to effectuate the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129.

69. The standards for a temporary restraining order and a preliminary injunction are the same.<sup>17</sup> To obtain either, the movant must show (a) it has a substantial likelihood of prevailing on the merits; (b) it will suffer irreparable injury without the injunction; (c) the threatened injury to the movant outweighs the damage the proposed injunction may cause to the parties opposing it; and (d) that the requested injunction would not be against the public interest.<sup>18</sup> The Court must necessarily make its decision by relying on an early and abbreviated

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<sup>16</sup> See 11 U.S.C. § 363(b).

<sup>17</sup> *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987); *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 635 (M.D. La. 2015); *Miranda v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 90632 (N.D. Tex. June 27, 2013).

<sup>18</sup> *Id.*

proceeding and set of facts.<sup>19</sup> Quick and abbreviated determinations are necessary to recognize the goal of injunctive relief, which is to maintain the status quo to permit the Court the time necessary to make a decision on the merits after full development of the facts.<sup>20</sup>

70. Moreover, not all of the four (4) factors must be given equal weight. According to the Fifth Circuit Court of Appeals: “a sliding scale must be applied in considering the probability of plaintiffs’ winning on the merits and plaintiffs’ irreparable injury in the absence of interlocutory relief....”<sup>21</sup> and “...none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus.”<sup>22</sup> This means that as long as the Court finds that there is some likelihood of ultimate success (*i.e.*, not zero likelihood of success), the Court can give greater weight to the severity and irreparability of the harm and the relative hardships to the movant and opponent of the injunctive relief.<sup>23</sup>

71. The Trustee can show that the elements warranting a temporary restraining order and preliminary injunction exist here: (1) the Trustee has a "substantial likelihood of success on the merits" of a claim regarding (i) violation of the automatic stay if injunction is not granted, (ii) failing to comply with the requirements of an optional redemption, (iii) utilizing assets transferred for no value to attempt to effectuate an optional redemption, (iv) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (v) confirmation of an effective plan of reorganization; (2) creditors and interested third-parties face a substantial threat of imminent and irreparable injury to their interests in the Debtors' bankruptcy estates if an injunction is not issued since confirmation of a plan of reorganization funded by Oaktree or other

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<sup>19</sup> *Texas v. Seatrain Int’l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975).

<sup>20</sup> *Kliebert*, 141 F. Supp. 3d at 635.

<sup>21</sup> *Siff v. State Democratic Executive Committee*, 500 F.2d 1307 (5th Cir. 1974).

<sup>22</sup> *Seatrain*, 518 F.2d at 180.

<sup>23</sup> *Id.*

competent party will be eliminated; (3) the threatened injury to interested parties "if the injunction is denied outweighs any harm that will result if the injunction is granted"; and (4) "public interest" favors letting the Trustee exercise its fiduciary duties and effectuate his process over costly litigation.<sup>24</sup>

**A. Substantial Likelihood of Success on the Merits**

72. The Optional Redemption Notices demand the liquidation of property currently under the control of Acis LP, as portfolio manager, as well as the PMAs, which are defined as Assets under the Indentures and are property of the Acis LP estate. Indeed, the main, if not sole, purpose of the redemptions appears to be to remove Acis LP as portfolio manager and terminate its primary asset, the PMAs. Accordingly, by extinguishing the PMAs, the purported Optional Redemption is prohibited because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" in violation of 11 U.S.C. § 362(a)(3).

73. Further, any action taken by the Defendants to effectuate the Optional Redemption, and thereby extinguish rights under the PMAs, is outside the ordinary course of Acis's business, and therefore would require Court approval pursuant to 11 U.S.C. § 363(b).

**1. The Automatic Stay**

74. Section 362 of the Bankruptcy Code operates as a stay, applicable to all entities of: "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."<sup>25</sup> Property of the estate is defined by section 541 of

<sup>24</sup> See *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (stating the elements of a preliminary injunction).  
<sup>25</sup> 11 U.S.C. § 362(a)(3).

the Bankruptcy Code as including: "all legal or equitable interests of the debtor in property as of the commencement of the case."<sup>26</sup>

75. The protection afforded to a debtor by the automatic stay is one of the most important benefits that a debtor and its creditors receive when filing for bankruptcy. "The automatic stay has broad scope."<sup>27</sup> "This breadth suggests Congressional intent that, in the face of uncertainty or ambiguity, courts should presume protection of arguable property."<sup>28</sup> The stay is automatic and "springs into being immediately upon the filing of a bankruptcy petition."<sup>29</sup> Actions in violation of the automatic stay are voidable.<sup>30</sup>

## 2. The Automatic Stay is Applicable to the PMAs and CLOs

76. In the TRO, the Court enjoined "the Optional Redemption, call, or other liquidation of the Acis CLOs" because such actions appeared to this Court to have the potential to liquidate or harm valuable property of the Debtors, namely the PMAs. Moreover, this Court found the "Trustee has a substantial case on the merits on a serious legal question" that such actions would constitute a violation of the automatic stay pursuant to 11 U.S.C. § 362(a)(3). Thus, to obtain a second TRO and a preliminary injunction, the Trustee must demonstrate a substantial likelihood of success on the merits regarding whether the actions by HCLOF and others to liquidate the assets of the Acis CLOs, and thereby eviscerate the value of Acis LP's interest in the PMAs, violate the automatic stay.

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<sup>26</sup> 11 U.S.C. § 541(a).

<sup>27</sup> *Burns v. Home Zone Sales & Lease Purchase, LLC*, 503 B.R. 666, 673 (Bankr. S.D. Miss. 2013).

<sup>28</sup> *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 302 (5th Cir. 2005).

<sup>29</sup> *Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003)(quoting *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997)).

<sup>30</sup> *Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003).

77. The Debtors' rights under the PMAs, which are executory contracts, are property of the estate.<sup>31</sup> The Debtors' rights under the PMAs are therefore protected by the automatic stay.<sup>32</sup> If the Optional Redemption or other liquidation of the assets in the Acis CLOs is permitted to go forward, it would render the PMAs valueless. Consequently, the Optional Redemption and any other attempt by HCLOF liquidate the assets of the Acis CLOs would violate section 362(a)(3) because such actions involve exercising control over property of the estate (the PMAs).

78. In *Three Strokes Limited Partnership*, this Court held that a foreclosure sale was an attempt to exercise control over property of the estate under 11 U.S.C. § 362(a)(3) where the debtor held the second lien, but not the first lien on the property subject to foreclosure.<sup>33</sup> The Court held that, even though the underlying asset (i.e., the real property subject to foreclosure) was not the debtor's property:

[T]he second line interest of the Debtor in that property is a property interest worth of recognition and protection. Thus, Section 362 applies to automatically stay the foreclosure proceedings. The foreclosure proceedings could have the effect of extinguishing the Debtor's second lien interest. The foreclosure proceedings would constitute an exercise of control over property of the estate, pursuant to Bankruptcy Code Section 362(a)(3). The court recognizes that the automatic stay is generally a tool to stop creditor collection efforts, and Consec is not a creditor of this Debtor. However, section 362 is worded to prevent "of all entities" (not merely creditors) from engaging in certain accts including "an act ... to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Clearly, Section 362(a)(3) is intended to prevent dismemberment of the estate and to allow a breathing spell for a debtor-in-possession."<sup>34</sup>

The *Three Strokes* case is analogous to this one. Here, Acis has a property interest in the PMAs – an interest “worthy of recognition and protection” – that will be extinguished if the CLOs are

<sup>31</sup> *In re Mirant Corp.*, 303 B.R. 319, 328 (Bankr. N.D. Tex. 2003) (“a debtor has rights under the contract which are property of the estate and so are protected by the automatic stay from actions of other parties”).

<sup>32</sup> *Id.* at 328.

<sup>33</sup> 397 B.R. 804, 807 (Bankr. N.D. Tex. 2008).

<sup>34</sup> *Id.*

liquidated. Consequently, any attempt to extinguish Acis LP's property interest in the PMAs would be an exercise of control over property of the estate, and is therefore stayed by Section 362(a)(3).

79. The *Three Strokes* opinion is consistent with a long line of cases holding that where a non-debtor's actions would directly or indirectly interfere with and/or substantially diminish a debtor (or trustee's) intangible property rights, such actions violate section 362(a)(3) of the Bankruptcy Code. See, e.g., *In re 48th Street Steakhouse*, 835 F.2d 427, 430-31 (2d Cir. 1987) (finding landlord's termination as to the primary tenant would destroy the debtor's subtenancy violated the automatic stay and was therefore void because, where a non-debtor's interest is intertwined with that of a bankrupt debtor and an action would "inevitably have an adverse impact on property of the estate," such action is barred by the automatic stay); *In re Prudential Lines*, 928 F.2d 565, 573-574 (2d Cir. 1991) (affirming order of the bankruptcy court permanently enjoining parent from taking a "worthless stock" deduction on its tax return where it would effectively eliminate the value of the debtor's net operating loss and have an adverse impact on its reorganization); cf., *Allentown Ambassadors, Inc. v. Northeast Am. Baseball, LLC (In re Allentown Ambassadors, Inc.)*, 361 B.R. 422, 438 and n. 34 (Bankr. E.D. Pa. 2007) (analyzing the phrase "to exercise control over property of the estate" and collecting cases explaining what that means in the context of section 362(a)(3)). Thus, because the liquidation of the CLOs represents an "act to obtain possession of property of the estate," – namely, Acis LP's intangible property rights in the PMAs – such actions constitute a violation of section 362(a)(3).

80. Moreover, apart from the fact that the Optional Redemption directs Acis LP to cancel the PMAs, the Optional Redemption also seeks to force the winding down of the CLOs. By Acis LP's own admission on the Acis LP SOFA, Acis LP has at least a possessory interest in the CLO assets, such that a transfer of CLO assets constitutes a transfer of property *from* the

estate under section 362(a)(3) of the Bankruptcy Code. Property from the estate includes property that does not belong to debtor, but over which the debtor has possession or control. The legislative history of section 362(a)(3) makes this clear:

Paragraph (3) stays any act to obtain possession of property of the estate (that is, property of the debtor as of the date of the filing of the petition) or property **from** the estate (**property over which the estate has control or possession**). The purpose of this provision is to prevent dismemberment of the estate. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.<sup>35</sup>

Similarly, Collier extensively discusses the concept that property over which a debtor has possession or control is appropriately covered by the automatic stay:

Section 362(a)(3) stays all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. The trustee or debtor in possession takes control of all property of the estate in order to maintain any going concern value and to ensure an equitable distribution of the property among creditors. This requires that no entity seek to interfere with these tasks by taking possession or exercising control over property of the estate. It also requires that no entity grab non-estate property *from* the estate without the court supervision that comes from a stay relief proceeding . . . . The property protected may be property of the estate or property in the possession of the estate.<sup>36</sup>

81. Finally, cases interpreting section 362(a)(3) uniformly hold that property in the possession of a debtor (even if not property of the estate) is covered by the protections and procedures of Section 362(a)(3). For example, Judge Isgur has called section 362(a)(3) an "anti-grab-law statute" and noted that "[t]he intent and purpose of (a)(3) is to prohibit physical taking of property . . . ." In *Adana Mortgage*, the Georgia bankruptcy court thoroughly explained the purpose of section 362(a)(3) related to property from the estate in finding a willful violation of the automatic stay:

<sup>35</sup> S. REP. No. 95-989, at 50 (1978) (emphasis added).

<sup>36</sup> 3 COLLIER ON BANKRUPTCY ¶ 362.03[5] (16th ed. 2018) (emphasis in original).

Title or ownership of property is not controlling to a Section 362(a)(3) violation. Possession or control by the debtor is sufficient to enact the protection of the automatic stay. The prohibition against any act to remove property from the estate was apparently "included to forestall a lienor or other adverse claimant from asserting as a justification for an exercise of selfhelp that the property taken from the debtor did not belong to the estate." The accounts clearly were under the control of Debtor at the time of filing. Thus, regardless of whether they are property of the estate, the accounts constituted property from the estate at the time of filing and were under the protection of Section 362(a)(3). The actions taken by GNMA to attempt to divest the Debtor of control and to obtain possession of these accounts were, therefore, in violation of the automatic stay.<sup>37</sup>

82. Likewise, many cases have found that a debtor's mere possessory interest in property is sufficient to make it property of the estate under section 541 of the Bankruptcy Code and subject to the stay.<sup>38</sup>

### 3. Section 555 of the Bankruptcy Code Does Not Apply to HCLOF

83. Section 365(e)(1) prohibits the operation of an *ipso facto* clause in an executory contract or unexpired lease due the filing of a bankruptcy case.<sup>39</sup> Section 555 provides a "safe harbor" from the automatic stay when a stockbroker, financial institution, financial participant, or securities clearing agency exercises its contractual right under an *ipso facto* clause to liquidate, terminate, or accelerate a securities contract for one of the conditions specified in section 365(e)(1)—that is, the insolvency or financial condition of the debtor, the commencement of a case under title 11, or the appointment of or taking possession by a trustee

<sup>37</sup> *Adana Mortgage Bankers, Inc.*, 12 B.R. 989, 1005 (Bankr. N.D. Ga. 1980) (vacated by the agreement of parties).

<sup>38</sup> *See In re Canon*, 130 B.R. 748, 750 (Bankr. N.D. Tex. 1991) (citing legislative history of Bankruptcy Code to show that a "possessory interest" is property of the estate); *In re 48th St. Steakhouse, Inc.*, 835 F.2d 427, 430 (2d Cir. 1987) ("[A] mere possessory interest in real property, without any accompanying legal interest, is sufficient to trigger the protection of the automatic stay."); *In re Salov*, 510 B.R. 720, 729 (Bankr. S.D.N.Y. 2014) ("Courts in all ten circuits have found that the automatic stay protects a possessory interest in property.") (collecting cases); *Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered Prods., Inc.)*, 382 B.R. 90, 106 (Bankr. E.D. Mich. 2008) ("The stay protects interests in property whether an ownership interest, possessory interest or some other interest."); *Boydston v. Reed*, 218 B.R. 840, 842 (N.D. Miss. 1998) (finding that even stolen property is property of the estate).

<sup>39</sup> *See* 3 COLLIER ON BANKRUPTCY ¶ 365.08[1].

in a case under title 11.<sup>40</sup> Section 555 does not provide an unqualified right to liquidate, terminate, or accelerate a securities contract in violation of the automatic stay merely because the contract contains a broad termination provision.<sup>41</sup>

84. Here, although HCLOF has asserted that it is protected by the safe harbor of section 555 of the Bankruptcy Code, HCLOF is not exercising a "contractual right . . . [under a] securities contract . . . because of a condition of the kind specified in section 365(e)(1) of [the Bankruptcy Code]." <sup>42</sup>

85. Specifically, HCLOF has not demonstrated that it is exercising its contractual right under a securities contract to liquidate, accelerate, or terminate due to an *ipso facto* clause in such contract.

86. Further, HCLOF must show that it has:

agreements or transactions described in described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross market-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition.<sup>43</sup>

87. HCLOF has not demonstrated that it is exercising purported contractual rights under securities contracts with the Debtors or non-affiliates. HCLOF has also not demonstrated that it is a "financial participant," as required under section 555. Accordingly, HCLOF has not

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<sup>40</sup> Cf. *In re Enron Corp.*, 306 B.R. 465, 472-733 (Bankr. S.D.N.Y. 2004) (reaching the same result under analogous provision of section 560 of the Bankruptcy Code).

<sup>41</sup> See *In re Amcor Funding Corp.*, 117 B.R. 549, 551 (Bankr. D. Ariz. 1990) (finding contractual provision permitting liquidation of a securities contract for *any reason* did not bring contract within section 555's safe harbor provision where liquidation was not triggered by a condition of the kind specified in section 365(e)(1)).

<sup>42</sup> See HCLOF's Brief in Opposition to Extending the TRO, Docket No. 271, at 22-27.

<sup>43</sup> See 11 U.S.C. § 101(22A).

shown that the safe harbor of section 555 of the Bankruptcy Code applies to its actions to effectuate the Optional Redemption.

**4. The Optional Redemption is Outside the Ordinary Course of the Debtors' Business**

88. Under section 363(b) of the Bankruptcy Code, the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

89. To determine whether a transaction is within the ordinary course of business, courts look to "whether the transaction is abnormal or unusual, in which case it is probably not in the ordinary course of business, or whether it is a reasonably common type of transaction."<sup>44</sup> The Optional Redemption contemplated by HCLOF is not a common event in the course of the Debtors' business. Indeed, the Optional Redemption is an extraordinary event, which would effectively cause the liquidation of the CLOs and the PMAs. This is not in the ordinary course of business.

90. Further, any party that "deals with a bankruptcy trustee in a transaction that is not in the ordinary course of business is charged with the knowledge that the law may require court approval."<sup>45</sup>

91. Actions taken by Defendants in furtherance of the purported Optional Redemption were outside the ordinary course of the Debtors' business and were taken without the Trustee's consent or authorization from the Court. Thus, such actions are ineffective pursuant to 11 U.S.C. § 363(b).

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<sup>44</sup> 3 COLLIER ON BANKRUPTCY ¶ 363.03[1][a] (citing *In re Dant & Russell, Inc.*, 853 F.2d 700 (9th Cir. 1988) (applying the "horizontal test").

<sup>45</sup> *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 266 (5th Cir. 2010).

92. For the reasons set forth above, sections 362(a)(3) and 363(b) of the Bankruptcy Code foreclose any action by the Defendants in furtherance of the Optional Redemption, call, or liquidation of the Acis CLOs. Thus, the Trustee has a substantial likelihood of succeeding on the merits.

**B. Substantial Threat of Irreparable Injury**

93. Injunctive relief is necessary to prevent imminent and irreparable injury in the form of substantial losses to creditors and parties-in-interest, as well as to third parties' financial interests, related to the Optional Redemption, call, or other liquidation of the Acis CLOs. The losses that would result in the event an injunction is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, creditors and interested third parties otherwise would have no adequate remedy at law. The Optional Redemption would eliminate the confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan.

**C. Balancing of Harms**

94. The balancing of the harms weighs in favor of issuing a preliminary injunction because any alleged harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to all parties-in-interest if the Court does not enjoin the Optional Redemption, call, or other liquidation of the Acis CLOs, and return more to all affected parties than would be received by the Optional Redemption.<sup>46</sup> Highland and the Highland Entities will receive the same monetary benefit from the Oaktree Transaction, creditors will be paid in full, and economic stakeholders would reap a benefit. HCLOF's claimed harm is exaggerated.

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<sup>46</sup> Any alleged harm to Defendants is illusory and specious because, among other things, the Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a "refinance" or "reset" transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption.

**D. Public Interest**

95. Public policy supports restraining the actions described herein to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property and other assets. Further, there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.

96. Therefore, the Trustee asks that the Court, after a hearing on this application, grant a temporary restraining order and preliminary injunction enjoining the Defendants and Defendants' officers, agents, servants, employees, and attorneys from engaging in the following actions:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs, including any further optional redemption under section 9.2 of the Indentures; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

97. The Trustee requests that such injunctive relief remain effective unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129.

***Count 2: Willful Violation of the Automatic Stay***

98. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.<sup>47</sup>

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<sup>47</sup> *Campbell v. Countrywide Home Loan, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005)).

99. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate."<sup>48</sup>

100. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees.<sup>49</sup>

101. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."<sup>50</sup> The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction."<sup>51</sup> This is consistent with the broad equitable authority of the bankruptcy courts.<sup>52</sup>

102. Pursuant to section 362(k)(1), Plaintiff seeks recovery of damages commensurate with its injury, due to Defendants' violation of the automatic stay. Further, given Defendants' blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiff seeks attorneys' fees and sanctions against Defendants, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 3: Declaratory Judgment that the Optional Redemption Notices  
Were Defective and Ineffective Under the PMAs and Indentures***

103. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

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<sup>48</sup> *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

<sup>49</sup> *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009) (the term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. See *Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, inter alia, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

<sup>50</sup> 11 U.S.C. § 105(a).

<sup>51</sup> 2 COLLIER ON BANKRUPTCY ¶105.01 (collecting cases).

<sup>52</sup> See *United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

104. The Optional Redemption Notices were not sent by properly authorized parties, pursuant to the certain PMA, dated November 15, 2017 (the "11-15-17 PMA"), between HCLOF and Highland HCF. A true and correct copy of the 11-15-17 PMA is attached hereto as **Exhibit "K."**

105. Under Section 5(a)(xvii) of this 11-15-17 PMA, Highland HCF has the authority for and in the name of HCLOF to "vote Financial Instruments . . . ." The Subordinated Notes referenced in the Optional Redemption Notices are clearly Financial Instruments covered by Section 5(a)(xvii). Further, Section 4 of the 11-15-17 PMA requires that State Street Custodial Services (Ireland) Limited ("State Street"), as custodian, "shall at all times be responsible for the . . . exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by [HCLOF]." Yet, the Optional Redemption Notices were signed only by directors of HCLOF, not Highland HCF or State Street.

106. Section 9.4(a) of the Indenture states that, with any redemption under Section 9.2, the Holders of the Subordinated Notes (currently, HCLOF) must provide written direction/notice of such redemption no later than 45 days prior to the Redemption Date, and Section 9.4(b) requires that all notices of redemption delivered pursuant to Section 9.4(a) state:

- (i) the applicable Redemption Date;
- (ii) the Redemption Prices of the Notes to be redeemed;
- (iii) that all of the Secured Notes are to be redeemed in full and that interest on such Secured Notes shall cease to accrue on the Redemption Date specified in the notice;
- (iv) the place or places where Notes are to be surrendered for payment of the Redemption Prices, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2; and
- (v) if all Secured Notes are being redeemed, whether the Subordinated Notes are to be redeemed in full on such Redemption Date and, if so, the place or places where the Subordinated Notes (other than any Uncertificated Subordinated Notes) are to be surrendered for payment of the Redemption Prices, which shall be the office or

agency of the Co-Issuers to be maintained as provided in Section 7.2 in order to receive payment therefor.

107. The Optional Redemption Notices fail to provide any such information other than the Redemption Date. Thus, the Optional Redemption Notices are defective on their face. Additionally, it has not been demonstrated that the Optional Redemption Notices were actually received by the required parties, which is required at least with respect to U.S. Bank.

108. Also, as originally referenced the Trustee's May 22, 2018 Redemption Responses, and as adduced above, completion of the Optional Redemption as requested by the Optional Redemption Notices would, or could reasonably be expected to: (i) violate applicable law; and/or (ii) knowingly and willfully adversely affect the interests of the Holders in the Assets in any material respect that is not expressly permitted under the PMAs or the Indentures. Under such circumstances, Section 8 of the PMAs requires coordination with the Trustee in order to make indemnification arrangements and providing a legal opinion from outside counsel, which must meet the Trustee's approval. Defendants have not complied with Section 8 of the PMAs.

109. Finally, the Second Optional Redemption Notices make reference to placing "a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P." The Indentures and PMAs do not provide for such an arrangement.

110. Thus, for the numerous deficiencies set forth above, the Optional Redemption Notices are defective and ineffective.

***Count 4: Declaratory Judgment that the Optional Redemption Notices Were Outside the Ordinary Course of Business and Therefore Ineffective under 11 U.S.C. § 363(b)***

111. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

112. Under section 363(b) of the Bankruptcy Code, the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

113. The Trustee did not consent to Defendants' actions taken in connection with the Optional Redemption Notices.

114. Actions taken by Defendants in furtherance of the purported Optional Redemption were outside the ordinary course of the Debtors' business and were taken without the Trustee's consent or authorization from the Court. Thus, such actions are ineffective pursuant to 11 U.S.C. § 363(b).

***Count 5: Declaratory Judgment that the Trustee Has Not Violated His Fiduciary Duties by Declining to Carry Out the Optional Redemption***

115. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

116. The Trustee is mindful of his fiduciary obligations under the PMAs and Indentures. At the same time, the Trustee believes any action taken to effectuate the Optional Redemption are in violation of the automatic stay, outside the ordinary course of Acis's business, and an attempt to destroy the primary vehicle by which Acis generates revenue.

117. The Trustee was appointed on Monday, May 14, 2018. In the brief period of time since the Trustee's appointment, Highland, pursuant to the Shared Services Agreement and Sub-Advisory Agreement, has advised the Trustee on the day-to-day business operations of Acis. Highland, as a fiduciary for Acis LP, pursuant to the Sub-Advisory Agreement, has stated that if the Trustee does not begin the process of liquidating the Acis CLOs and comply with the Optional Redemption, the Trustee will breach certain fiduciary duties owed to the Acis CLOs. As described believe, the Trustee believes the Optional Redemption will violate sections 362 and 363 of the Bankruptcy Code and leave Acis without its most valuable assets, the PMAs. Highland

has further suggested to the Trustee that if he does not agree to effectuate the Optional Redemption, he was be individually liable for violating his fiduciary duty to the Acis CLO's equity.<sup>53</sup> At the May 31, 2018 status conference in these Cases, the Trustee advised the Court of Highland's demands related to the Optional Redemption. The Trustee believes that he has proposed a plan of reorganization that maximizes recovery for all parties, including HCLOF.

118. As such, the Trustee seeks a declaratory judgment that he has not violated his fiduciary obligations by declining to carry out the Optional Redemption, as ordered by HCLOF.

## VI. PRAYER

119. For the foregoing reasons, the Trustee respectfully requests that the Court enter judgment in favor of the Trustee, and specifically and expressly provide the following relief to the Plaintiff for the benefit of the Debtors' bankruptcy estates:

- (i) Temporary restraining order and preliminary injunction pursuant to Federal Rule of Bankruptcy Procedure 7065, to preserve the status quo and protect the estates by enjoining the Defendants from taking any action in furtherance of the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129;
- (ii) Plaintiff's recovery of damages pursuant to 11 U.S.C. § 362(k), for Defendants' violation of the automatic stay;
- (iii) Declaratory judgment that the Optional Redemption Notices are defective and ineffective pursuant to the PMAs and Indentures;
- (iv) Declaratory judgment that the Optional Redemption Notices are ineffective pursuant to 11 U.S.C. § 363(b);
- (v) Declaratory judgment that the Trustee has not violated his fiduciary duties by declining to carry out the Optional Redemption;

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<sup>53</sup> HCLOF is the only signatory on the Optional Redemptions related to CLO-3, CLO-4, CLO-5, and CLO-6. The signatories for the Optional Redemption related to CLO-1 are New ALF, Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategic Fund) (a Highland affiliate), and Drexel Limited.

- (vi) Plaintiff's recovery from Defendants of pre- and post-judgment interest, at the greatest rate permitted by law, on all amounts awarded to Plaintiff;
- (vii) Plaintiff's recovery from Defendants of all attorney's fees and costs incurred in connection with the prosecution of this Adversary Proceeding;
- (viii) All such other and further relief as to which Plaintiff has shown or hereafter shows himself to be justly entitled in law or in equity.

**DATED: June 20, 2018**

*[Remainder of Page Intentionally Left Blank]*

Respectfully submitted,

By: /s/ Rakhee Patel

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**COUNSEL FOR THE CHAPTER 11  
TRUSTEE**

VERIFICATION

STATE OF TEXAS

§  
§  
§

COUNTY OF DALAS

BEFORE ME, the undersigned notary public on this day personally appeared Robin Phelan, Chapter 11 Trustee, as authorized representative of Acis Capital Management, L.P. and Acis Capital Management GP, LLC, who, after being duly sworn stated under oath that he has read the foregoing Verified Original Complaint and Request for Temporary Restraining Order and Preliminary Injunction, and that every statement contained therein is true and correct based on his personal knowledge or information obtained from other persons.

*Robin Phelan*

SWORN TO and SUBSCRIBED before me on this 20<sup>th</sup> day of June, 2018.

*Sheryl Precopia*  
Notary Public in and for the State of Texas

My Commission Expires:

\_\_\_\_\_





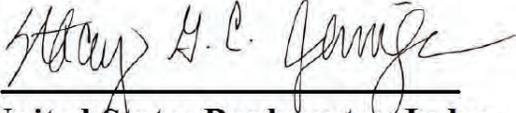
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed June 6, 2018

  
United States Bankruptcy Judge

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**

§  
§  
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**Case No. 18-30264-SGJ-11  
Case No. 18-30265-SGJ-11**

**(Jointly Administered Under Case  
No. 18-30264-SGJ-11)**

**Chapter 11**

**TEMPORARY RESTRAINING ORDER**

On its own motion pursuant to 11 U.S.C § 105 and Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, for the reasons stated on the record at the May 31, 2018 Status Conference<sup>1</sup> in the above-referenced cases, after considering the argument of counsel, the testimony of Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P., ("Acis LP") and ("Acis GP, with Acis LP, "Debtors"), and the pleadings, and other information on file, the Court finds that there is evidence that harm is

<sup>1</sup> On May 31, 2018, upon request of the Trustee (as hereinafter defined) through the *Trustee's Request for Status Conference* [Docket No. 239] (the "Status Conference Motion"), the Court held a status conference in the above-referenced cases (the "Status Conference"). Capitalized terms not defined herein have the meaning(s) ascribed to such term(s) by the Status Conference Motion.

imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured. As the basis for this order, the Court states the following:

1. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, LTD ("HCLOF"), CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra") (HCLOF, Holdco and Neutra are collectively referred to herein as the "Highland-Related Parties"), U.S. Bank National Association ("US Bank"), Acis CLO 2013-1 LTD. ("CLO-1"), Acis CLO 2014-3 LTD. ("CLO-3"), Acis CLO 2014-4 LTD. ("CLO-4"), Acis CLO 2014-5 LTD. ("CLO-5"), Acis CLO 2015-6 LTD. ("CLO-6") (CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6 are collectively referred to herein as the "Acis CLOs"), Acis CLO 2013-1 LLC ("CLO-1 LLC"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), Acis CLO 2015-6 LLC ("CLO-6 LLC") (CLO-1 LLC, CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, and CLO-6 LLC are collectively referred to herein as the "Acis CLO Co-Issuer") and other parties (the Trustee, Highland, the Highland-Related Parties, US Bank, the Acis CLOs, and the Acis Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures"). The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties.

2. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.
3. The Trustee has a substantial case on the merits on a serious legal question—to wit: that the threatened actions described herein, if not enjoined, will violate the automatic stay in this matter, pursuant to 11 U.S.C. § 362(a)(3).
4. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland-Related Parties, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.
5. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

**IT IS THEREFORE ORDERED** that all Restrained Parties<sup>2</sup> and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined for a period of fourteen (14) days from:

1. proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
2. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of the Optional Redemption, call, or other liquidation of the Acis CLOs.

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<sup>2</sup> The Restrained Parties appeared at the Status Conference. Parties-in-interest received notice of the Status Conference pursuant to the *Notice of Status Conference* [Docket No. 242].

**IT IS FURTHER ORDERED**, for the avoidance of doubt, that U.S. Bank may continue to perform its ministerial functions in respect of sale trades that *were executed and settled*, at the initiation of the CLO issuers or Highland-Related Parties *prior to May 31, 2018*, without running afoul of this TRO.

**IT IS FURTHER ORDERED** that this Order expires on 12:01 a.m. (Central Daylight Time) on June 15, 2018, unless further extended by this Court or by agreement of the parties.

**### END OF ORDER ###**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed July 10, 2018

**United States Bankruptcy Judge**

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

<b>IN RE:</b>	§	<b>Case No. 18-30264-SGJ-11</b>
	§	<b>Case No. 18-30265-SGJ-11</b>
<b>ACIS CAPITAL MANAGEMENT, L.P.,</b>	§	
<b>ACIS CAPITAL MANAGEMENT GP,</b>	§	<b>(Jointly Administered Under Case</b>
<b>LLC,</b>	§	<b>No. 18-30264-SGJ-11)</b>
	§	
<b>Debtors.</b>	§	<b>Chapter 11</b>
	§	

<b>ROBIN PHELAN, Chapter 11 Trustee,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>Adversary No. 18-03212-SGJ</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT,</b>	§	
<b>L.P., HIGHLAND CLO FUNDING, LTD.</b>	§	
<b>f/k/a ACIS LOAN FUNDING, LTD., CLO</b>	§	
<b>HOLDCO, LTD., NEUTRA, LTD., ACIS</b>	§	
<b>CLO 2014-3 LTD., ACIS CLO 2014-4 LTD.,</b>	§	
<b>ACIS CLO 2014-5 LTD., ACIS CLO 2015-6</b>	§	
<b>LTD., ACIS CLO 2014-3 LLC, ACIS CLO</b>	§	
<b>2014-4 LLC, ACIS CLO 2014-5 LLC, and</b>	§	
<b>ACIS CLO 2015-6 LLC,</b>	§	
	§	
<b>Defendants.</b>	§	

## **PRELIMINARY INJUNCTION ORDER**

Upon the *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adversary No. 18-03212, Docket No. 1] (the "Complaint")<sup>1</sup> filed by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP", with Acis LP, "Debtors"); and the Court having jurisdiction over this matter pursuant 28 U.S.C. §§ 157 and 1334; and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and the Complaint constituting a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O); and the substantive law being 11 U.S.C. §§ 105, 362, and 363; and it appearing that there was good and sufficient notice of the Trustee's Application for Preliminary Injunction ("Application"); and upon the record of the July 6, 2018 hearing on the Application (the "Hearing"); and upon the Trustee's verification of the Complaint; and pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, the Court finds that there is compelling evidence that irreparable harm is imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a preliminary injunction enjoining the actions described herein, the Parties will be irreparably injured. All objections to the Trustee's Application are hereby overruled. As the basis for this order, the Court states the following:

1. The Chapter 11 Debtor, Acis LP—which is affiliated with the large investment advisor firm Highland Capital Management, L.P. ("Highland")—is a company that, for several years, has been engaged in the business of managing investments for special purpose entities that hold collateralized loan obligations ("CLOs"). Acis LP is currently the portfolio manager for,

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<sup>1</sup> Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

*inter alia*, funds of the following CLOs: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6" and together with CLO-1, CLO-3, CLO-4, and CLO-5, the "Issuers" or the "Acis CLOs"). As relevant herein, Acis LP manages the Acis CLOs through five portfolio management agreements ("PMAs").<sup>2</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. True and correct copies of the PMAs were submitted into evidence at the Hearing (Trustee's Exhibits B-F). The Acis CLOs are subject to: (i) that certain Indenture, dated as of March 18, 2013, by and among CLO-1, as Issuer, Acis CLO 2013-1 LLC, as Co-Issuer and U.S. Bank National Association ("US Bank"); (ii) that certain Indenture, dated as of February 25, 2014, by and among CLO-3, as Issuer, Acis CLO 2014-3 LLC, as Co-Issuer and U.S. Bank, as Indenture Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, by and among CLO-4, as Issuer, Acis CLO 2014-4 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, by and among CLO-5, as Issuer, Acis CLO 2014-5 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, by and among CLO-6, as Issuer, Acis CLO 2015-6 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures." True and correct copies of the Indentures were submitted into evidence (Trustee's Exhibits G-K).

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<sup>2</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

2. Highland CLO Funding, Ltd. f/k/a/ Acis Loan Funding Ltd. ("HCLOF" or "ALF") has had, in recent months, a significant role with regard to Acis LP, and the PMAs, and the whole "CLO ecosystem"—as the parties in this bankruptcy case have been known to call the structure of the Acis LP CLO business. ALF apparently was originally created, in large part, to comply with certain risk-retention requirements of federal law relating to CLOs. ALF has been the holder of the equity in the Acis CLOs (which "equity" is actually in the form of subordinated notes, and is the bottom tranch of the capital structure of the Acis CLOs—i.e., the last investor to get paid upon a liquidation of the Acis CLOs). Notably, persons connected with Highland began implementing transactions that changed the Acis LP "CLO ecosystem" and impaired Acis LP's contractual rights, almost immediately after October 20, 2017—the date that an individual named Joshua Terry obtained a multi-million arbitration award against Acis LP. For example, prior to October 24, 2017, Acis LP had a small ownership interest in ALF. Acis LP (being controlled at that time by the same persons that control Highland) decided to sell its interest in ALF back to ALF on or around October 24, 2017

3. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to another Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "ALF PMA"). A true and correct copy of the ALF PMA was submitted into evidence (Trustee's Exhibit L). The ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which

may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

See ALF PMA § 5(a)-(q).

4. While ALF did not have authority to terminate the ALF PMA, *Acis LP* could terminate the ALF PMA without cause upon at least ninety (90) days' notice. See ALF PMA § 13(a)-(c). Still, the ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." See ALF PMA § 14(a)-(e).

5. Significantly, on October 27, 2017, *just seven days after Joshua Terry's arbitration award, Acis LP effectively terminated its own portfolio management rights under the ALF PMA and transferred its authority and those valuable portfolio management rights—for no apparent value—to Highland HCF Advisors, Ltd. ("Highland HCF").*

6. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which cancelled and terminated the ALF PMA and empowered Highland HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). See October 2017 PMA §§ 1 & 5(a)-(q).

7. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. Nevertheless, just days after the Joshua Terry multimillion dollar arbitration award was issued, the persons controlling Acis LP (and Highland), without expressing the basis for reasonable business judgment for this transfer,

simply directed Acis LP to sign the October 2017 PMA, consenting and agreeing to Acis LP's removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA. *It appears to the Court that, without this ALF PMA Transfer, which transferred Acis LP's rights under the ALF PMA to Highland HCF, ALF—which changed its name in late October 2017 to Highland CLO Funding Ltd.—could not have attempted to direct and effectuate an optional redemption, which it is now attempting to do.*

8. On April 30, 2018, HCLOF sent five notices purportedly requesting optional redemption pursuant to the Section 9.2 of each of the Indentures (the "First Optional Redemption Notices")—which essentially ordered a liquidation of the Acis CLOs, which among other things, would have rendered valueless the Acis PMA and Acis LP's value. Those notices were later withdrawn, after resistance from the Trustee and Court intervention.

9. Later, on June 15, 2018, after HCLOF withdrew the First Optional Redemption Notices, HCLOF gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices"). Apparently, HCLOF has now withdrawn the Second Optional Redemption Notices. However, the Trustee seeks a preliminary injunction preventing further attempts by HCLOF at effectuating Optional Redemptions while the Trustee attempts to confirm a plan or otherwise resolve the Acis LP bankruptcy case in a way beneficial to creditors and interest holders. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the Indentures. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by HCLOF or any of the Defendants (as

hereinafter defined) or any other attempt to liquidate the Acis CLOs now or in the future by any means.

10. The Trustee has sustained his heavy burden of entitlement to a preliminary injunction in this Adversary Proceeding. First, absent affirmative relief from the automatic stay, any action to effectuate an Optional Redemption by way of any Optional Redemption notices violates the automatic stay of the Acis LP bankruptcy case because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Further, any action taken by the Defendants to effectuate an Optional Redemption is outside the ordinary course of Acis LP's business, and therefore requires bankruptcy court approval. Acis LP's rights under the PMAs are valuable, and if Acis LP were to lose such rights, immediate and irreparable harm would result to Acis LP's creditors and third parties with financial interests in the Acis LP's bankruptcy estates because confirmation of a plan of reorganization funded by Oaktree Capital Management, L.P. ("Oaktree") pursuant to the Oaktree Transaction (as defined and explained by the *Emergency Motion to Approve Break-Up Fee, Expense Reimbursement, and Replacement Sub-Advisory and Shared Services Provider, Oaktree Capital Management, L.P.* [Case No. 18-30264, Docket No. 263] (the "Break-Up Fee Motion")—or, perhaps, any other viable transaction—would be impossible. In addition to the Oaktree Transaction, the Trustee credibly testified that he has received expressions of interests from other qualified parties to fund alternative plans of reorganization for Acis LP, which may include a reset of the CLOs and continuance of Acis LP as the portfolio manager of the CLOs. Finally, HCLOF is using rights that appear to have been fraudulently transferred from Acis LP (i.e., rights under the ALF PMA) to attempt to effectuate the Optional Redemptions.

11. To obtain a preliminary injunction, the movant must show that (a) it has a substantial likelihood of prevailing on the merits; (b) it will suffer irreparable injury without the injunction; (c) the threatened injury to the movant outweighs the damage the proposed injunction may cause to the parties opposing it; and (d) the requested injunction would not be against the public interest. *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987); *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F.Supp. 3d 604, 635 (M.D. La. 2015); *Miranda v. Wells Fargo Bank, N.A.*, No. 3:13-CV-2217-L, 2013 U.S. Dist. LEXIS 90632 (N.D. Tex. June 27, 2013). The Court must necessarily make its decision by relying on an early and abbreviated proceeding and set of facts. *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975). Quick and abbreviated determinations are necessary to recognize the goal of injunctive relief, which is to maintain the status quo to permit the court the time necessary to make a decision on the merits after full development of the facts. *Kliebert*, 141 F. Supp. 3d at 635. Moreover, not all of the four (4) factors must be given equal weight. According to the Fifth Circuit Court of Appeals: "a sliding scale must be applied in considering the probability of plaintiffs' winning on the merits and plaintiffs' irreparable injury in the absence of interlocutory relief...." (*Siff v. State Democratic Executive Committee*, 500 F.2d 1307, 1309 (5th Cir. 1974)) and "...none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus." *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179-180 (5th Cir. 1975). This means that as long as the court finds that there is some likelihood of ultimate success (i.e., not zero likelihood of success), the court can give greater weight to the severity and irreparability of the harm and the relative hardships to the movant and opponent of the injunctive relief. *Id.*

12. The Trustee has shown that the elements warranting a preliminary injunction exist here: (1) the Trustee has a "substantial likelihood of success on the merits" of a claim regarding (i) violation of the automatic stay if injunction is not granted, (ii) utilizing rights transferred for no or insufficient value to attempt to effectuate an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization; (2) creditors and interested third-parties face a substantial threat of imminent and irreparable injury to their interests in the Debtors' bankruptcy estates if an injunction is not issued since confirmation of a plan of reorganization funded by Oaktree or other competent party will be eliminated; (3) the threatened injury to interested parties "if the injunction is denied outweighs any harm that will result if the injunction is granted"; and (4) "public interest" favors letting the Trustee exercise his fiduciary duties and effectuate his process over costly litigation. *See Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (stating the elements of a preliminary injunction).

13. As earlier noted, the Optional Redemption Notices essentially demand the liquidation of property currently under the control of Acis LP, as portfolio manager, and, in effect, the PMAs themselves, which are defined as Assets under the Indentures and are property of the Acis LP estate. Indeed, the main, if not sole, purpose of the redemptions appears to be to remove Acis LP as portfolio manager and terminate its primary asset, the PMAs. Accordingly, by extinguishing the PMAs, a purported Optional Redemption in this context should be deemed prohibited because it would represent an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" in violation of 11 U.S.C. § 362(a)(3). The Debtors' rights under the PMAs, which are executory contracts, are property of the estate. The Debtors' rights under the PMAs are therefore protected by the

automatic stay. *In re Mirant Corp.*, 303 B.R. 319, 328 (Bankr. N.D. Tex. 2003) ("a debtor has rights under the contract which are property of the estate and so are protected by the automatic stay from actions of other parties"). If the Optional Redemption or other liquidation of the assets in the Acis CLOs is permitted to go forward, it would render the PMAs valueless. Consequently, the Optional Redemption and any other attempt by HCLOF to liquidate the assets of the Acis CLOs would violate Section 362(a)(3) because such actions involve exercising control over property of the estate (the PMAs). Thus, because the liquidation of the CLOs represents an "act to obtain possession of property of the estate,"—namely, Acis LP's intangible property rights in the PMAs—such actions constitute a violation of Section 362(a)(3).

14. Injunctive relief is necessary here to prevent imminent and irreparable injury in the form of substantial losses to creditors and parties-in-interest, as well as to third parties' financial interests, related to the Optional Redemption, call, or other liquidation of the Acis CLOs. The losses that would result in the event an injunction is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, creditors and interested third parties otherwise would have no adequate remedy at law. The Optional Redemption would eliminate any chance of confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan. HCLOF has not shown that the safe harbor of Section 555 of the Bankruptcy Code applies to its actions to effectuate the Optional Redemption.

15. The balancing of the harms weighs in favor of issuing a preliminary injunction because any alleged harm to HCLOF, Highland, or any of the Highland Affiliates,<sup>3</sup> is substantially outweighed by the damage that would be caused to all parties-in-interest if the

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<sup>3</sup> The Highland Affiliates include: HCLOF, CLO Holdco, Ltd. ("Holdco"), and Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"),

Court does not enjoin the Optional Redemption, call, or other liquidation of the Acis CLOs, and return more to all affected parties than would be received by the Optional Redemption. Any alleged harm to Defendants is illusory and specious because, among other things, the Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a "refinance" or "reset" transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption. There seems to the Court to be a highly meaningful chance that HCLOF, Highland and the Highland Affiliates will receive the same or more monetary benefit from the Oaktree Transaction than they would from an Optional Redemption, and creditors will likely be paid in full. HCLOF's claimed harm is exaggerated.

16. Public policy supports restraining the actions described herein to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property and other assets. Further, there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.

17. Accordingly, the Court issues this preliminary injunction preventing the Defendants from taking any action in furtherance of any Optional Redemption. Any notices of optional redemption sent by HCOLF would be an attempt to obtain a property right (the right to control trading of the loans in the CLOs) from Acis LP as well as an attempt to exercise control over contractual property rights of Acis LP, all in violation of Section 362(a)(3) of the Bankruptcy Code.

18. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland, CLO-1, CLO-3,

CLO-4, CLO-5, CLO-6, Acis CLO 2013-1 LLC ("CLO-1 LLC"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-1 LLC, CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, HCLOF, the Issuers, and the Co-Issuers are referred to herein as the "Defendants") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties.

19. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a preliminary injunction order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.

20. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iii) confirmation of an effective plan of reorganization.

21. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by

the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.

22. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

**IT IS THEREFORE ORDERED** that for the reasons stated herein and pursuant to Federal Rule of Civil Procedure 65, made applicable herein by Federal Rule of Bankruptcy Procedure Rule 7065 and pursuant to Federal Rule of Bankruptcy Procedure Rule 7001(7) the Court finds the Trustee is entitled to a preliminary injunction, that all Defendants and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Defendants' behalf are enjoined from:

- a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Defendants and any other attempt to liquidate the Acis CLOs now or in the future by any means;
- b. trading any Acis CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and
- c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

**IT IS FURTHER ORDERED** that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

**IT IS FURTHER ORDERED** for the avoidance of doubt, that U.S. Bank, as Indenture Trustee, may perform its ministerial functions in respect of sale trades executed at the initiation of the Issuers or Highland Affiliates prior to July 9, 2018.

**IT IS FURTHER ORDERED** that this Order expires upon confirmation of any plan of reorganization or conversion of the Bankruptcy Cases unless further extended by the Court or by the agreement of the parties, or until such time as the Defendants seek Court approval to dissolve this Order or until such time as the Defendants seek and are granted relief from the automatic stay pursuant Section 362 of the Bankruptcy Code.

### END OF ORDER ###

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

<b>IN RE:</b>	§	<b>Case No. 18-30264-SGJ-11</b>
	§	<b>Case No. 18-30265-SGJ-11</b>
<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,</b>	§	<b>(Jointly Administered Under Case No. 18-30264-SGJ-11)</b>
<b>DEBTORS</b>	§	<b>Chapter 11</b>

<b>ROBIN PHELAN, CHAPTER 11 TRUSTEE</b>	§	
<b>Plaintiff,</b>	§	
<b>v.</b>	§	<b>Adversary No. 18-03212-SGJ</b>
<b>HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. f/k/a ACIS LOAN FUNDING, LTD., CLO HOLDCO, LTD., NEUTRA, LTD., ACIS CLO 2014-3 LTD., ACIS CLO 2014-4 LTD., ACIS CLO 2014-5 LTD., ACIS CLO 2015-6 LTD., ACIS CLO 2014-3 LLC, ACIS CLO 2014-4 LLC, ACIS CLO 2014-5 LLC, and ACIS CLO 2015-6 LLC,</b>	§	
<b>Defendant.</b>	§	

**HIGHLAND CLO FUNDING, LTD.’s MOTION TO  
DISSOLVE PRELIMINARY INJUNCTION AND LIFT THE AUTOMATIC STAY**

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## PRELIMINARY STATEMENT

Highland CLO Funding, Ltd. (“**HCLOF**”) holds bargained-for contractual rights under non-debtor contracts with respect to non-debtor CLOs that hold over \$2 billion in assets. For months now, the Chapter 11 Trustee (the “**Trustee**”) has enjoyed the benefits of a preliminary injunction that has barred HCLOF from exercising these rights. That injunction was granted, in part, upon the Trustee’s belief that he could effect a plan of reorganization that would pay creditors and HCLOF in full. HCLOF objected to the Trustee’s proposed plan because it did not pay HCLOF “in full” and forced a sale of its property, or altered its non-debtor contract rights, against its will. The Court denied approval of all three plans.

The Trustee now wants to try again — this time with “Plan D.” Plan D suffers from the same defects that rendered Plans B and C unconfirmable because it presumes that the Trustee can alter rights that HCLOF has under the CLO indentures — contracts to which debtor Acis LP is not a party. The CLOs are not in bankruptcy, the CLO indentures are non-debtor contracts, and HCLOF is not even a creditor in this case. Plan D will fail just as the other plans have failed.

The Trustee had his chance. If there were ever justification for the injunction, that justification no longer exists. There is no “quick fix” to this bankruptcy case. If the Trustee believes he has claims against HCLOF and others, he should not ask the Court to prejudge those claims, or prejudge whether HCLOF or others should be “collapsed” into parties against whom Mr. Terry has a pre-petition arbitration award. Instead, the Trustee should pursue those claims to judgment. If he prevails, he has a remedy. That stands in stark contrast to HCLOF, which has been held in stasis for months with no remedy against the Debtors or the Trustee. The Court recently concluded that HCLOF is not a creditor; it follows that HCLOF has no claim against the

Trustee for the harm he is causing. A party with an adequate legal remedy (the Trustee) is not entitled to an injunction.

Accordingly, HCLOF respectfully requests that the preliminary injunction be dissolved, and that it be granted relief from the automatic stay, to the extent applicable, to exercise its contractual rights as it sees fit, with the discretion it bargained for, and to which it is entitled.

## RELEVANT FACTS

### A. Background

1. The debtors in this case are Acis Capital Management, L.P. (“**Acis LP**”) and Acis Capital Management GP, LLC (collectively, the “**Debtors**”). Acis LP is the portfolio manager of five financial investment vehicles known as collateralized loan obligations (“**CLOs**”).<sup>1</sup>

2. Each CLO holds a portfolio of diversified syndicated leveraged commercial loans through the private placement of rated secured notes (“**Secured Notes**”) and unsecured subordinated securities (“**Equity Notes**” together with the Secured Notes, the “**Notes**”), providing investors with differentiated risk and reward profiles. Hr’g Tr. (Feb. 7, 2018), at 73:1–74:20.

3. Each Note is subject to an indenture (the “**Indenture**”) that establishes the rights of the noteholders and the indenture investment criteria.<sup>2</sup> Neither of the Debtors are a party to any of the Indentures.

4. Through a Portfolio Management Agreement (“**PMA**”) for each CLO, Acis LP agreed to manage the assets securing the Notes according to the criteria specified in the

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<sup>1</sup> The CLOs at issue are: Acis CLO 2013-1, Ltd.; Acis CLO 2014-3, Ltd.; Acis CLO 2014-4, Ltd.; Acis CLO 2014-5, Ltd.; and Acis CLO 2015-6, Ltd.

<sup>2</sup> *E.g.*, Indenture for Acis CLO 2013-1 (Exhibit 1 at Plan Confirmation) (“2013-1 Indenture”). The indentures for the other CLOs were Exhibits 2 through 5 at Plan Confirmation. References to specific provisions of the Indentures are illustrated by reference to the 2013-1 Indenture. The provisions are substantially similar, if not identical, across the various indentures.

respective Indentures.<sup>3</sup> In return for its services, Acis LP earns management fees, which are specified percentages of the principal amount of the total assets under management. *See, e.g.*, 2013-1 Indenture at 31–32, 64, 66. Acis LP has no employees or other infrastructure necessary to manage the CLOs, and has historically employed Highland-related entities as sub-advisors and sub-servicers to perform the necessary front, middle, and back office services.

5. At the time of their respective investments in the CLOs, it was represented to the investors, including the Equity Noteholders, that Highland Capital Management, L.P. (“**Highland**”) would perform all of the portfolio management duties, and the CLOs and the Equity Noteholders, including HCLOF, relied on that representation and the reputation of Highland in the industry to manage their investments. Hr’g Tr. (June 12, 2018), at 36:25–38:25; *see also* HCLOF Offering Memorandum dated Nov. 15, 2017 (Ex. 90 at Plan Confirmation).

6. Pursuant to the Indentures, the CLOs can redeem the Secured Notes under certain conditions, including at the written direction of 66 2/3% of the aggregate outstanding amount of the Equity Notes. *E.g.*, 2013-1 Indentures § 9.2. Through this right of redemption, the Equity Noteholders can restructure the CLOs when they no longer meet their investment objectives.

7. Acis LP is not a party to the Indenture but must comply with certain aspects of the Indenture in its capacity as the Portfolio Manager of the CLOs. *See, e.g.*, 2013-1 PMA § 3(a). As relevant here, the Indentures require Acis LP, “[u]pon receipt or delivery of a notice of a redemption of the Secured Notes,” to “direct the sale of all or part of the Collateral Obligations and other Assets” to effect a redemption. *E.g.*, 2013-1 Indenture § 9.2. Acis LP has no discretion to refuse this directive.

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<sup>3</sup> *E.g.*, Portfolio Management Agreement between Acis CLO 2013-1, Ltd. and Acis Capital Management, LP (Exhibit 6 at Plan Confirmation) (“2013-1 PMA”). The PMAs for the other CLOs were Exhibits 7 through 10 at Plan Confirmation. References to specific PMAs are illustrated by reference to the 2013-1 PMA. The provisions are substantially similar, if not identical, across the various PMAs.

## B. HCLOF's Efforts To Reset The CLOs

8. Because changes in interest rates affect the return on the CLOs' investments, HCLOF has the contractual right under the Indentures to "reset" the CLO, which is a process of refinancing currently existing collateral loan obligations. Once refinanced, the reset CLO will pay lower interest rates to the Secured Noteholders and thus maintain or improve the yield to the Equity Noteholders. *See* Hr'g Tr. (Feb. 6, 2018), at 73:22–75:1.

9. By January 2018, HCLOF had secured sufficient capital to effectuate the reset for Acis CLO 2014-3. Hr'g Tr. (Feb. 7, 2018), at 81:1–83:7. But the transaction did not close because the involuntary bankruptcy petitions were filed. *Id.* at 83:8–84:7, 85:20–89:2.<sup>4</sup> As a result, HCLOF remains stuck in subpar investments, and it is losing approximately \$59,000 per CLO per week — a total of approximately \$295,000 per week — compared to what it could earn by redeploying this capital to a better investment. Hr'g Tr. (June 12, 2018), at 40:20–23, 73:1–8.<sup>5</sup>

## C. The Bankruptcy Proceedings

10. Following the bankruptcy petitions and the appointment of a Chapter 7 bankruptcy trustee, HCLOF decided to cut its losses, as a now bankrupt portfolio manager was untenable and the future of its investment was uncertain. HCLOF determined that a redemption, effectuated by Highland as the sub-manager for Acis LP, was its sole remedy under the circumstances. Accordingly, on April 30, 2018, HCLOF instructed the Indenture Trustee and Acis LP to initiate an optional redemption (the "**Initial Notices**"). *See* Hr'g Tr. (Feb. 6, 2018), at 157:9–160:11.

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<sup>4</sup> Mr. Terry has admitted that preventing the reset was a reason why he filed the involuntary. Hr'g Tr. (Mar. 27, 2018), [Doc. 107], at 27:22–28:1 (Q: "And you knew that there was an extreme likelihood that the transaction was not going to go forward as a result of the bankruptcy filing." Joshua Terry: "Yes, that was our goal on filing the involuntary petitions . . .").

<sup>5</sup> These figures were calculated as of June 2018.

11. After the Initial Notices were issued, on May 11, 2018, the Bankruptcy Court converted the Chapter 7 cases and granted a motion to appoint a Chapter 11 trustee. *See* Order [Doc. 205]. The Trustee was appointed by this Court on May 17, 2018. *See* Order [Doc. 221].

12. The Trustee refused to authorize the processes to allow Highland, as sub-manager, to take the actions necessary to effect the Initial Notices. *See* Trustee Letters (May 22, 2018) (Exhibit 40 at Plan Confirmation); Trustee Email (May 27, 2018) (Exhibit 44 at Plan Confirmation). At a status conference on May 31, 2018, the Court *sua sponte* entered a temporary restraining order (“**TRO**”) which effectively stayed the optional redemption process. [Doc. 256]. Hr’g Tr. (May 31, 2018), at 66:11–69:2.

13. On June 13, 2018, HCLOF withdrew the Initial Notices. *See* Revocation and Withdrawal Notices (Exhibit 97 at Plan Confirmation). On June 15, 2018 at 12:01 a.m., the TRO expired by its own terms.

14. Later on June 15, 2018, HCLOF issued new Notices of Redemption (the “**Second Notices**”) with a redemption date of July 30, 2018, in the manner required by the Indentures. *See* June 15, 2018 Redemption Notices (Exhibit 20 at Plan Confirmation). The Second Notices were withdrawn on July 6, 2018. *See* Revocation and Withdrawal Notices (Exhibit 98 at Plan Confirmation).

15. On June 21, 2018, the Trustee filed the *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Doc. 1] seeking, among other things, a temporary restraining order and preliminary injunction prohibiting HCLOF from taking any actions to effectuate an optional redemption. The Court entered an *ex parte* temporary restraining order on June 21, 2018 and held a preliminary injunction hearing on July 6, 2018.

16. On July 10, 2018, the Court entered a preliminary injunction (the “**Preliminary Injunction**”) enjoining HCLOF from “proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption.” *Preliminary Injunction Order* [Adv. No. 18-03212, Doc. 21] (“**PI Order**”), at 13.

#### **D. The Proposed Plans And Confirmation Hearing**

17. On July 5, 2018, the Trustee filed his joint plan for the Debtors [Doc. 383], proposing three (3) alternatives — Plans A, B and C. Plan A proposed to transfer non-estate property (i.e., HCLOF’s Equity Notes) and the PMAs (the “**Oaktree Transaction**”) to Oaktree Capital Management, L.P. (“**Oaktree**”). Alternatively, the Trustee proposed Plans B and C, both of which were premised on preventing HCLOF from exercising certain rights under the Indentures, thereby ensuring future revenue streams from which the estates would pay creditors.

18. On August 30, 2018, the Court denied confirmation of all three plans. *See generally* Court’s Ruling on Confirmation [Doc. 549] (“**Confirmation Decision**”) and subsequent Order entered at Doc. 569.

19. On September 28, 2018, the Trustee filed a *Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Doc. 612] (“**Plan D**”). Plan D is very similar to Plans B and C in that it seeks to modify the Indentures to restrict HCLOF’s contractual rights. Plan D relies on a plan injunction, issued pursuant to sections 105(a), 1123(a)(5), and 1123(b)(6), and other plan provisions to achieve the same result. *See* Plan D §§ 14.03 (plan injunction), § 6.08 (restricting HCLOF’s right to withdraw redemptions).

## ARGUMENT

20. With the benefit of the Preliminary Injunction granted by this Court, the Trustee took his chances with Plans A, B, and C. The Court denied confirmation of all three plans, concluding that HCLOF's rights could not be so modified because it was neither (1) a creditor of the estates nor (2) a contract counter party to the Debtors. For these same reasons, the Trustee cannot confirm any plan that alters HCLOF's rights without its consent.

21. Nonetheless, the Trustee has determined to continue on his war path, seeking to confirm his new Plan D. That new plan relies on a continued injunction barring HCLOF from exercising its rights. But, Plan D is no less confirmable than Plans A, B, or C without HCLOF's consent. The same jurisdictional infirmities apply: (1) HCLOF is neither a creditor nor a contract-counterparty to the Debtors, and (2) this Court does not have the jurisdiction to impair HCLOF's rights under the Indentures through such an injunction. The Trustee's proposal of another unconfirmable plan only highlights that there is no likelihood of a successful reorganization justifying a continued injunction.<sup>6</sup>

22. Nor is the Preliminary Injunction necessary pending the Trustee's current prosecution of his fraudulent transfer claims. If the Trustee succeeds on those claims, he has a legal remedy. There is no irreparable harm and thus no need for an injunction. Even if the Trustee were successful in avoiding the alleged "transfer" of the ALF PMA,<sup>7</sup> that contract on its face would not grant the Trustee unfettered rights with respect to the Equity Notes. No witness in this case has so testified, and the contract language is perfectly clear. At all times, HCLOF's portfolio manager, whether it be Highland, Acis LP or anyone else, is subject to the direction and

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<sup>6</sup> See Highland's Motion for an Order Dismissing the Debtors' Chapter 11 Cases Or, in the Alternative, Converting the Cases to Chapter 7 for Cause [Doc. 604] ("**Motion to Dismiss**").

<sup>7</sup> The "ALF PMA" refers to the Portfolio Management Agreement, dated December 22, 2016, by and between Acis Loan Funding, Ltd. and Acis. (Ex. 11 at Plan Confirmation).

control of HCLOF with respect to its investments. The Court should not effectively pre-judge those claims through the Preliminary Injunction. Nor would lifting the injunction necessarily pre-judge the outcome of that proceeding. *See Vogel v. Am. Society of Appraisers*, 744 F.2d 598, 604 (7th Cir. 1984) (emphasizing that denial of preliminary injunction did not serve to “prejudge the trial”).

23. The continuation of the Preliminary Injunction only exacerbates the great prejudice and irreparable harm to HCLOF. As stated throughout these cases, HCLOF continues to suffer irreparable damages (per a June analysis, \$295,000 on a weekly basis). Moreover, HCLOF should not be compelled into a forced marriage with an investment adviser that has been openly hostile to HCLOF and its interests.

24. If the balance of harms and the public interest ever tipped in favor of the Trustee, that is no longer the case. The Court gave the Trustee an opportunity to deliver what he promised would be a quick-fix and win for everyone, but he has failed at great expense. Plan D stands on no better footing. The public interest now demands that HCLOF’s rights under non-debtor contracts, with non-debtor CLOs, be respected and that the Preliminary Injunction be dissolved. Those same reasons also constitute “cause” for this Court to lift the automatic stay (to the extent it applies) so that HCLOF can exercise its contractual rights.

**I. THE PRELIMINARY INJUNCTION SHOULD BE DISSOLVED**

25. “The district courts apply the same standards in reviewing a preliminary injunction under a motion to dissolve as they do in deciding whether to grant one in the first instance.” *Texas v. United States*, No. 7:15-cv-00056-O, 2015 WL 13424776, at \*1 (N.D. Tex. June 26, 2015) (quoting *Vaughn v. St. Helena Parish Police Jury*, 261 F. Supp. 2d 553, 556 (M.D. La. 2002)). These elements are: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened

injury to the plaintiff outweighs the injury to the defendant; and (4) that granting the injunction does not disserve the public interest. *See, e.g., Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (citation omitted).

**A. The Trustee Cannot Show Irreparable Harm; HCLOF Continues to Be Irreparably Harmed by the Preliminary Injunction.**

26. In rendering its confirmation decision, this Court made it crystal clear: HCLOF is not a creditor and does not have a claim against the Trustee or the estates. *See* Confirmation Ruling at \*3-4. *HCLOF therefore has no remedy against these estates* — for the Trustee’s failure to effect an optional redemption and for the millions of dollars in damages that it has accrued and will continue to accrue. That is a textbook example of “irreparable harm.” *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (“An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.”).

27. On the other hand, the Trustee continues to benefit from the Preliminary Injunction even though he continues to have every remedy available at law against Highland or HCLOF — whether arising from any purported fraudulent transfers or otherwise. Indeed, the Trustee is now affirmatively pursuing those claims. The Trustee *cannot* suffer irreparable harm if he has an adequate remedy at law. *See, e.g., Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 491 B.R. 27, 39 (S.D.N.Y. 2013), *aff’d sub nom. Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199 (2d Cir. 2014) (“Since the Trustee would be able to recover any property deemed to be property of the estate in the fraudulent transfer action, the Trustee has failed to demonstrate . . . that the Madoff Securities estate would suffer irreparable harm under the traditional test for an injunction . . .”).

28. There has never been a suggestion that the Trustee is without a legal remedy. Instead, the Trustee stated previously only that he wanted to avoid lengthy litigation. As the Fifth Circuit has concluded, the inconvenience of having to litigate is not irreparable harm:

Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction], are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Morgan v. Fletcher*, 518 F.2d 236, 240 (5th Cir. 1975) (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); see also *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (same); *Jones v. Dallas County*, No. 3:11-CV-2153-D, 2013 WL 4045291, \*3 (N.D. Tex. Aug. 9, 2013) (same); *Controls Int'l, Inc. v. Kinetrol, Ltd.*, No. 3:97-CV-2504-D, 1998 WL 158678, \* 2 (N.D. Tex. Mar. 25, 1998) (same).

29. That is the case even if the costs of litigation would be substantial or even unrecoverable. See *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974) (“Mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury.”) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51-52, 58 (1938)).

30. Moreover, it is neither necessary nor appropriate to leave the injunction in place pending a resolution of the fraudulent transfer claims. The Court can dissolve the Preliminary Injunction and allow HCLOF to reset or redeem the CLOs pursuant to its existing contractual rights, thereby avoiding the ongoing harm caused by the injunction. Again, the Trustee will be able to present his claims and present every theory of damages available to him. If the Trustee can successfully prove his theories (he has stated he has claims against Highland of more than \$20 million), he can collect damages and pay creditors in full. The existence of an injunction

does nothing to preserve or enhance those claims. There is *no need* for any injunction to preserve the prosecution of these claims.<sup>8</sup>

31. The Fifth Circuit has long recognized that an injunction should not be imposed merely to protect legal remedies. *See F.D.I.C. v. Faulkner*, 991 F.2d 262, 265 (5th Cir. 1993) (“Because the availability of a legal remedy often indicates that an applicant’s injury is not irreparable, courts generally do not issue injunctions to protect legal remedies.”). In fact, the Fifth Circuit has likened such an injunction to an impermissible “prejudgment attachment.” *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 560 (5th Cir. 1987).

32. In granting the Preliminary Injunction, the Court also found that irreparable harm would ensue because “[t]he Optional Redemption would eliminate any chance of confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan.” PI Order ¶ 14. As explained below, the Trustee had his chances at reorganization, and failed. A transaction such as that contemplated by the Oaktree Transaction is no longer possible. The Court has concluded that the Trustee cannot transfer HCLOF’s notes without its consent.

33. The Court also noted that “[t]he Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors’ rights, the Debtors’ estates, and other assets in this matter, to the detriment of the Parties.” *Id.* ¶ 18. Here, it has been demonstrated conclusively that the PMAs have no significant value *unless* the HCLOF’s notes are sold or the Indentures are amended (both of which the Court has rejected). Hr’g Tr. (Aug. 28, 2018) (AM), at 124:10–128:9. The injunction is thus not necessary to preserve the value of the PMAs. Finally, and as noted above, if there is any alleged value attributable to the prosecution of the fraudulent transfer claims, such damages are easily subject

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<sup>8</sup> Indeed, Plan D makes no provision for how the fraudulent transfer or other litigations will be pursued (if at all).

to quantification (the Trustee has already proffered opinion testimony on this issue)<sup>9</sup> and therefore can be adequately compensated by monetary damages from financially capable defendants if the Trustee is able to prove his claims.

**B. The Trustee Cannot Show Reasonable Likelihood of Success on the Merits.**

34. In granting the Preliminary Injunction, the Court found that “[t]he Trustee has a ‘substantial likelihood of success on the merits’ of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iii) confirmation of an effective plan of reorganization.” PI Order ¶ 20. While the issues have evolved in the past several months, the bottom-line questions with respect the “success on the merits” prong to the injunction analysis distill down to the following: (1) do these Debtors have a legitimate chance at reorganization? and (2) are the fraudulent transfer claims are likely to succeed? As explained below, the answer to both questions is no.

**i. Plan D Is Dead On Arrival; There is No Reasonable Likelihood of a Successful Reorganization Without HCLOF Consent.**

35. Plan D is nothing but a reworked version of Plans B and C. The reorganized Acis LP (owned by Josh Terry) will assume the PMAs, and Brigade Capital Management, LP (“**Brigade**”) will provide operational support. As in Plans B and C, HCLOF’s rights under the Indentures will be modified by way of a Court-ordered injunction designed to prohibit HCLOF from exercising under the Indentures, thereby holding HCLOF and the cash flow from the PMAs captive. See Plan D § 14.03 (“**Plan Injunction**”).<sup>10</sup>

36. **First**, HCLOF is not a contract counter-party to the debtors, and this Court is

<sup>9</sup> See generally Hr’g Tr. (Aug. 27, 2018), at 139:19–159:20.

<sup>10</sup> In fact, the Trustee cites to the same three statutes in his Plan Injunction provision that he cited in Plans B and C: section 105(a), section 1123(a)(5), and section 1123(b)(6).

without jurisdiction to modify the Indentures to affect HCLOF's rights thereunder. Again, *the Debtors are not a party to the Indentures*. The Court cannot modify the Indentures either through section 1123(a)(5) (like under Plans B or C) or through an injunction (like under Plan D). In addition to depriving HCLOF of its right to seek a redemption, Plan D also modifies other of HCLOF's rights under the Indentures. *See, e.g.*, Plan D § 6.08 (foreclosing HCLOF's right to withdraw an optional redemption "in the reasonable business judgment of the Reorganized Debtor."). This Court already held that section 1123(a)(5)(F) does not authorize such modifications. Confirmation Decision at \*1. That notwithstanding, the Trustee has invoked section 1123(a)(5) as a basis for the proposed injunction. The Trustee cannot seek to do through section 105(a), what the Court has already said he cannot do under section 1123(a)(5)(F).<sup>11</sup>

37. The Trustee's reliance on section 105(a) is improper. Section 105(a) must be exercised within the boundaries of the Bankruptcy Code and is not intended to create new, substantive rights. As the Fifth Circuit has stated:

While the bankruptcy courts have fashioned relief under Section 105(a) in a variety of situations, the powers granted by that statute may be exercised only in a manner consistent with the provisions of the Bankruptcy Code. That statute does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.

*U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986); *see also Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, (1988) (a bankruptcy court's powers "must and can only be exercised within the confines of the Bankruptcy Code.").

38. In keeping with this limitation, courts have refused to use section 105(a) to expand the scope of specific statutes and rules. *See, e.g., In re Smith*, 21 F.3d 660, 666 (5th Cir.

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<sup>11</sup> 11 U.S.C. 1123(b)(6) provides that "Subject to subsection (a) of this section, a plan may ... include any other appropriate provision not inconsistent with the applicable provisions of this title."

1994) (“Bankruptcy courts cannot use their equitable powers created by Section 105(a) to expand the requirements of Rules 3003(c)(3) and 9006(b)(1).”); *U.S. Bank Nat’l Ass’n v. Verizon Commcn’s Inc.*, No. 3:10-CV-1842-G, 2012 WL 3100778, \*7 (N.D. Tex. July 31, 2012) (Fish, J.) (refusing to expand scope of section 550 under “equitable jurisdiction and Section 105... [b]ecause allowing this action would be inconsistent with a more specific provision of the Code.”).

39. These principles also accord with the bankruptcy axiom that the debtor in possession or trustee steps into the shoes of a debtor and has no greater rights than that of the debtor. *See Majestic Star Casino, LLC v. Barden Dev., Inc. (In re Majestic Star Casino, LLC)*, 716 F.3d 736, 748 (3d Cir. 2013) (“It is a given that the trustee or debtor-in-possession can assert no greater rights than the debtor himself had on the date the bankruptcy case was commenced.” (internal alterations omitted)); *In re Gibraltar Res., Inc.*, 197 B.R. 246, 253 (Bankr. N.D. Tex. 1996) (“the general rule is that a trustee has no greater rights than the debtor”).

40. The PMAs, which are proposed to be assumed by the reorganized debtors, do not provide Acis LP with any guarantee to management fees or any right to prevent HCLOF from exercising the options available to it under the Indentures. Such rights cannot now be created out of whole cloth either through modification of the PMAs or the Indentures (which the Debtors are not even party to), and doing so would be inconsistent with section 1123(a)(5) and other black-letter bankruptcy principles. *See In re Advent Corp.*, 24 B.R. 612, 614 (B.A.P. 1st Cir. 1982) (“A bankruptcy court may not extend a contract beyond its original terms. The Bankruptcy Code neither enlarges the rights of a debtor under a contract, nor prevents the termination of a contract by its own terms.”); *see also In re Nat’l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000) (executory contracts must be assumed *cum onere*); *In re Texas Rangers Baseball Partners*, 521

B.R. 134, 179–80 (Bankr. N.D. Tex. 2014) (Jernigan, J.) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”).

41. **Second**, this Court has already established that HCLOF is not a creditor of the estates. HCLOF does not hold a claim that would allow the Debtors to modify HCLOF’s rights through a plan. In fact, because HCLOF does not hold a claim, it cannot even vote on Plan D.

42. Plan D proposes to modify the rights of HCLOF, a third party, for absolutely no consideration, again raising issues relating to the taking of third-party rights that the *Irving Tanning* case explicitly identified and denounced. *See In re Irving Tanning Co.*, 496 B.R. 644, 664-65 (B.A.P. 1st Cir. 2013). To be sure, not only does Plan D propose to modify HCLOF’s contract rights under the Indentures, it also seeks to seize and hold captive HCLOF’s investments in the CLOs, i.e., ***its property***, without its consent.

43. The words of the First Circuit B.A.P. bear repeating:

[F]or both statutory and constitutional reasons, the preemptive effect of § 1123(a) cannot extend to laws defining and protecting the property rights of third parties. . . . Indeed, what the Debtors urge us to find—a grant of power to appropriate the property of third parties—is so bold and remarkable a grant that one cannot imagine Congress having inserted it without a clear and specific indication of such intent. . . . Constitutional concerns also inform this interpretation. Any interpretation of the preemptive scope of § 1123(a)(5) that permitted plan proponents to appropriate or overwrite the property rights of third parties under applicable nonbankruptcy law would run headlong into constraints and quite possibly outright impediments in the takings clause of the Fifth Amendment. . . . ***Even if the takings clause were deemed to permit a private plan proponent to appropriate the property of another for plan purposes, “just compensation” would be a necessary condition of that appropriation. . . .***

*Id.* at 664-65 (emphasis added). While the B.A.P. was speaking specifically to section 1123(a), the same rationale logically extends to section 105(a) and section 1123(b)(6), which the Trustee is attempting to use to preempt and overwrite fundamental protections. Holding HCLOF hostage, and giving it the false option of a reset — a right that HCLOF already possesses — is no less of an offensive intrusion upon HCLOF’s property rights than what was proposed in Plan A.

44. **Third**, the Trustee will still have to satisfy the numerous confirmation requirements of the Bankruptcy Code for any new plan, including the flawed Plan D. Highland and HCLOF will reiterate each of their prior confirmation objections with respect to the lack of good faith, the failure of the best interests test, the failure to satisfy the cram-down standard, and Josh Terry's insider status, among others.<sup>12</sup>

45. **Fourth**, and more practically, it is highly unlikely that Acis will ever be able to deliver a reset for HCLOF, rendering that critical aspect of Plan D entirely illusory. HCLOF has presented credible testimony that industry participants would not want to engage with a reorganized portfolio manager in a reset transaction, let alone the four or five sequential resets that would be required in this case. Hr'g (July 6, 2018) at 200:8–14.<sup>13</sup>

46. And even if resets could be effectuated, they would necessarily be on terms highly unfavorable to HCLOF. As a third party to these proceedings, HCLOF cannot be compelled against its will into transactions that it does not wish to enter into by giving it a choice between a bad choice and a worse one. HCLOF never bargained for investment into CLOs managed by Brigade, Josh Terry, or anyone other than Highland when it invested in the Equity Notes. Moreover, the involvement of a formerly-bankrupt portfolio manager, let alone one that is helmed by Joshua Terry, and a mandatory two-year lock up will undoubtedly result in sub-market terms that will be unfavorable to HCLOF. The market is very well aware of this bankruptcy case and the pricing of any Acis-led reset will reflect that market perception.

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<sup>12</sup> See generally Joint Objection of Highland Capital Management, L.P. and Highland CLO Funding, Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC [Doc. 497]. In the event Plan D is set for a confirmation hearing, HCLOF and Highland will further articulate their objections in written pleadings.

<sup>13</sup> If necessary, HCLOF is prepared to produce further expert testimony that a market reset is simply not feasible with Acis LP and Josh Terry at the helm.

47. Outside of bankruptcy, Acis, a portfolio manager and fiduciary, would never have been able to effect such transactions without the consent of its investors.<sup>14</sup> It cannot try to do that now in bankruptcy.

**ii. The Trustee’s Fraudulent Transfer Claims Will Not Succeed, and Even If They Do, Will Not Provide the Result Desired By the Trustee.**

48. In denying confirmation, the Court found “a basis for keeping the preliminary injunction in place pending determination of the Acis Trustee’s fraudulent transfer lawsuits.” Confirmation Opinion at \*6. However, the injunction is not necessary at all to allow for a determination of those claims or to preserve a right to monetary damages. Moreover, even if the Trustee were to prevail on those claims, they would not provide the Trustee with the rights he is touting.

49. The crux of the Trustee’s claims is that HCLOF’s rights under the Indentures once belonged to Acis LP pursuant to the ALF PMA. *See* PI Order ¶ 10.<sup>15</sup> At Plan Confirmation, the Trustee presented his evidence in support of avoidance, which consisted entirely of Mr. Terry’s self-serving legal conclusions disguised as “testimony” that the ALF PMA allowed Acis to make all decisions on behalf of HCLOF. Hr’g Tr. (Aug. 28, 2018) (AM), at 69:7–76:11. In support of this interpretation, the Trustee points to Section 5 of the ALF PMA, which provided Acis LP authority to take specified actions “[s]ubject at all times to . . . the Investment Policy” of the Fund. ALF PMA § 5.

50. First, as repeated at the confirmation hearing, the ALF PMA *explicitly limits* the authority delegated under Section 5 as follows:

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<sup>14</sup> HCLOF’s position, of course, is that Acis LP could not effect such a transaction even if it was still portfolio manager for HCLOF under the ALF PMA, as explained below.

<sup>15</sup> The “ALF PMA” is the Portfolio Management Agreement between Acis Loan Funding, Ltd. and Acis Capital Management, L.P. (Exhibit 11 at Plan Confirmation).

Policies of the Company. The activities engaged in by the Portfolio Manager *shall be subject to the policies and control of the Company, including (without limitation) the Investment Policy*. . . .

*In furtherance of the foregoing*, the Company hereby appoints the Portfolio Manager as the Company’s attorney-in-fact, with full power of authority to act in the Company’s name and on its behalf with respect to the matters set forth in Section 5 above.

*Id.* § 6 (emphasis added); *see also* Hr’g Tr. (Aug. 28, 2018) (AM), at 157:3–158:21 (testimony of Dan Castro, Jr. explaining that “th[e] control provisions, it’s explicit there, and that is the market understanding”). At all times, HCLOF’s portfolio manager, whether Acis LP or anyone else, has been subject to the direction and control of HCLOF with respect to its investments.

51. Second, Acis LP’s exercise of its delegated authority was subject at all times to the fiduciary duties it owes as an investment adviser. *See* Hr’g Tr. (Aug. 28, 2018) (AM), at 157:3–158:21 (testimony of Dan Castro, Jr. that “if the portfolio manager disagrees with [the investor], the fiduciary duty of the portfolio manager is, well, I may not agree with it, I may - - maybe I think this is a better trade or a different way to go, but if that’s what he wants me to do, I’m supposed to do it.”). It would defy common sense for any investment adviser to be given authority to take actions that would be contrary to the directives of its investor. Yet it is clear that the Trustee’s intention, if given his alleged “control” over HCLOF’s rights, is to attempt to force decisions on behalf of HCLOF that preserve at all costs the right of Acis to earn an income stream. Such a course of action would be illegal, and it cannot be, and would not be, condoned.<sup>16</sup>

**C. The Balance of Equities Weighs in Favor of Lifting the Preliminary Injunction.**

52. The balance of equities favors lifting of the Preliminary Injunction. The Trustee has had the benefit of an injunction for months while he pressed forward with three patently unconfirmable plans. During that time, HCLOF has continued to incur losses of approximately \$295,000 per week (an annualized loss of over \$15 million). Hr’g Tr. (June 12, 2018) at 40:20–

<sup>16</sup> Acis LP was not contractually entitled to any fees under the ALF PMA.

23, 73:1–8. Again, to the extent HCLOF were somehow able to later prevail on any claims for these losses, it will hold a judgment against Acis LP, a Chapter 11 debtor with no meaningful assets. *See Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 848 (5th Cir. 2004) (“there is no adequate remedy at law if the defendant is incapable of responding in damages”) *see also Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App’x 259, 273 (5th Cir. 2014) (affirming finding of irreparable harm where there was a substantial probability that movant would be unable to collect a judgment against bankruptcy debtor) (citation omitted). Meanwhile, the Trustee continues to possess legal remedies against HCLOF and Highland.

53. The Trustee has repeatedly appealed to this Court’s equity sounding the call that HCLOF is acting “economically irrationally” and that he is trying to save HCLOF from committing “economic suicide.” The Trustee (a bankruptcy attorney with no background in CLO investing or portfolio management) is in no position to instruct HCLOF on how to run its business. There is nothing economically irrational or suicidal in HCLOF’s efforts to divorce itself of Acis LP or avoid a forced sale of its property. HCLOF has every right to take the actions that it is legally entitled to take, regardless of the motivations, and the Trustee’s judgment should not be supplanted for HCLOF’s judgment with respect to its own property.

54. In fact, and ironically, it is the Trustee who has been acting in an economically irrational manner, choosing to *never once* approach HCLOF regarding a consensual plan, while reiterating the disingenuous notion that he is giving HCLOF “everything it wants.” In that process, he has pursued manifestly unconfirmable plans while racking up millions in administrative expenses, driving the estates into administrative insolvency, all while continuously placing the estates’ interests in earning management fees above all other interests. No investor anywhere would voluntarily tolerate this behavior from an investment advisor. The

equities here demand that the Trustee’s runway be cut off. The Trustee obtained an injunction on a promise to deliver and he has failed. He cannot be allowed to further harm the estates and HCLOF in this manner.

55. Moreover, the estates and creditors will not be harmed if these cases are converted and the fraudulent transfer litigation pursued alongside a Chapter 7 proceeding. In fact, creditor recoveries may very well be enhanced through avoiding the costs associated with another plan solicitation and confirmation process and the heavier carrying costs of Chapter 11 – especially where, as here, the Trustee has employed two sets of counsel and has wasted millions of dollars in payments to Oaktree and other unnecessary expenses.

**D. The Public Interest Is Served By Lifting the Preliminary Injunction.**

56. In granting the Preliminary Injunction, the Court found that “[p]ublic policy supports [the injunction] to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors’ property and other assets. Further there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.” PI Order ¶ 16.

57. Again, the Trustee has wasted his opportunity to maximize value and the Chapter 11 process was given its due course. The Trustee now has nothing to show for his attempt other than a mountain of administrative expenses and another doomed plan. The Trustee’s shortcut has in fact turned out to be the long way, and likely more expensive than litigation alone would have been. If the Trustee from the beginning had shut down the business, initiated litigation, and treated this as the “cash and claims case” that it is, millions of dollars and untold judicial resources would have been saved. The public interest would not be served by the

Trustee’s attempt to effectively “cram-down” a Plan D on a non-voting, non-creditor HCLOF, which HCLOF will contest just as vigorously as it did Plans A, B, and C.

58. And again, the Trustee owes fiduciary duties to the CLOs, and, by extension, to the CLOs’ investors. The Trustee cannot in good conscience be said to be fulfilling those fiduciary duties when he is continuously in pursuit of plans that seek to undermine the interests of the CLOs and their investors — the very parties that he is duty-bound, by contract and state and federal law, to serve. *See, e.g.*, 2013-1 PMA § 17(b)(i); *see also Transamerica Mortg. Advisors v. Lewis*, 444 U.S. 11, 17 (1979) (“Congress intended to impose enforceable fiduciary obligations” in passing the Investment Advisers Act of 1940); 15 U.S.C. § 80b-6; *Bullmore v. Ernst & Young Cayman Islands*, 846 N.Y.S.2d 145, 148 (N.Y. App. Div. 2007) (“Professionals such as investment advisors, who owe fiduciary duties to their clients. . . .”) (citations omitted).

59. Furthermore, the public interest would not be served by unfairly holding HCLOF hostage to an investment, tying up its property and its funds, solely so that a bankrupt portfolio manager can generate fees from that relationship. Nor would the public interest be served by binding HCLOF into a continuing relationship with a reorganized debtor helmed by Joshua Terry, whom HCLOF is actively litigating against. A continued injunction would be manifestly unjust with respect to HCLOF and its expectations as an investor.

60. Moreover, it bears noting that the Debtors here are no more than shell entities with nothing other than a conditional, unguaranteed payment stream. There are no jobs to be saved or an enterprise to be preserved through a reorganization. Thus, traditional policy concerns weighing in favor of Chapter 11 rehabilitation are just not present here.<sup>17</sup> Here, there

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<sup>17</sup> Courts have refused to confirm plans of reorganization involving shell companies on the basis that they were not filed in good faith where the goal was not rehabilitation (e.g., tax avoidance purposes). *See, e.g., In re Maxim Indus., Inc.* 22 B.R. 611 (Bankr. D. Mass. 1982).

are only a sparse number of creditors—and only one who timely voted in favor of the Trustee’s original plans—who have every avenue of recovery left open to them through the prosecution of causes of action in a Chapter 7 proceeding. Again, these cases have been “cash and claims” cases since the very beginning. The injunction should be lifted and this unproductive and lengthy detour through Chapter 11 should be put to an end.

**II. The Automatic Stay Does Not Apply; To the Extent it Applies, the Stay Should Be Lifted to Permit HCLOF’s Exercise of Its Rights.**

61. In its Confirmation Decision, the Court noted that it would keep the Preliminary Injunction “in place for now” because the “effect of an optional redemption is to *exercise control over the Acis PMAs and revenue stream* (property of the estate).” Confirmation Decision at \*5 (citing *Hometown 2006-11925 Valley View, L.L.C. v. Prime Income Asset Mgmt., L.L.C.*, 847 F.3d 302 (5th Cir. 2017)). HCLOF respectfully disagrees with this portion of the Court’s Confirmation Decision and reiterates its belief that the automatic stay does not apply to HCLOF’s exercise of its rights under the Indenture.<sup>18</sup>

62. This case is very different from the *Hometown* case cited by the Court in its Confirmation Decision. Unlike the debtor there, Acis LP has no property interest in any future, unearned management fees. That is because the PMAs provide no guarantee, after an initial two year non-redemption period (which has long passed), that the CLO structure or the collateral therein will continue to exist. This is not a case involving a debtor with a vested property interest in a fixed or guaranteed payment stream, such as a right to a structured settlement payment or a coupon under a bond. *Cf. Hometown*, 847 F.3d at 302 (fee stream earned during

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As alleged by Highland in its Motion to Dismiss, the Chapter 11 process has been essentially used as a collection device for Josh Terry and the Court should not condone the further abuse of the process and confirm a plan that will essentially act as nothing more than a collection device for Josh Terry.

<sup>18</sup> See generally Response of HCLOF to Chapter 11 Trustee’s Application for Temporary Restraining Order and Preliminary Injunction [Doc. 365].

required termination notice period were “sufficiently vested” and therefore constituted “assets” for purposes of Texas fraudulent transfer statute). There is likewise no mechanism in the PMAs that permits Acis LP to compel that the CLO assets remain in place so that it can continue to earn fees. Acis LP has already received multiples of what it is entitled to under the PMAs and it is not entitled to another dollar.

63. To the extent the Court believes the stay applies, HCLOF asks that that the Court grant HCLOF stay relief for “cause” under section 362(d)(1).

64. Because “cause” is not defined in the Bankruptcy Code, bankruptcy courts have the flexibility to define cause in a particular case. *Little Creek Dev. Co. v. Commonwealth Mtg. Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986). Whether cause exists to grant relief from the stay is determined on a case-by-case basis, based on the totality of the circumstances. *In re Trident Assocs. Ltd. P'ship*, 52 F.3d 127, 131 (6th Cir. 1995).

65. “Cause” exists for all of the reasons stated above. The estates’ only asset of any value (other than causes of action) are the PMAs, which have little or no value. The Debtors have little chance at a successful reorganization with or without the PMAs, without HCLOF consent. On the other hand, the stay continues to irreparably harm HCLOF and greatly prejudice its rights. The balance of equities and the public interest also weigh in favor of lifting the stay.

66. The Court should also consider lifting the stay under the factors articulated in section 362(d)(2). While section 362(d)(2) applies to lifting the stay with respect to a secured creditors’ collateral, the principles that undergird that analysis apply here. Section 362(d)(2) provides that the court shall grant relief from the stay “with respect to a stay of an act against

property ... (A) the debtor does not have any equity in such property; and (B) such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2).<sup>19</sup>

67. This Court has considered a request for stay relief under section 362(d)(2) in similar circumstances. In that case, the Court considered whether the stay should be lifted to allow a secured creditor to proceed against its collateral, which was central to any reorganization in that case. In deciding to lift the stay, the Court stated as follows:

It is undisputed that the Debtors will be unable to reorganize without the properties. However, the properties must be essential for an effective reorganization *that is in prospect*. This means there must be a reasonable possibility of a successful reorganization within a reasonable time. However honest in its efforts the debtor may be, and however sincere its motives, the Court is not bound to clog its docket with visionary or impracticable schemes for resuscitation. In essence, courts usually require the debtor to do more than manifest unsubstantiated hopes for a successful reorganization.

*In re Northwest Timberline Enters.*, 348 B.R. 412, 430 (Bankr. N.D. Tex. 2006) (Jernigan, J.) (emphasis in original) (internal citations and alterations omitted).

68. Although the debtor in that case had languished in Chapter 11 for two years, the rationale in lifting the stay apply equally here. The Trustee has not demonstrated that he can, in fact, propose a reorganization “that is in prospect.” *See id.* (citing *United Sav. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 376 (1988)).

69. HCLOF should not and cannot be held hostage to an investment because the portfolio manager wants to earn or monetize future management fees—fees that are in no way assured or guaranteed under the PMAs—and the Court should not allow this to continue. The stay should be lifted.

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<sup>19</sup> It bears noting that the PMAs are pledged by the CLOs to the Indenture Trustee pursuant to the Indentures in order to permit the Indenture Trustee to enforce the obligations of Acis LP under the PMAs. *E.g.*, 2013-1 Indenture § 15.1.

**CONCLUSION**

WHEREFORE, HCLOF respectfully requests that the Court (a) enter an order dissolving the Preliminary Injunction, (b) to the extent applicable, enter an order granting HCLOF relief from the automatic stay to exercise its rights under the Indentures, and (c) grant to HCLOF such other and further relief as the Court may deem proper.

Dated: October 11, 2018

Respectfully submitted,

**KING & SPALDING LLP**

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served electronically by the Court's ECF system on October 11, 2018.

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**COUNSEL FOR  
THE CHAPTER 11 TRUSTEE**

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**

§  
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§  
§  
§  
§

**Case No. 18-30264-SGJ-11  
Case No. 18-30265-SGJ-11**

**(Jointly Administered Under Case  
No. 18-30264-SGJ-11)**

**Chapter 11**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P. AND  
HIGHLAND CLO FUNDING LTD,**

**Plaintiffs.**

**v.**

**ROBIN PHELAN, CHAPTER 11  
TRUSTEE,**

**Defendant.**

§  
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§

**Adversary No. 18-03078-sgj**

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY  
CLAIMS**

<b>ROBIN PHELAN, CHAPTER 11 TRUSTEE,</b>	§
	§
	§
<b>THIRD PARTY PLAINTIFF.</b>	§
	§
<b>V.</b>	§
	§
<b>HIGHLAND HCF ADVISOR, LTD. AND HIGHLAND CLO MANAGEMENT, LTD.</b>	§
	§
	§
<b>THIRD PARTY DEFENDANTS.</b>	§

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendant, Robin Phelan, Chapter 11 Trustee (the "Trustee") files his Answer, Affirmative Defenses, Counterclaims, and Third Party Claims to *Plaintiffs Highland Capital Management, L.P. and Highland CLO Funding LTD’s Original Complaint and Request for Preliminary Injunction* [Adversary No. 18-03078, Docket No. 1] ("Complaint"), and respectfully shows the Court:

**RESPONSES TO FACTUAL ALLEGATIONS IN THE COMPLAINT**

**I. INTRODUCTION**

1. The Trustee admits that Acis Capital Management, L.P. ("Acis LP") and its general partner Acis Capital Management GP, LLC ("Acis GP," together with Acis LP, the "Debtors") were put into an involuntary bankruptcy by creditor Joshua Terry ("Mr. Terry"). The Trustee denies the remaining factual allegations asserted in Paragraph 1 of the Complaint.

2. The Trustee admits that the purported instruction was issued on April 30, 2018, with a redemption date of June 14, 2018. The Trustee admits that the structured funds' assets are

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

not in the possession of the Debtors. The Trustee denies the remaining factual allegations asserted in Paragraph 2 of the Complaint.

## **II.** **PARTIES**

3. No response is required for the facts asserted in Paragraph 3 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 3 of the Complaint, the remaining allegations asserted in Paragraph 3 of the Complaint are denied.

4. No response is required for the facts asserted in Paragraph 4 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 4 of the Complaint, the remaining allegations asserted in Paragraph 4 of the Complaint are denied.

5. The Trustee admits the factual allegations asserted in Paragraph 5 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 5 of the Complaint, the remaining allegations asserted in Paragraph 5 of the Complaint are denied.

6. No response is required for the facts asserted in Paragraph 6 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 6 of the Complaint, the remaining allegations asserted in Paragraph 6 of the Complaint are denied.

7. No response is required for the facts asserted in Paragraph 7 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 7 of the Complaint, the remaining allegations asserted in Paragraph 7 of the Complaint are denied.

8. No response is required for the facts asserted in Paragraph 8 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 8 of the Complaint, the remaining allegations asserted in Paragraph 8 of the Complaint are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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9. No response is required for the facts asserted in Paragraph 9 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 9 of the Complaint, the remaining allegations asserted in Paragraph 9 of the Complaint are denied.

10. No response is required for the facts asserted in Paragraph 10 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 10 of the Complaint, the remaining allegations asserted in Paragraph 10 of the Complaint are denied.

11. No response is required for the facts asserted in Paragraph 11 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 11 of the Complaint, the remaining allegations asserted in Paragraph 11 of the Complaint are denied.

### **III.** **JURISDICTION AND VENUE**

12. The Trustee admits that jurisdiction is proper pursuant to 28 U.S.C. § 1334. The Trustee denies that 28 U.S.C. § 157(d) and Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 7001(2) and 7001(9) relate to jurisdiction. The Trustee denies the remaining allegations asserted in Paragraph 12 of the Complaint.

13. The Trustee denies the allegations asserted in Paragraph 13 of the Complaint because this matter is a core proceeding.

14. The Trustee admits the allegations asserted in Paragraph 14 of the Complaint.

15. The Trustee admits that the predicate for the relief sought by the Complaint are Bankruptcy Rules 3007(b), 7001(2), 7001(9), 7003, and 7008. The Trustee denies the remaining allegations asserted in Paragraph 15 of the Complaint.

16. The Trustee admits the allegations asserted in Paragraph 16 of the Complaint.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

**IV.**  
**FACTS**

17. To the extent Paragraph 17 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 17 of the Complaint; therefore, those allegations are denied.

18. To the extent Paragraph 18 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 18 of the Complaint; therefore those allegations are denied.

19. To the extent Paragraph 19 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 19 of the Complaint; therefore those allegations are denied.

20. To the extent Paragraph 20 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 20 of the Complaint; therefore those allegations are denied.

21. To the extent Paragraph 21 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 21 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

22. To the extent Paragraph 22 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 22 of the Complaint; therefore those allegations are denied.

23. The Trustee denies the factual allegations in Paragraph 23 of the Complaint.

24. To the extent Paragraph 24 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 24 of the Complaint; therefore those allegations are denied.

25. To the extent Paragraph 25 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 25 of the Complaint; therefore those allegations are denied.

26. To the extent Paragraph 26 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 26 of the Complaint; therefore those allegations are denied.

27. To the extent Paragraph 27 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 27 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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28. To the extent Paragraph 28 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 28 of the Complaint; therefore those allegations are denied.

29. To the extent Paragraph 29 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 29 of the Complaint; therefore those allegations are denied.

30. The Trustee denies the factual allegations in Paragraph 30 of the Complaint.

31. The Trustee denies the factual allegations in Paragraph 31 of the Complaint.

32. To the extent Paragraph 32 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 32 of the Complaint; therefore those allegations are denied.

33. To the extent Paragraph 33 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 33 of the Complaint; therefore those allegations are denied.

34. To the extent Paragraph 34 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 34 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

35. To the extent Paragraph 35 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 35 of the Complaint; therefore those allegations are denied.

36. To the extent Paragraph 36 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 36 of the Complaint; therefore those allegations are denied.

37. The Trustee admits that Mr. Terry filed involuntary bankruptcy petitions against Acis LP and Acis GP on January 30, 2018 at approximately 12:00 a.m. Otherwise, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 37 of the Complaint; therefore those allegations are denied.

38. The Trustee admits the factual allegations in Paragraph 38 of the Complaint.

39. The Trustee admits the factual allegations in Paragraph 39 of the Complaint.

40. The Trustee admits the factual allegations in Paragraph 40 of the Complaint. However, the trial referenced by paragraph 40 was also on the Involuntary Petitions (as defined by the Complaint).

41. The Trustee admits the factual allegations in Paragraph 41 of the Complaint.

42. The Trustee admits the factual allegations in Paragraph 42 of the Complaint.

43. The Trustee admits the factual allegations in Paragraph 43 of the Complaint.

44. The Trustee admits that the Bankruptcy Court held a hearing on April 23, 2018 on the Operating Motion, and on May 6, 2018, the Bankruptcy Court granted the Operating Motion

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

[Dkt. No. 178], and that the Chapter 7 Trustee thereafter proceeded to operate the Debtors in the ordinary course of business. The Trustee denies the remaining factual allegations in Paragraph 44 of the Complaint.

45. The Trustee admits the factual allegations in Paragraph 45 of the Complaint.

46. The Trustee admits the factual allegations in Paragraph 46 of the Complaint.

47. The Trustee admits the factual allegations in Paragraph 47 of the Complaint.

48. The Trustee admits the factual allegations in Paragraph 48 of the Complaint.

49. The Trustee admits the factual allegations in Paragraph 49 of the Complaint.

50. To the extent Paragraph 50 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 50 of the Complaint; therefore those allegations are denied.

51. The Trustee denies the factual allegations in Paragraph 51 of the Complaint.

52. The Trustee denies the factual allegations in Paragraph 52 of the Complaint.

53. The Trustee denies the factual allegations in Paragraph 53 of the Complaint.

54. The Trustee admits that on April 30, 2018 Highland CLO Funding LTD f/k/a Acis Loan Funding, Ltd. ("HCLOF")<sup>1</sup> purported to and attempted to direct each CLO (as defined by the Complaint), the Indenture Trustee (as defined by the Complaint), and Acis LP to affect an

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<sup>1</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. prior to October 30, 2017 and the defined term "HCLOF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. on and after October 30, 2017.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

"Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018." The Trustee denies all other factual allegations in Paragraph 54.

55. The Trustee admits that Highland Capital Management, L.P. ("Highland") emailed the Trustee stating that the Trustee should begin selling the CLOs' assets pursuant to HCLOF's redemption instructions. The Trustee lacks sufficient information and knowledge to form a belief as to the truth of the remaining factual allegations in Paragraph 55 of the Complaint; therefore those allegations are denied.

56. The Trustee admits that he sent a response to the Redemption Notices Letter dated May 22, 2018 stating that, *inter alia*, "[i]t does not appear that the Redemption Notice[s] were] sent by properly authorized parties," and that "[t]he Redemption Notice[s] themselves] fail[] to comply with the Indenture[s]." The Trustee denies the remaining factual allegations in Paragraph 56 of the Complaint.

57. The Trustee admits that he received the Notices of Redemption on May 24, 2018. The Trustee denies the remaining factual allegations in Paragraph 57 of the Complaint.

58. The Trustee admits the factual allegations in Paragraph 58 of the Complaint.

59. The Trustee admits that on May 27, 2018 he sent correspondence stating that the May 24, 2018 Issuer Orders "do not comply with the relevant Indentures and Portfolio Management Agreements" and the Issuer Orders are therefore ineffective. The Trustee denies the remaining factual allegations in Paragraph 59 of the Complaint.

60. The Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 60 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

61. The Trustee admits the factual allegations in Paragraph 61 of the Complaint.
62. The Trustee denies the factual allegations in Paragraph 62.
63. The Trustee denies the factual allegations in Paragraph 63.
64. The Trustee denies the factual allegations in Paragraph 64.
65. The Trustee denies the factual allegations in Paragraph 65.
66. The Trustee denies the allegations in Paragraph 66.

**V.**  
**CLAIMS FOR RELIEF**

67. The Trustee admits the allegations in Paragraph 67.
68. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLOs (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 68 of the Complaint.
69. The Trustee denies the allegations in Paragraph 69.
70. The Trustee denies the allegations in Paragraph 70.
71. The Trustee denies the allegations in Paragraph 71.
72. The Trustee denies the allegations in Paragraph 72.
73. The Trustee denies the allegations in Paragraph 73.
74. The Trustee admits the allegations in Paragraph 74.
75. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 75 of the Complaint.
76. The Trustee denies the allegations in Paragraph 76.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

77. The Trustee denies the allegations in Paragraph 77.

78. The Trustee denies the allegations in Paragraph 78.

79. The Trustee denies the allegations in Paragraph 79.

80. The Trustee denies the allegations in Paragraph 80.

81. The Trustee admits the allegations in Paragraph 81.

82. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 82 of the Complaint.

83. The Trustee denies the allegations in Paragraph 83.

84. The Trustee denies the allegations in Paragraph 84.

85. The Trustee denies the allegations in Paragraph 85.

86. The Trustee denies the allegations in Paragraph 86.

87. The Trustee denies the allegations in Paragraph 87.

88. The Trustee admits the allegations in Paragraph 88.

89. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 89 of the Complaint.

90. The Trustee denies the allegations in Paragraph 90.

91. The Trustee denies the allegations in Paragraph 91.

92. The Trustee denies the allegations in Paragraph 92.

93. The Trustee denies the allegations in Paragraph 93.

94. The Trustee denies the allegations in Paragraph 94.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

95. The Trustee admits the allegations in Paragraph 95.

96. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 96 of the Complaint.

97. The Trustee denies the allegations in Paragraph 97.

98. The Trustee denies the allegations in Paragraph 98.

99. The Trustee denies the allegations in Paragraph 99.

100. The Trustee denies the allegations in Paragraph 100.

101. The Trustee denies the allegations in Paragraph 101.

102. Paragraph 102 is a legal conclusion that does not require an answer. To the extent a response is required for the allegations asserted in Paragraph 102 of the Complaint, the remaining allegations asserted in Paragraph 102 of the Complaint are denied.

103. The Trustee denies the allegations in Paragraph 103.

104. The Trustee denies the allegations in Paragraph 104.

105. The Trustee denies the allegations in Paragraph 105.

106. The Trustee denies the allegations in Paragraph 106.

107. The Trustee denies the allegations in Paragraph 107.

108. The Trustee denies the factual allegations in Paragraph 108.

109. No response is required for the facts asserted in Paragraph 109 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 109 of the Complaint, the remaining allegations asserted in Paragraph 109 of the Complaint are denied

110. The Trustee denies the allegations in Paragraph 110.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

111. The Trustee denies the allegations in Paragraph 111.

112. The Trustee denies the factual allegations in Paragraph 112 of the Complaint.

113. The Trustee denies the allegations in Paragraph 113.

114. The allegations contained in paragraph 114 are not sufficiently specific for the Trustee to admit or deny. To the extent a response is required for the facts asserted in Paragraph 114 of the Complaint, the remaining allegations asserted in Paragraph 114 of the Complaint are denied

115. The Trustee denies the allegations in Paragraph 115.

116. The Trustee denies the allegations in Paragraph 116.

117. The Trustee denies the factual allegations in Paragraph 117.

118. The Trustee denies the allegations in Paragraph 118.

119. The Trustee denies the allegations in Paragraph 119.

120. The Trustee denies the allegations in Paragraph 120.

121. The Trustee denies the allegations in Paragraph 121.

122. The Trustee denies the allegations in Paragraph 122.

123. No response is required to Paragraph 123. To the extent a response is required for the facts asserted in Paragraph 123 of the Complaint, the remaining allegations asserted in Paragraph 123 of the Complaint are denied

124. The Trustee denies the allegations in Plaintiffs' prayer for relief and further denies that Highland and HCLOF (the "Plaintiffs") are entitled to the relief sought.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

**VI.**  
**AFFIRMATIVE DEFENSES**

125. Highland's claims are barred because Highland lacks standing to bring the claims and requests for relief asserted.

126. Plaintiffs' claims are barred, in whole or in part, for failure to perform a condition precedent.

127. Plaintiffs' claims are barred, in whole or in part, by estoppel.

128. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' unclean hands.

**VII.**  
**PRAYER FOR RELIEF: HIGHLAND CAPITAL MANAGEMENT, L.P.'S AND  
HIGHLAND CLO FUNDING, LTD.'S COMPLAINT**

129. The Trustee prays that Highland and HCLOF take nothing by virtue of its Complaint and that the Trustee have all such other and further relief, in either law or equity, as may be appropriate.

**COUNTERCLAIMS**

130. The Trustee hereby asserts the following counterclaims against Highland and HCLOF as an offset to any claim Highland and HCLOF have against the Trustee or the Debtors and for the purposes of affirmative recovery against Highland and HCLOF.

**VIII.**  
**PARTIES**

131. Highland is a limited partnership incorporated under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

132. HCLOF is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands. Highland and HCLOF are collectively referred to herein as the "Counter Defendants."

133. Highland HCF Advisor, Ltd. ("Highland HCF") is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland HCF Advisor, Ltd. may be served through its president, James Dondero at 300 Crescent Court, Suite 700 Dallas, TX 75201.

134. Highland CLO Management Ltd. ("Highland CLOM") is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland CLO Management Ltd. may be served through the President of its general partner, Strand Advisors, Inc., James Dondero at 300 Crescent Court, Suite 700 Dallas, TX 75201 and its general partner, Strand Advisors, Inc., at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. Highland HCF and Highland CLOM are collectively referred to herein as the "Third Party Defendants."

**IX.**  
**JURISDICTION AND VENUE**

135. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

136. The Court has the power to adjudicate this adversary proceeding pursuant to 28 U.S.C. § 157(a)-(b) and the *Miscellaneous Order No. 33, Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas.

137. This matter arises under the laws of the United States of America. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). The Trustee hereby consents to the Bankruptcy Court's entry of a final judgment resolving this Adversary Proceeding.

138. Venue of this Adversary Proceeding in this District is proper under 28 U.S.C. § 1409.

139. The predicate for relief requested here in is 11 U.S.C. §§ 544, 548, 550, 551, TEX. BUS. & COM. CODE 24.001 *et seq.* ("TUFTA") and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

**X.**  
**INTRODUCTION**

140. After the commencement of litigation with Mr. Terry and in earnest after Mr. Terry received the Final Award (as hereinafter defined) Highland, Highland CLOM, Highland HCF and HCLOF sought to fraudulently transfer the assets of Acis LP pursuant to a scheme comprised of a series of fraudulent transfers in an effort to denude Acis LP of value (Highland, Highland CLOM, Highland HCF and HCLOF collectively referred to herein as the "Highland Enterprise"). This fraudulent transfer scheme was accomplished through, *inter alia*, the Note Transfer, the ALF Share Transfer, and ALF PMA Transfer (as hereinafter defined), which

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

fraudulently transferred economic rights away from Acis LP to the Highland Enterprise. The Trustee seeks to recover the fraudulent transfers, as further described herein.

## **XI. BACKGROUND FACTS**

### **A. State Court Litigation And Final Award**

141. Highland commenced litigation against Mr. Terry on or about September 8, 2016 in the 162<sup>nd</sup> Judicial District Court of Texas (the "162<sup>nd</sup> Action"). Mr. Terry subsequently moved to compel arbitration, which request was granted. Accordingly, the 162<sup>nd</sup> Action was stayed pending resolution of the arbitration on the merits.

142. On October 20, 2017, a JAMS arbitration panel made up of former or retired judges (the "Arbitration") entered a Final Award (the "Final Award") in favor of Mr. Terry in the amount of \$7,949,749.15<sup>2</sup> against the Debtors.

143. On December 18, 2017, the Final Award was reduced to a final judgment by the 44th Judicial District Court of Dallas County, Texas, and the Final Judgment was entered in Cause No. DC-17-15244 (the "Judgment").

### **B. The Bankruptcy Cases**

144. On January 30, 2018 (the "Petition Date"), Mr. Terry as petitioning creditor, filed involuntary petitions (the "Involuntary Petitions") against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

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<sup>2</sup> Pursuant to the Judgment, interest accrues on the Judgment from October 20, 2017 until such time as the Judgment is paid in full, at an interest rate of 5% per annum. The total amount due to Mr. Terry, pursuant to the Judgment, as of the date of filing the involuntary bankruptcy, January 30, 2018, was at least \$8,060,827.84.

145. On April 13, 2018, after six days of testimony and argument, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Order for Relief").

146. After the Order for Relief was entered these cases were converted to Chapter 7 cases. Robin Phelan was appointed Chapter 11 Trustee of the Debtors' the bankruptcy estates.

**C. Highland and the Highland Enterprise's Role in these Cases**

147. Although Highland did not appear in these cases until after the entry of the Order for Relief, Highland employees directed Acis's actions at all times before the Order for Relief.

*See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

*Id.*

148. Additionally, the two indirect owners of Highland, James Dondero and Mark Okada, testified at the trial on the Involuntary Petitions.<sup>3</sup>

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<sup>3</sup> Opinion at p. 3, n. 4 ("Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and [O]kada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable").

149. Highland and its network of affiliates have numerous other connections to this case. HCLOF and other Highland affiliates attempted to intervene in the trial on the Involuntary Petitions.

HCLOF is the

holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash flow from the CLOs. It, in certain ways, controls the CLO vehicle—for example, by virtue of having the ability to make a redemption call after a certain 'no-call' period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A's). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. ('ALF'), which was incorporated under the laws of the island nation of Guernsey, was the CLO equity holder. To be clear, ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the 'ALF Portfolio Management Agreement'— not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements).

Opinion at pp. 12-13 (footnotes omitted).

#### **D. The CLOs, the PMAs, and the Indentures**

150. Acis LP is the portfolio manager for funds of certain Collateralized Loan Obligations ("CLOs"): (i) Acis CLO 2013-1, Ltd. ("CLO-1"), (ii) Acis CLO 2014-3, Ltd ("CLO-3"), (iii) Acis CLO 2014-4, Ltd. ("CLO-4"), (iv) Acis CLO 2014-5, Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6"). *See* Opinion ¶ 24. CLO-1, CLO-3, CLO-4, CLO-5 and CLO-6 are collectively referred to herein as the "Acis CLOs."

151. As relevant herein, Acis LP manages the Acis CLOs through five PMAs.<sup>4</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. See Opinion ¶ 13. True and correct copies of the PMAs are attached hereto as **Exhibit "A."** Each of the Acis CLOs is governed by the Indentures.<sup>5</sup> True and correct copies of the Indentures are attached hereto as **Exhibit "B."**

**XII. FRAUDLENT TRANSFERS**

**A. The ALF PMA Transfer**

152. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit "C."** A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit "D."**

<sup>4</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

<sup>5</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures."

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

153. The Second ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

(i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) **vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.**

Second ALF PMA § 5(a)-(q) (emphasis added).

154. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). Still, the Second ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." *See* ALF PMA § 14(a)-(e).

155. On October 27, 2017, just seven days after Mr. Terry's arbitration award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and those valuable portfolio management rights—for no value—to Highland HCF Advisor, Ltd. ("Highland HCF"), an affiliate of Highland.

156. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which empowered Highland

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct of the October 2017 PMA is attached hereto as **Exhibit "E."**

As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at p. 19 (footnotes omitted).

157. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, (without expressing its business judgment to this transfer) Acis LP simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA.

158. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland HCF, HCLOF could not have attempted to direct and effectuate an optional redemption, and deplete Acis's assets, as it is now attempting to do.

**B. ALF Share Transfer**

159. On October 24, 2017, a mere four days after the Final Award was entered, an employee of Highland and representative of Acis LF, Frank Waterhouse and Grant Scott, for CLO Holdco. Ltd., entered into that certain special resolution whereby HCLOF, then known as

ALF acquired back Acis's interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit "F."**

160. By the ALF Share Transfer, HCLOF paid Acis LP \$999,1180.13 for its shares of ALF. HCLOF is an insider of Acis LP. By November 1, 2017, Acis LP had given up its shares of HCLOF and its control of HCLOF.

**C. Note Transfer**

161. On November 3, 2017, Acis LP, Highland, and Highland CLO Management Ltd., a Cayman entity ("Highland CLOM"), an affiliate of Highland, entered into the Agreement for Assignment and Transfer of Promissory Note (the "Assignment and Transfer Agreement"). A true and correct copy of the Assignment and Transfer Agreement is attached here to as **Exhibit "G."** The Assignment and Transfer Agreement, among other things, transferred the \$9.5 million promissory note by Highland in favor of Acis LP (the "Note") from Acis LP to Highland CLOM (the "Note Transfer"). Acis LP received no or insufficient consideration for the Note Transfer.

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses

Opinion at p. 20.

162. Additionally, the Assignment and Transfer Agreement also purports to initiate the transfer of the PMA between Acis and the CLOs to Highland CLOM. Again, Acis LP is to receive no consideration for transferring its most significant assets, the PMAs. Upon information and belief, Acis LP did not in fact transfer the PMAs pursuant to the Assignment and Transfer Agreement.

**XIII.**  
**CAUSES OF ACTION**

163. The Trustee complains of, and asserts the following claims and causes of action against Counter Defendants and Third Party Defendants:

**XIV.**  
**COUNT I**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(ALF Share Transfer)**

164. The Trustee incorporates by reference the foregoing paragraphs.

165. On or about October 27, 2017, less than two years prior to the Petition Date, HCLOF, formerly known as ALF, received the ALF Share Transfer

166. The ALF Share Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

167. Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer.

168. Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer.

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

169. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

170. The ALF Share Transfer was to or for the benefit of insiders, the Highland Enterprise, including HCLOF.

171. The ALF Share Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the ALF Share Transfer pursuant to section 548 of the Bankruptcy Code.

172. To the extent the ALF Share Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT II**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(ALF PMA Transfer)**

173. The Trustee incorporates by reference the foregoing paragraphs.

174. On or about October 27, 2017, less than two years prior to the Petition Date, Highland HCF received the ALF PMA Transfer.

175. The ALF PMA Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

176. Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer.

177. Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

178. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

179. The ALF PMA Transfer was to or for the benefit of insiders, the Highland Enterprise, including Highland HCF.

180. The ALF PMA Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the ALF PMA Transfer pursuant to section 548 of the Bankruptcy Code.

181. To the extent the ALF PMA Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT III**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(Note Transfer)**

182. The Trustee incorporates by reference the foregoing paragraphs.

183. On or about November 2, 2017, less than two years prior to the Petition Date, Highland CLOM received the Note Transfer.

184. The Note Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

185. Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer.

186. Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

187. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

188. The Note Transfer was to or for the benefit of an insider, Highland CLOM.

189. The Note Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the Note Transfer pursuant to section 548 of the Bankruptcy Code.

190. To the extent the Note Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT IV**  
**11 U.S.C. § 550**

191. The Trustee incorporates by reference the foregoing paragraphs.

192. To the extent not otherwise asserted herein the Trustee seeks appropriate relief against the Highland Enterprise pursuant to section 550 of the Bankruptcy Code.

**COUNT V**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(ALF Share Transfer)**

193. The Trustee incorporates by reference the foregoing paragraphs.

194. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

195. The Trustee is entitled to a judgment avoiding the ALF Share Transfer to HCLOF as fraudulent transfers pursuant to TUFTA as follows:

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

196. To the extent the ALF Share Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VI**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(ALF PMA Transfer)**

197. The Trustee incorporates by reference the foregoing paragraphs.

198. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

199. The Trustee is entitled to a judgment avoiding the ALF PMA Transfer to Highland HCF as fraudulent transfers pursuant to TUFTA as follows:

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

200. To the extent the ALF PMA Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VII**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(Note Transfer)**

201. The Trustee incorporates by reference the foregoing paragraphs.

202. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

203. The Trustee is entitled to a judgment avoiding the Note Transfer to Highland CLOM as fraudulent transfers pursuant to TUFTA as follows:

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

204. To the extent the Note Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VIII**  
**SECTION 24.008 OF THE TEXAS BUSINESS AND COMMERCE CODE**

205. The Trustee incorporates by reference the foregoing paragraphs.

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

206. To the extent not otherwise asserted herein the Trustee seeks appropriate relief against the Highland Enterprise pursuant to section 24.008 of the Texas Business and Commerce Code

**COUNT IX**  
**11 U.S.C. § 551**

207. The Trustee incorporates by reference the foregoing paragraphs.

208. Pursuant to section 551 of the Bankruptcy Code, any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code is preserved for the benefit of the estate but only with respect to property of the estate.

**COUNT X**  
**CIVIL CONSPIRACY**

209. The Trustee incorporates by reference the foregoing paragraphs.

210. The Highland Enterprise which is comprised of two or more business entities sought to engage in a series of fraudulent transfers including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

211. The Highland Enterprise which is comprised of two or more business entities had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers , including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

212. The fraudulent transfers (as further described below), including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer constitute one or more unlawful, overt acts.

213. The Debtors and the Debtors' estates suffered damages as a proximate result of the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

214. The Trustee seeks actual, joint and several and exemplary damages for the Highland Enterprise's conspiracy.

**COUNT XI**  
**CONDITIONS PRECEDENT**

215. All conditions precedent to the Trustee’s recovery on its counterclaims asserted in this action have occurred, have been performed, or have been waived.

**COUNT XII**  
**ATTORNEYS’ FEES**

216. The Trustee seeks an award of its reasonable and necessary attorneys’ fees as provided for under Tex. Bus. & Com. Code 24.013.

**COUNT XIII**  
**ATTORNEYS’ FEES**

217. Accordingly, the Trustee prays that upon a final hearing that the Trustee has and recovers judgment against Highland, HCLOF, Highland CLOM and Highland HCF, as follows:

- 218. The Trustee's damages as set forth above;
- 219. The award of the Trustee's costs; and
- 220. For all such and further relief the Trustee may be justly entitled.

Respectfully submitted,

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**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY  
CLAIMS**

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001725

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2018, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District. I hereby certify that on July 3, 2018, notice of this document, will be sent via First-Class U.S. Mail to the parties below.<sup>6</sup>

/s/ Annmarie Chiarello

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<sup>6</sup> The attachments referenced herein not be sent via First-Class U.S. Mail unless parties request the undersigned to mail such attachments. Such request may be made to Annmarie Chiarello at [achiarello@winstead.com](mailto:achiarello@winstead.com).

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**



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**COUNSEL FOR REORGANIZED DEBTORS**

**COUNSEL FOR REORGANIZED DEBTORS**

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

<b>In re:</b>	§	<b>Case No. 18-30264-SGJ-11</b>
	§	<b>Case No. 18-30265-SGJ-11</b>
<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,</b>	§	<b>(Jointly Administered Under Case No. 18-30264-SGJ-11)</b>
	§	
<b>Debtors.</b>	§	<b>Chapter 11</b>
	§	

<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors,</b>	§	
	§	
<b>Plaintiffs,</b>	§	<b>Adversary No. 18-03078</b>
	§	
<b>vs.</b>	§	<b>(To be consolidated with Adversary Nos. 18-03212 &amp; 19-03103)</b>
	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD,</b>	§	
	§	
<b>Defendants.</b>	§	
	§	

**SECOND AMENDED COMPLAINT (INCLUDING CLAIM  
OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)**

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")<sup>1</sup> the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:<sup>2</sup>

**ANSWER AND AFFIRMATIVE DEFENSES**

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

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<sup>1</sup> On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

<sup>2</sup> As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

### **CLAIMS AND COUNTERCLAIMS**

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

#### **I. JURISDICTION, VENUE, AND STATUTORY PREDICATE**

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

## II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See **Exhibit T*** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id.* Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

### III. JURISDICTIONAL BACKGROUND<sup>3</sup>

#### A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See Exhibit T* at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

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<sup>3</sup> Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al.* At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covtiz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

## **B. Highland Management Jurisdictional Background**

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.<sup>4</sup> Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?

A: We would -- we would honor it and -- and pay as appropriate.

See Exhibit U (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al.* 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer... **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach.**" Opinion at 20-21, n. 37 (emphasis added).

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<sup>4</sup> Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

#### C. **Highland Holdings Jurisdictional Background**

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

#### IV. **PROCEDURAL BACKGROUND**

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

redemption.<sup>5</sup> Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

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<sup>5</sup> Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extent allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of \$3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan* (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.*, resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

## V. FACTUAL BACKGROUND

### A. **The Debtors' Business**

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").<sup>6</sup> The CLOs are governed by certain indentures (the

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<sup>6</sup> The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").<sup>7</sup> Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").<sup>8</sup> See Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of \$11,037,445.00 to Dondero, \$4,598,935.00 to Terry, and \$2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly \$3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

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<sup>7</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

<sup>8</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

*Id.*

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),<sup>9</sup> holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

<sup>9</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

**B. Section 3.10(a) of the Limited Partnership Agreement**

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust<sup>10</sup> (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.<sup>11</sup> The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")<sup>12</sup>, as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, *may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group.*

LPA § 3.10(a) (emphasis added).

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<sup>10</sup> Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

<sup>11</sup> The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

<sup>12</sup> Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

[A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

*Id.* § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

### **C. State Court Litigation and Arbitration**

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

### **D. The Arbitration Award**

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.

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The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of \$1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least \$7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.<sup>13</sup> On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

**E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement**

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

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<sup>13</sup> If \$1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least \$7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.<sup>14</sup>

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

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<sup>14</sup> Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)<sup>15</sup> to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

**F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.**

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

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<sup>15</sup> The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for \$30,000 per month, \$250-\$350 per trade, and a one-time fee of \$75,000. Cortland's fee equates to roughly 3 basis points per month.<sup>16</sup>

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately \$300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No. 790 at 100-01 & 134.

**G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.**

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

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<sup>16</sup> Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted \$15,441,551 in total assets (including nearly \$4 million in valuable portfolio management investments and the \$9.5 million note) as well as \$3,372,851 in total equity value.<sup>17</sup> After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only \$2,855,050 in total assets, no investment assets or notes, and a paltry \$35,709 in total equity value.<sup>18</sup> Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

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<sup>17</sup> The Balance Sheet as of August 31, 2017, is attached as Exhibit C.

<sup>18</sup> The Declaration of David Klos concerning Defendants' net worth, is attached as Exhibit D.

of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

**1. The ALF PMA Transfer and the ALF Share Transfer**

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E**. A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F**.

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] ...; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).<sup>19</sup>

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.<sup>20</sup>

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G**.

88. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

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<sup>19</sup> The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

<sup>20</sup> Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.<sup>21</sup>

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H**. Pursuant the ALF Share Transfer, ALF paid Acis LP \$991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

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<sup>21</sup> After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,<sup>22</sup> Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.<sup>23</sup> Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

## 2. *The Note Transfer*

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I**. The Note Assignment and Transfer Agreement, among other things, transferred the

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<sup>22</sup> ALF had changed its name to Highland Funding at this point.

<sup>23</sup> Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring \$150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and ... bring the total capital to up to around \$325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

\$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.<sup>24</sup> Again,

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<sup>24</sup> Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

**3. The Acis CLO 2017-7 Transfers**

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)<sup>25</sup> entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J**. The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

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to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

<sup>25</sup> Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).

In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a \$2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the \$2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

**4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption***

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").<sup>26</sup> Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."<sup>27</sup> Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

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<sup>26</sup> The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

<sup>27</sup> Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as Exhibit K.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

**5. The First Optional Redemption Notices**

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").<sup>28</sup> True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L**.

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

<sup>28</sup> Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

**6. *The Temporary Restraining Order Against the Highlands***

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

#### **7. *The Second Optional Redemption Notices***

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit N** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>29</sup>

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit Q** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

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<sup>29</sup> See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves its rights to seek appropriate protection and redress at law or in equity.**<sup>30</sup>

#### H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [ Case No. 18-30264, Docket No. 165] (the "SOFA")<sup>31</sup> and its general ledger disclose more than two dozen payments totaling \$16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "Prepetition Payments"):

- (i) Contractual Payments: \$5,011,836.72
- (ii) Services: \$7,672,145.25<sup>32</sup>
- (iii) Unsecured Loan Repayments Including Interest: \$3,311,497.65
- (iv) Expense Reimbursement: \$118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

<sup>30</sup> Emphasis in original email correspondence.

<sup>31</sup> The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

<sup>32</sup> The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional \$1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.)*, Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

## VI. CAUSES OF ACTION<sup>33</sup>

### ***Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA [Against Highland Capital]***

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at \*48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

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<sup>33</sup> All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. See, e.g., *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at \*20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least \$7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least \$7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

***Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a)  
for Unauthorized Overpayments  
[Against Highland Capital]***

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least \$7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least \$7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least \$7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

***Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments  
[Against Highland Capital]***

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least \$7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least \$7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 4: Conversion for Unauthorized Overpayments  
[Against Highland Capital]***

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least \$7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to the Sub-Advisory Agreement [Against Highland Capital]***

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 8**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

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- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)	
Vol. 2 000450	12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
000466	01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
000481	01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
000491	01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
000501	01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
000502	01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
000505	01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of <i>HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan</i> Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

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		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

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01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement [Against Highland Capital]***

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.
- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) The transfer/obligation incurred was to an insider.

150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement [Against Highland Capital]***

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;
- (ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

***Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement  
[Against Highland Capital]***

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;
- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;
- (ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the ALF Share Transfer  
[Against Highland Capital and Highland Funding]***

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the ALF Share Transfer [Against Highland Capital and Highland Funding]***

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the ALF Share Transfer  
[Against Highland Capital and Highland Funding]***

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;
- (ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

(iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer [Against Highland Capital and Highland Funding]***

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the Note Transfer  
[Against Highland Capital and Highland Management]***

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)  
for the Note Transfer  
[Against Highland Capital and Highland Management]***

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;
- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

***Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the Note Transfer  
[Against Highland Capital and Highland Management]***

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the Note Transfer;
- (ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer [Against Highland Capital and Highland Management]***

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]***

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]***

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;
- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the 2017-7 Equity and 2017-7 Agreement Transfers  
[Against Highland Capital and Highland Holdings]***

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]***

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]***

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount \$16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

***Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550  
[Against All Defendants]***

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

***Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers  
[Against Highland Capital, Highland Advisor, Highland Management, and Highland  
Holdings]***

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")<sup>34</sup> sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

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<sup>34</sup> This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

***Count 28: Tortious Interference with the Universal/BVK Agreement  
[Against Highland Capital]***

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 \*7 (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id.*

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

***Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement  
[Against Highland Capital]***

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia*:<sup>35</sup>

- (i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;
- (ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;
- (iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;
- (iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

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<sup>35</sup> Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

[T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

***Count 30: Breach of Fiduciary Duties by Highland Capital  
[Against Highland Capital]***

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

***Count 31: Punitive Damages  
[Against All Defendants]***

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at \*10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

***Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust  
Enrichment  
[Against All Defendants]***

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).<sup>36</sup>

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<sup>36</sup> To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

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of injustice or unfairness' is present. *Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at \*9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

***Count 33: Willful Violation of the Automatic Stay  
[Against Highland Capital and Highland Funding]***

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

*Campbell v. Countrywide Home Loan, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 34: Attorneys' Fees and Costs,  
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases  
[Against All Defendants]***

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

**VII. REQUEST FOR DISGORGEMENT**

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

### **VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST**

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK-Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App.—Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other."). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at \*26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

**IX. OBJECTIONS TO HIGHLAND CAPITAL PROOFS OF CLAIM**

303. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

304. The Highland Capital Claims are allegedly based on claims arising from the Sub-Advisory Agreement and the Shared Services Agreement. The Highland Capital Claims<sup>37</sup> are summarized as follows:

<b>Alleged Pre-Petition Claim<sup>38</sup></b>	<b>Alleged Claim Amount</b>
Sub-Advisory Agreement	\$1,605,362.41
Shared Services Agreement	\$1,017,213.62
Total alleged Pre-Petition Claim	\$2,622,576.03
<b>Alleged 502(f) Claim<sup>39</sup></b>	<b>Alleged 502(f) Claim Amount</b>
Sub-Advisory Agreement	\$1,170,147.06
Shared Services Agreement	\$ 879,417.29
Total alleged 502(f) Claim	\$2,049,564.35
<b>Total Claim Amount</b>	<b>\$4,672,140.38</b>

<sup>37</sup> Highland Capital filed identical claims against both Acis LP and Acis GP. Acis GP is not a party to the Sub-Advisory Agreement or the Shared Services Agreement. Presumably, Highland Capital is relying on Delaware partnership law to argue that Acis GP is also liable under the Sub-Advisory Agreement and Shared Services Agreement. See 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners."); see also 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). If this is the case, Acis does not dispute this basic tenet of partnership law; however, Acis disputes the Highland Capital Claims for the reasons set forth herein. Accordingly, all arguments set forth herein are applicable to both Highland Capital Claims.

<sup>38</sup> The Alleged Pre-Petition Claim relates to Highland Capital's alleged claim arising prior to the Petition Date.

<sup>39</sup> The Alleged 502(f) Claim relates to Highland Capital's alleged claim arising after the Petition Date and prior to April 13, 2018, the date the Court entered the Orders for Relief.

The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

**A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).**

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at \*17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.)*, 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

**B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).**

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.)*, Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at \*22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

**1. Highland Capital is an Insider of the Debtors.**

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.<sup>40</sup>

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

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<sup>40</sup> For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at \*17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.<sup>41</sup> Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

**2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.**

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at \*23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc.*, No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at \*22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

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<sup>41</sup> Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 & 18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id.* at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein." *In re Marquam Inv. Corp.*, 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.<sup>42</sup>

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

**C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.**

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

<sup>42</sup> 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.)

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).<sup>43</sup> Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

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<sup>43</sup> "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C. § 502(d)

**D. The Highland Capital Claims Should be Equitably Subordinated.**

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,<sup>44</sup> and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.<sup>45</sup> These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

## **X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM**

### **A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.**

#### **1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.**

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id.* A simple review of the

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<sup>44</sup> See *Plaintiff's Motion for Expedited Discovery*, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

<sup>45</sup> See June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

**2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).**

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

**3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.**

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.<sup>46</sup> Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

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<sup>46</sup> Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

*Lamont*, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

**B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.**

**1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.**

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'") (quoting *Jack/Wade Drilling*, 258 F.3d at 387).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at \*9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

**2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.**

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."<sup>47</sup> As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

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<sup>47</sup> *See Exhibit K* (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

even after Highland Capital was terminated as sub-advisor on August 1, 2018—when Highland Capital no longer had any legitimate reason to communicate with Universal or BVK.

340. Highland Capital's actions during the pendency of these Bankruptcy Cases demonstrate that Highland Capital did not service the Acis CLOs in a way that "enhanced the ability of the [debtor's] business to function." *Transamerican*, 978 F.2d at 1416. Indeed, Highland Capital acted to destroy the Debtors' business—therefore, Highland Capital's request for allowance of its Administrative Claim must be denied.

341. In its Application, Highland Capital essentially asserts that it provided services to the Debtors on a postpetition basis pursuant to various prepetition agreements and, therefore, the expenses are entitled to administrative priority. In order to qualify as an administrative expense, however, Highland Capital must show that its claim arose postpetition "as a result of actions by the trustee that benefitted the estate." *Id.* Further, although the terms of the Debtors' prepetition contracts may be probative of the reasonable value of postpetition services, they are not dispositive. *In re Am. Plumbing & Mech., Inc.*, 323 B.R. at 462. Indeed, "all that the estate is required to pay is the *reasonable value* of those services which were rendered." *Id.* (emphasis in original) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984)). Consequently, the provisions of the prepetition contracts do not automatically and dispositively translate into an allowed administrative claim. Highland Capital must still demonstrate a quantifiable benefit to the estate.

342. Highland Capital's assertion that its costs were incurred postpetition fails to satisfy its burden of proving entitlement to administrative priority. Specifically, aside from merely referencing the Sub-Agreements and the Universal/BVK Agreement, and contending that monies owed to it under such agreements are an administrative expense, Highland Capital fails to show that (i) such costs were necessary for the preservation of the Debtors' estate, and (ii) the

Debtors received any benefit, let alone a direct and substantial benefit, as a result of such services and expenses.

**3. The Amount Charged by Highland Capital Was Inflated and Unnecessary.**

343. Further, even if Highland Capital could show that, rather than undermining Acis's business, it provided postpetition services that enhanced the ability of Acis to function, to the extent the rates Highland Capital charged Acis were inflated or above market, the amounts charged to Acis under the Sub Agreements did not benefit the estates or its creditors, and such inflated amounts were therefore not necessary. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) ("Courts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit the estate and its creditors."). Indeed, at the July 6, 2018 hearing, regarding approval of the break-up fee and replacement of Highland Capital as sub-servicer with Oaktree, J.P. Sevilla, assistant general counsel for Highland Capital, testified that Highland Capital would reduce its rates charged to Acis LP for sub-servicing from 35 basis points to 17.5 basis points, in order to match competing offers:

Q Okay. Would Highland be willing to reduce its fee during the pendency of the bankruptcy, maybe without its rights to assert the validity of the contract, but would Highland otherwise be willing to assert -- to reduce its fees during the pendency of the bankruptcy?

A I think at the very least Highland would match Saratoga or whatever the 17.5 bps offer is. Again, reserving all rights, but in order to stay in the deal and to establish Highland's commitment to this deal, we would do it for 17-1/2 basis points, no question.

July 6, 2018 Hr'g Tr. at pp. 243-44. Moreover, the effective rate for such services charged by Brigade and Cortland also approached 17.5 basis points.<sup>48</sup> Accordingly, notwithstanding the objections otherwise raised herein, and assuming the services provided to Acis LP enhanced,

<sup>48</sup> Pursuant to the Third Amended Joint Plan, Brigade agreed to provide sub-advisory and shared services to the Acis CLOs for 15 basis points (and decreasing after one year). *See* Docket No. 661 at pp. 28, 136; *see also* Dec. 11, 2018 (PM) Hr'g Tr. at 89 & Dec. 12, 2018 (AM) Hr'g Tr. at 62.

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

**4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.**

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately \$2,612,574.00, rather than \$3,007,678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes \$543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

**C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.**

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.<sup>49</sup> As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

**D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.**

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.)*, 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about \$400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

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<sup>49</sup> The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

## VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

By: /s/Rakhee V. Patel

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

*/s/ Annmarie Chiarello* \_\_\_\_\_

One of Counsel

**HEATHER BESTWICK**

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

IN RE:

ACIS CAPITAL MANAGEMENT, L.P., ) (Case No. 18-30264-sgj11  
ACIS CAPITAL MANAGEMENT GP, ) (Case No. 18-30265-sgj11  
LLC, ) (  
 ) ((Jointly Administered  
DEBTORS, ) (Under Case No.  
 ) (18-30264-sgj11)  
 ) (  
 ) (Chapter 11

\*\*\*\*\*

ORAL DEPOSITION OF  
HEATHER BESTWICK  
NOVEMBER 26, 2018

\*\*\*\*\*

ORAL DEPOSITION OF HEATHER BESTWICK, produced as a witness at the instance of the Robin Phelan, Chapter 11 Trustee, and duly sworn, was taken in the above-styled and numbered cause on the 26th day of November 2018, from 8:18 a.m. to 2:13 p.m. before Tonya Perkins, Certified Shorthand Reporter in and for the State of Texas, reported at the offices Winstead, PC, 300 Throckmorton, Suite 1700, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and/or provisions stated on the record.

**HEATHER BESTWICK**

12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) Now you describe</b></p> <p>3 <b>yourself as an independent director, correct?</b></p> <p>4 A. Uh-huh. Yes.</p> <p>5 <b>Q. Is there another type of director, a</b></p> <p>6 <b>non-independent director?</b></p> <p>7 A. That's the nomenclature that's used for the</p> <p>8 role.</p> <p>9 <b>Q. Fair enough. And how are you selected?</b></p> <p>10 A. I believe that Highland -- you're talking</p> <p>11 about Highland, or you're talking about generally? I</p> <p>12 mean, generally speaking, our CVs are pretty much</p> <p>13 available on sites like LinkedIn. Promoters also speak</p> <p>14 to the lawyers that they've instructed in the relevant</p> <p>15 jurisdiction to know if they have any particular</p> <p>16 recommendations or contacts or know about people.</p> <p>17 <b>Q. But in terms of the actual selection, it was</b></p> <p>18 <b>Highland that selected you, correct?</b></p> <p>19 A. Yes, of course.</p> <p>20 <b>Q. Of course? Help me understand why you</b></p> <p>21 <b>answer --</b></p> <p>22 A. Because they're -- they're the promoter of</p> <p>23 the fund and so they are the ones who will look to</p> <p>24 structure it, and part of that process will be the</p> <p>25 selection of the non-ex directors.</p>		<p style="text-align: right;">Page 44</p> <p>1 requires, so it changes from year to year. Clearly this</p> <p>2 year we've had more meetings because we've had this case</p> <p>3 to discuss, but it varies.</p> <p>4 <b>Q. Are notes of the minutes of the meeting</b></p> <p>5 <b>regularly maintained?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Who does that?</b></p> <p>8 A. That's State Street. They are the</p> <p>9 administrator and company's secretary.</p> <p>10 <b>Q. So do they participate in every board</b></p> <p>11 <b>meeting?</b></p> <p>12 A. Pretty much. To the extent that they don't,</p> <p>13 we will let them know what we -- what we've agreed and</p> <p>14 ask them to --</p> <p>15 COURT REPORTER: Wait. I didn't get the</p> <p>16 last part. We agreed what?</p> <p>17 THE WITNESS: How to document it.</p> <p>18 <b>Q. (BY MR. WIELEBINSKI) How do you typically</b></p> <p>19 <b>communicate with Mr. Scott?</b></p> <p>20 A. Telephone, generally. I don't see him other</p> <p>21 than when I'm in Guernsey for meetings.</p> <p>22 <b>Q. Do you send emails regularly?</b></p> <p>23 A. Yes. Yes.</p> <p>24 <b>Q. And what about with PWC, how do you</b></p> <p>25 <b>communicate with them?</b></p>
<p style="text-align: right;">Page 43</p> <p>1 <b>Q. And how many members are there of the board?</b></p> <p>2 A. Two.</p> <p>3 <b>Q. Who's the chairman?</b></p> <p>4 A. Bill.</p> <p>5 <b>Q. And Bill is Bill Scott?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And your relationship to Bill Scott?</b></p> <p>8 A. I serve on a board with him.</p> <p>9 <b>Q. Just one board?</b></p> <p>10 A. Uh-huh.</p> <p>11 <b>Q. This board?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. No other relationship?</b></p> <p>14 A. No.</p> <p>15 <b>Q. And how long have you been affiliated with</b></p> <p>16 <b>HCLOF?</b></p> <p>17 A. Since I was appointed in May 2015.</p> <p>18 <b>Q. What's your compensation?</b></p> <p>19 A. I'm paid 35,000 pounds a year.</p> <p>20 <b>Q. And on average how often do you meet with --</b></p> <p>21 <b>does HCLOF's board meet?</b></p> <p>22 A. We have a corporate calendar which revolves</p> <p>23 around four quarterly board meetings. We meet to</p> <p>24 discuss the financial accounts every year also. We have</p> <p>25 various ad hoc meetings as and when the business</p>		<p style="text-align: right;">Page 45</p> <p>1 A. Again, telephone, and meetings, emails.</p> <p>2 <b>Q. Emails as well?</b></p> <p>3 A. Uh-huh.</p> <p>4 <b>Q. Same with State Street?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And Highland?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Does anyone from Highland sit in on your</b></p> <p>9 <b>board meetings?</b></p> <p>10 A. Not in person, but by telephone, yes.</p> <p>11 <b>Q. Do they sit in on every meeting?</b></p> <p>12 A. Yes. Yes. We take the Portfolio Management</p> <p>13 Agreement as an agenda item.</p> <p>14 <b>Q. But you don't just discuss portfolio</b></p> <p>15 <b>management issues during those board meetings, correct?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Do they sit through the entire meeting?</b></p> <p>18 A. Generally, yes.</p> <p>19 <b>Q. Have you ever asked to exclude them from any</b></p> <p>20 <b>portion of your board meetings?</b></p> <p>21 A. I don't recall that we ever have done that.</p> <p>22 Sometimes they have to drop off because they've got</p> <p>23 other commitments, and as long as we've had the agenda</p> <p>24 item specifically involving them, that's okay.</p> <p>25 <b>Q. Is that because they own a controlling</b></p>

**HEATHER BESTWICK**

13 (Pages 46 to 49)

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1 interest in the fund?  
2 MR. MALONEY: Objection, foundation.  
3 A. It's because they're the portfolio manager,  
4 and they have their duties to the fund.  
5 **Q. (BY MR. WIELEBINSKI) But you previously**  
6 **testified that their portfolio management role is solely**  
7 **with respect to managing the portfolio, right? Isn't**  
8 **that correct?**  
9 MR. MALONEY: Objection, foundation.  
10 **Q. (BY MR. WIELEBINSKI) Well, let me ask you.**  
11 **Isn't what Highland does is serve only as a portfolio**  
12 **manager? Do they play any other role in the operation**  
13 **or management of HCLOF?**  
14 A. Well, HCLOF, as you know, is a Guernsey  
15 entity, and we have lots of service providers apart from  
16 the portfolio manager.  
17 **Q. And which one of those sit in on your board**  
18 **meetings?**  
19 A. Well, we have State Street there, obviously,  
20 because they're the administrator. We have the  
21 custodian.  
22 **Q. They sit in on every board meeting?**  
23 A. Of course.  
24 **Q. Okay.**  
25 A. The custodian dials in, generally, from

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1 Ireland to give their report.  
2 **Q. And they sit through the entire meeting?**  
3 A. Not always. Sometimes they do. Actually,  
4 no, they tend to come just for their report. And, of  
5 course, when we're dealing with auditors, they will come  
6 and report to us as well. So --  
7 **Q. Does PWC sit through the meetings?**  
8 A. No, not all of them, but they'll be there for  
9 the meeting where we're discussing the accounts.  
10 **Q. So both of -- PWC and State Street only sit**  
11 **through a portion of the meetings, but Highland always**  
12 **sits through the entire meeting --**  
13 MR. MALONEY: Objection, foundation.  
14 **Q. (BY MR. WIELEBINSKI) -- is that correct?**  
15 A. Not always.  
16 **Q. So now you're saying they don't sit through**  
17 **the entire meeting?**  
18 A. No. What I said was that they don't if they  
19 have other things to do or if they have commitments or  
20 they have to go on other calls or they're traveling,  
21 that sort of thing.  
22 **Q. But other than they're not being able to**  
23 **attend for some reason, they otherwise will sit through**  
24 **the entire board meetings; is that correct?**  
25 A. Pretty much, yes.

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1 **Q. And who is it from Highland that sits in**  
2 **those meetings?**  
3 A. It's generally Hunter Covitz. Tim Cournoyer  
4 will sometimes join. They're the main contacts we have.  
5 **Q. Okay. You mentioned there's only two members**  
6 **of the board, correct?**  
7 A. Yes.  
8 **Q. And do you vote on all issues?**  
9 MR. MALONEY: Objection, form.  
10 A. We don't have a formal voting procedure  
11 because it's just the two of us and we're sitting around  
12 a table. It's in the nature of our relationship that we  
13 discuss things. We don't have a formal vote. We come  
14 to agreement by discussion.  
15 **Q. (BY MR. WIELEBINSKI) On everything?**  
16 A. Well, that's generally the way that we  
17 operate. You know, our role is not to be  
18 confrontational with each other. Our role is to look  
19 after the fund in the best way that we can. So we don't  
20 row or argue; we discuss issues and come to a consensual  
21 decision.  
22 **Q. Is there anything you've ever disagreed with**  
23 **Mr. Scott on any issue?**  
24 A. I can't think of an out-and-out disagreement.  
25 **Q. Did you ever have a disagreement with**

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1 **Highland or its advice?**  
2 A. Again, I don't think that I can recall a  
3 particular disagreement. That's not to say that we  
4 don't have robust discussions and challenge because, of  
5 course, we do, and that's the purpose of the quarterly  
6 board meetings and all the various reports. We do  
7 interrogate them.  
8 **Q. But you've never had a disagreement with him?**  
9 A. I can't recall that we've disagreed.  
10 **Q. And you've always accepted their advice?**  
11 A. Yes. On the basis that they are the experts,  
12 and it's their role to do what they do.  
13 **Q. Now, what type of decisions do you make for**  
14 **the -- as a member of the board that are not based on**  
15 **the portfolio manager's advice?**  
16 A. You mean outside of portfolio management all  
17 together? So just day-to-day running?  
18 **Q. I'm asking you.**  
19 A. -- of the fund?  
20 **Q. I don't know what things you might decide on**  
21 **that doesn't involve the portfolio manager.**  
22 A. Well, obviously, we have the relationship  
23 with the administrator. We had what -- for instance,  
24 when we were set up, we were going to be a listed fund  
25 on the stock exchange, so we had a registrar company

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14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 called Computer Share. We didn't get listed, we didn't 2 go down that route, so there was no point in paying 3 another service provider money for doing something we 4 didn't need so we decided that the best thing would be 5 to terminate Computer Share. 6 So we discussed that with Highland. I think, 7 you know, we -- the decisions that we make, obviously, 8 we will make as a board, but we do it in discussion with 9 Highland, the portfolio manager. 10 <b>Q. Is it pretty much fair to say that most</b> 11 <b>decisions that you do make as board member are in or</b> 12 <b>through discussions with Highland as portfolio manager?</b> 13 MR. MALONEY: Objection to form. 14 A. I think there's some pretty basic sort of 15 admin-type things that we get on with without 16 necessarily discussing with Highland, but that's just 17 the nature of the fund. 18 <b>Q. (BY MR. WIELEBINSKI) But anything substantive</b> 19 <b>Highland is involved and you discuss it with them; is</b> 20 <b>that what I understand?</b> 21 MR. MALONEY: Objection to form. 22 A. I think we would always want to involve 23 Highland and the portfolio manager in discussions about 24 anything substantive. 25 <b>Q. (BY MR. WIELEBINSKI) When was HCLOF formed?</b></p>		<p style="text-align: right;">Page 52</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) Ms. Bestwick, we're back</b> 2 <b>on the record.</b> 3 A. Okay. 4 <b>Q. You mentioned -- you mentioned earlier that</b> 5 <b>Highland, as the promoter, selected you and Mr. Scott.</b> 6 <b>Do you remember that?</b> 7 A. Yes. 8 <b>Q. Who makes the decision to fire you or</b> 9 <b>Mr. Scott?</b> 10 A. Well, that will be the shareholders who have 11 that authority. 12 <b>Q. Okay. And those are the shareholders you</b> 13 <b>mentioned before, Harbour Vest and the DAF, as well as</b> 14 <b>the 2 percent interest held by --</b> 15 A. Yes. 16 <b>Q. -- the Highland entities?</b> 17 A. Yes. 18 <b>Q. So essentially Highland controls that</b> 19 <b>decision on firing because they control the majority of</b> 20 <b>the investments; is that correct?</b> 21 MR. MALONEY: Objection, foundation. 22 A. Well, no. If it is put to a resolution of 23 the shareholders, my understanding is that it would have 24 to be a 75 percent decision. 25 <b>Q. (BY MR. WIELEBINSKI) And what's that based</b></p>
<p style="text-align: right;">Page 51</p> <p>1 A. 2015. I can't tell you the exact date. 2 <b>Q. And under what circumstances?</b> 3 A. With a view to being part of the structure 4 that we've described. 5 <b>Q. And this is your -- this is your first</b> 6 <b>involvement with Highland, correct?</b> 7 A. Yes. 8 <b>Q. Is it Bill's first involvement with Highland?</b> 9 <b>Do you know?</b> 10 A. I believe so, but you'd have to ask him for 11 sure. 12 <b>Q. And do you or Bill have any other connections</b> 13 <b>with Highland or any of the Highland affiliates?</b> 14 A. No. 15 MR. WIELEBINSKI: You know what, can we 16 take a short break? We've gone now for almost an 17 hour -- or a little over an hour. 18 MR. MALONEY: How long do you want to 19 take? 20 MR. WIELEBINSKI: Five minutes. 21 THE VIDEOGRAPHER: Off the record at 22 9:18. This is Disk 1, Volume 1. 23 (Break taken.) 24 THE VIDEOGRAPHER: On the record at 25 9:35. This is Disk 2, Volume 1.</p>		<p style="text-align: right;">Page 53</p> <p>1 <b>on, that understanding?</b> 2 A. Because it's a special resolution rather than 3 an ordinary resolution. 4 <b>Q. And that's contained where, that that</b> 5 <b>requirement --</b> 6 A. In the Articles of Association. 7 <b>Q. Remember you had mentioned that HCLOF had</b> 8 <b>initially hired the Gardere Foley law firm --</b> 9 A. Yes. 10 <b>Q. -- and they that were involved representing</b> 11 <b>you for some period of time in this bankruptcy?</b> 12 A. Yes. 13 <b>Q. Who made the decision to hire Gardere Foley?</b> 14 A. I think that was Highland. 15 <b>Q. It was a recommendation made by Highland, and</b> 16 <b>you, as the board member, and Mr. Scott decided to</b> 17 <b>accept that recommendation?</b> 18 A. Yes. Because when we were initially told 19 about the proceedings, then clearly we weren't aware 20 that the fund was involved. 21 <b>Q. You weren't even aware when the bankruptcies</b> 22 <b>were filed that you had some involvement in that? When</b> 23 <b>the bankruptcy was filed, it was Highland that had to</b> 24 <b>tell you that, hey, you guys need to get involved.</b> 25 <b>You're involved in this?</b></p>

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15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 A. Highland did tell the fund that that was the 2 case, yes. 3 <b>Q. And then they told you to hire Gardere?</b> 4 A. Well, no. I think that the firm was already 5 instructed to represent Highland. 6 <b>Q. And then they told you that you needed to 7 retain Gardere as well for your interests in the -- as 8 it related to the bankruptcy?</b> 9 MR. MALONEY: Objection, form. 10 A. We had common interests in that we needed to 11 have the fund out of the mess, so to that extent, yes. 12 <b>Q. (BY MR. WIELEBINSKI) And who, then, told you 13 that you needed to get King &amp; Spalding?</b> 14 MS. O'NEIL: Objection. Caution the 15 witness not to divulge attorney-client privileged 16 communications. 17 A. I think as any discussion of the board, it 18 would have involved a discussion between Bill and 19 myself. 20 <b>Q. (BY MR. WIELEBINSKI) With any Highland 21 involvement?</b> 22 A. I think there probably was a discussion had 23 at some point with Highland, but that's not to say that 24 we didn't have a discussion just between the two of us. 25 <b>Q. And do you recall specifically when you and</b></p>		<p style="text-align: right;">Page 56</p> <p>1 objection to the extent it calls for speculation. 2 A. I -- 3 <b>Q. (BY MR. WIELEBINSKI) Excuse me. Harbour Vest 4 is disclosed in information that's publicly available in 5 Guernsey, is it not, as an investor in the fund?</b> 6 A. Well, it's on the shareholder registry, but 7 that's not a public document. 8 <b>Q. But it is disclosed in that information, 9 correct?</b> 10 A. Yes. It has to be, as a matter of Guernsey 11 law. 12 <b>Q. And it's been disclosed through this 13 proceeding as well, correct?</b> 14 A. Yes. 15 <b>Q. So can you speculate as to a reason why they 16 wouldn't want their name mentioned and why you actually 17 didn't mention it when your counsel asked you questions?</b> 18 MR. MALONEY: Objection, calls for 19 speculation. 20 A. I can give you my view on it. 21 <b>Q. (BY MR. WIELEBINSKI) Do you mind?</b> 22 A. I think that they have been what you would 23 call a passive investor throughout. They haven't wanted 24 particular involvement, so it could be argued, I 25 suppose, that they want to continue in that sort of role</p>
<p style="text-align: right;">Page 55</p> <p>1 <b>Bill made the decision to essentially remove -- or end 2 the relationship with Gardere Foley?</b> 3 MR. MALONEY: Objection to form. You 4 can answer. 5 A. I don't have that information in my head, I'm 6 afraid. 7 <b>Q. (BY MR. WIELEBINSKI) Do you remember when 8 your counsel mentioned something about Harbour Vest 9 being -- asking that its name not be raised and that it 10 be referred to in a more ambiguous way?</b> 11 A. Yes. 12 <b>Q. Do you know why? Why is Harbour Vest 13 concerned about its name being mentioned?</b> 14 A. I don't know the reason from Harbour Vest, 15 but -- 16 <b>Q. Did they talk to you about it at all?</b> 17 A. No. 18 <b>Q. Did they talk to Bill about it, to your 19 knowledge?</b> 20 A. Not to my knowledge. 21 <b>Q. Can you think of a reason why they wouldn't 22 want to have their name mentioned considering that it's 23 public information in a number of -- from a number of 24 sources, including in Guernsey?</b> 25 MR. MALONEY: Objection to form, and</p>		<p style="text-align: right;">Page 57</p> <p>1 as a passive investor. 2 <b>Q. As a board member for HCLOF, who do you serve 3 for the benefit of?</b> 4 A. We serve for the benefit of the company, and 5 that is generally taken to mean the best economic 6 interests of the shareholders as a whole. 7 <b>Q. Is it fair to say that your role is to 8 attempt to maximize the recovery for your shareholders?</b> 9 A. Well, our role is to make sure that the 10 company is run properly; and, obviously, if you're 11 running an investment fund, then the idea is to maximize 12 returns for investors. 13 <b>Q. What exactly does HCLOF own?</b> 14 A. It owns investments, equity strips, and CLOs. 15 <b>Q. And does it have -- do you know how many CLOs 16 are involved in this matter that we're talking about?</b> 17 A. Yes. Five. Five or six. 18 <b>Q. And does HCLOF own equity strips in all five 19 CLOs?</b> 20 A. Yes. 21 <b>Q. Are you certain of that?</b> 22 A. I think there's one that is being liquidated, 23 so to the extent that that has happened. 24 <b>Q. I'm not trying to trick you on that. But 25 your understanding is that HCLOF owns equity strips in</b></p>

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16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 all five CLOs? 2 A. Yes. Yes. 3 <b>Q. What involvement, if any, does HCLOF have</b> 4 <b>with ACIS Capital Management?</b> 5 A. Now? 6 <b>Q. Yes.</b> 7 A. Well, it's the -- it was the portfolio 8 manager, but now it isn't. And ACIS is working with 9 Brigade on the underlying CLOs. 10 <b>Q. Including your equity strips?</b> 11 A. Yes. 12 <b>Q. Are you familiar with the series of transfers</b> 13 <b>and transactions in the fall of 2017 that involved ACIS</b> 14 <b>and HCLOF?</b> 15 A. Yes. 16 <b>Q. And were you involved in those transactions</b> 17 <b>and transfers?</b> 18 MR. MALONEY: Objection to form; vague. 19 You can answer if you know the transactions specifically 20 that he's talking about. 21 A. Well, as a director, we were involved in the 22 incoming new investor, and I think I mentioned earlier 23 that involved, as a condition precedent to the closing 24 of that deal, that ACIS be replaced as portfolio 25 manager.</p>		<p style="text-align: right;">Page 60</p> <p>1 A. The fact that it was going to help in the 2 marketing of the business going forward and that it was 3 a condition precedent to the new investor coming in. 4 <b>Q. Now, if I told you in discussions with</b> 5 <b>Harbour Vest they disclaimed any condition precedent to</b> 6 <b>their investment and said they didn't care one way or</b> 7 <b>the other, would that surprise you?</b> 8 A. That would certainly be news to me, because 9 we were advised that that was the case. 10 <b>Q. By Highland?</b> 11 A. By Highland. 12 <b>Q. And subsequent to your first being advised by</b> 13 <b>Highland about this condition precedent, have you ever</b> 14 <b>spoken to Harbour Vest about its investment and the</b> 15 <b>condition precedent?</b> 16 A. No, we've never discussed or spoken to 17 Harbour Vest about that. 18 <b>Q. When were you first made aware of the Terry</b> 19 <b>litigation in the United States involving Mr. Terry and</b> 20 <b>the Highland entities?</b> 21 A. It was the middle of April this year. 22 <b>Q. You never knew about it before that time</b> 23 <b>period?</b> 24 A. No. 25 <b>Q. Do you know if Mr. Scott did?</b></p>
<p style="text-align: right;">Page 59</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) And your testimony is</b> 2 <b>that Harbour Vest made that a condition precedent?</b> 3 A. That's what the board revised, yes. 4 <b>Q. And they were advised that by whom?</b> 5 A. By the portfolio manager, by Highland. 6 <b>Q. And what did you do as a board member to</b> 7 <b>verify that?</b> 8 <b>(At this time Mr. Shaw enters the room.)</b> 9 A. We listened to the rationale and were happy 10 to accept the advice on the basis that the portfolio 11 manager was acting in the best interest of the investors 12 as they were supposed to do. So we were happy to accept 13 that to be the case. 14 <b>Q. (BY MR. WIELEBINSKI) Did you do any</b> 15 <b>independent verification of that information conveyed to</b> 16 <b>you by Highland regarding Harbour Vest?</b> 17 A. No. And it wouldn't be something that would 18 be in the normal course of business that you would seek 19 independent verification of what your portfolio manager 20 was advising. 21 <b>Q. Do you know why the Portfolio Management</b> 22 <b>Agreement of HCLOF was transferred from ACIS to a</b> 23 <b>Highland affiliate or a Highland-related entity?</b> 24 A. For the reason that I've just explained. 25 <b>Q. That was the only reason, as far as you know?</b></p>		<p style="text-align: right;">Page 61</p> <p>1 A. I don't believe he did, but you'd have to ask 2 him. 3 <b>Q. And who made you aware of the Terry</b> 4 <b>litigation?</b> 5 A. Highland. 6 <b>Q. And what did they tell you?</b> 7 A. That there had been a proceeding in a Dallas 8 court the previous week to the call which meant that we 9 couldn't do the resets which had been anticipated and 10 that it was causing damage to the fund. 11 <b>Q. And who told you that?</b> 12 A. I believe it was Isaac Leventon. I think he 13 was on the call. It was a conference call, but I think 14 it was probably Mr. Leventon who explained it. 15 <b>Q. And this was in April of this year?</b> 16 A. Yes. 17 <b>Q. It was the first time you heard anything</b> 18 <b>about the Terry litigation?</b> 19 A. Yes. 20 <b>Q. And was it a special board meeting when he</b> 21 <b>told you this?</b> 22 A. No. It was a conference call, an update 23 call. We'd been asked to join a call for an update. 24 <b>Q. I'm sorry, I didn't hear you. You'd been</b> 25 <b>asked to join a call?</b></p>

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17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 A. A conference call by way of update. 2 <b>Q. Would that not be a special board meeting?</b> 3 A. Well, no, not if it involved others. There 4 are certain formalities around board meetings, and it 5 was an update call. 6 <b>Q. Okay. Who all was on that call? Do you</b> 7 <b>recall?</b> 8 A. Obviously, a few people from Highland. I 9 think probably Hunter might have been on the call, Tim 10 Cournoyer was probably on the call, and then Bill and 11 myself. 12 <b>Q. And what you've testified to was that they</b> 13 <b>told you two things. One, there was a proceeding in a</b> 14 <b>Dallas court involving Mr. Terry and that they --</b> 15 A. Involving ACIS. 16 <b>Q. Involving ACIS?</b> 17 A. Yes. Yes. 18 <b>Q. Did they say it also involved Mr. Terry?</b> 19 A. I don't think so. I think it was specific to 20 ACIS. 21 <b>Q. And it wouldn't allow you to do the resets</b> 22 <b>anticipated?</b> 23 A. Yes. 24 <b>Q. Are those the ones with Mizuho?</b> 25 A. Yes. We've been talking about resets</p>		<p style="text-align: right;">Page 64</p> <p>1 A. I think we were told that things were influx, 2 and so we asked to be kept updated. 3 <b>Q. But you didn't ask for any of the pleadings</b> 4 <b>and you didn't receive any of the pleadings at that</b> 5 <b>time?</b> 6 A. No. Because we weren't aware that it 7 particularly involved the fund in a way that it has 8 transpired. 9 <b>Q. It really wasn't that important. You just</b> 10 <b>know there was a proceeding going on, correct?</b> 11 A. Well, no. 12 MR. MALONEY: Objection, form. You can 13 answer. 14 A. The fact that our investments were not able 15 to be reset as anticipated obviously was an impact on 16 the fund. 17 <b>Q. (BY MR. WIELEBINSKI) For some reason I</b> 18 <b>thought that those Mizuho resets were to occur in</b> 19 <b>January or February. Wasn't that the case?</b> 20 A. We had been talking about resets throughout 21 2017, so I'm -- 22 <b>Q. Understood.</b> 23 A. -- not quite sure. 24 <b>Q. Now I'm talking about January or February of</b> 25 <b>2018. Weren't they to have occurred by that point?</b></p>
<p style="text-align: right;">Page 63</p> <p>1 throughout 2017 as part of the general board meetings, 2 updates, etcetera, and I think there was a contract with 3 Mizuho being talked about. 4 <b>Q. And did they tell you anything else about the</b> 5 <b>litigation?</b> 6 MS. O'NEIL: Object to the extent it may 7 call for attorney-client communications. 8 MR. MALONEY: I would join in that. 9 A. I think it was an update. There were 10 proceedings in a court in Dallas. 11 <b>Q. (BY MR. WIELEBINSKI) There were no attorneys</b> 12 <b>involved other -- well, strike. Strike.</b> 13 <b>Was Mr. Maloney involved on the call?</b> 14 A. No. 15 <b>Q. Was Ms. O'Neil or anybody from her firm</b> 16 <b>involved in the call?</b> 17 A. No. 18 <b>Q. So it was just those two pieces of</b> 19 <b>information that were shared with you at that point?</b> 20 A. (Nods head affirmatively.) 21 <b>Q. Did you ask for any -- you have to</b> 22 <b>acknowledge yes.</b> 23 A. Sorry. Yes. 24 <b>Q. Did you ask for any additional information at</b> 25 <b>that time?</b></p>		<p style="text-align: right;">Page 65</p> <p>1 A. I'd need to refresh my memory with board 2 minutes, etcetera, but I think the timing was probably 3 year end, beginning of 2018. 4 <b>Q. Why was it important for Highland to share</b> 5 <b>this information with you in April?</b> 6 MS. O'NEIL: Objection to the extent it 7 calls for disclosure of privileged attorney-client 8 communication. 9 MR. MALONEY: I also to the extent -- 10 I'd also object to the extent it calls for speculation. 11 To the extent the witness knows why Highland said, you 12 can answer. 13 A. We have update calls with Highland. This was 14 an update call about -- 15 COURT REPORTER: About what? 16 THE WITNESS: An event. 17 <b>Q. (BY MR. WIELEBINSKI) Did they ever tell you</b> 18 <b>how they proposed to address this situation?</b> 19 MS. O'NEIL: Objection to the extent it 20 calls for disclosure of attorney-client privileged 21 communications. 22 MR. MALONEY: I join in that, and the 23 instruction to avoid disclosing communications and 24 advice you received from counsel. 25 A. I think it would be difficult for me to</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 respond because, of course, we do, then, take advice 2 from counsel about precisely what you're talking about, 3 the options. 4 <b>Q. (BY MR. WIELEBINSKI) Did you ask the</b> 5 <b>question, What are we going to do to clean up this</b> 6 <b>situation?</b> 7 A. I think we asked the question, How are we 8 involved and what is the impact in all of this? 9 <b>Q. And other than the reset, how did they answer</b> 10 <b>that question?</b> 11 A. Well, it was -- it was around the reset and 12 the fact that that was costing the fund money. 13 <b>Q. How did you understand the -- you couldn't do</b> 14 <b>the resets at this point. That was going to be a</b> 15 <b>problem for the fund, correct?</b> 16 A. Yes. 17 <b>Q. How did you understand at that point you were</b> 18 <b>going to move forward in connection with this -- the</b> 19 <b>current situation? What were you, as a board member,</b> 20 <b>going to do for the company as a result?</b> 21 A. Well, given that this was something we needed 22 more information about, we had asked Highland to keep us 23 advised and informed. So we were waiting for more 24 information as to what the options were. 25 <b>Q. At that point, when you were advised of this,</b></p>		<p style="text-align: right;">Page 68</p> <p>1 <b>the problems that were encountered that was causing the</b> 2 <b>funds not to be able to do resets?</b> 3 A. I can't remember the exact timing, but the 4 question was asked, Are our shareholders advised? And 5 the question [sic] was yes. So that confirmed the way 6 that the portfolio manager is in charge of investor 7 relations. 8 <b>Q. Why was Harbour Vest brought into the fund?</b> 9 A. I can't speak to any of the discussions prior 10 to them coming in, because that was very much led by 11 Highland. If you look at -- the original intention with 12 the fund was that we were going to be a listed entity 13 listed on the London Stock Exchange and that was how we 14 were going to increase the investor base. 15 The market changed on NAV, went down quite 16 substantially, and there came a point when it was clear 17 that achieving a listing wasn't going to happen. So you 18 then have to decide how you're going to increase your 19 investor base. So having an investor like Harbour Vest 20 come on board is a sensible way to grow your investor 21 base. A very well-known house. 22 <b>Q. The losses were actually pretty severe for</b> 23 <b>the fund, weren't they?</b> 24 A. Uh-huh. Yes. 25 <b>Q. And overall this fund has not performed very</b></p>
<p style="text-align: right;">Page 67</p> <p>1 <b>did you immediately call Harbour Vest and advise them of</b> 2 <b>the situation?</b> 3 A. No. 4 <b>Q. Why not?</b> 5 A. It wasn't even considered as an appropriate 6 thing to do. 7 <b>Q. Well, wouldn't it have been material to them</b> 8 <b>to know that there was a problem in the United States</b> 9 <b>that was causing an inability to proceed with resets</b> 10 <b>that would impact them?</b> 11 MR. MALONEY: Objection, foundation 12 witnesses knowledge. 13 <b>Q. (BY MR. WIELEBINSKI) Let me ask it this way:</b> 14 <b>Would the inability to do the resets impact the Harbour</b> 15 <b>Vest investment in your fund?</b> 16 A. I think to go back to the question that you 17 asked, Highland is the portfolio manager. They have 18 investor relations as part of their role. That's how we 19 understand it. That's part of what they do as portfolio 20 manager. So to the extent that there's any 21 communication with shareholders, then we would expect 22 and assume that that is something that Highland does 23 rather than the directors. 24 <b>Q. Did you ask Highland to make sure they did</b> 25 <b>that, that they reached out and advised Harbour Vest of</b></p>		<p style="text-align: right;">Page 69</p> <p>1 <b>well, has it?</b> 2 A. It's certainly improved after the losses and 3 was doing far better. And if you were an external 4 investor, you wouldn't come in unless you had a belief 5 that the fund was going to carry on performing well. 6 <b>Q. You know, my broker answers my questions much</b> 7 <b>like you did: That my performance is a lot better after</b> 8 <b>I've suffered a large loss. The losses were in the 25</b> 9 <b>percent range, weren't they, within the first six weeks</b> 10 <b>of the funding?</b> 11 A. Yes, they were. 12 <b>Q. So thank goodness there was a better</b> 13 <b>performance after that.</b> 14 A. Yes. 15 MR. MALONEY: Objection, form. 16 <b>Q. (BY MR. WIELEBINSKI) And -- but overall,</b> 17 <b>since the formation of the fund, has the performance</b> 18 <b>been above average, average, mediocre? How would you</b> 19 <b>describe it?</b> 20 A. I would describe it as challenging in that 21 period when the NAV was going down fairly substantially. 22 And, obviously, you want to know from the portfolio 23 manager that they're doing all they can to improve the 24 performance of the fund, and that was the role of the 25 portfolio manager and the reports that we had from them</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 in our meetings. 2 <b>Q. Okay. Did you authorize the filing of a</b> 3 <b>lawsuit by the fund against Mr. Terry?</b> 4 A. You're talking about the Guernsey case? 5 <b>Q. Yes, ma'am.</b> 6 A. Yes. 7 <b>Q. And do you remember both you and Mr. Scott</b> 8 <b>both approved --</b> 9 A. Yes. 10 <b>Q. -- and authorized the filing of that lawsuit?</b> 11 A. Yes. 12 <b>Q. Was that done by what law firm? Do you</b> 13 <b>recall?</b> 14 A. That was done by Carey Olsen. 15 <b>Q. That's one of the firms you use?</b> 16 A. Yes. 17 <b>Q. And what was the nature of the lawsuit? Can</b> 18 <b>you describe that to me, your understanding?</b> 19 A. Yes. Well, our understanding -- my 20 understanding is that the losses that have been -- 21 COURT REPORTER: Wait. Hang on. Losses 22 what? 23 A. The losses that have been caused to the fund 24 as a result of the ACIS bankruptcy have been very 25 severe, as I'm sure you know. And as directors of the</p>		<p style="text-align: right;">Page 72</p> <p>1 <b>Q. Highland told you that. And did you do any</b> 2 <b>independent verification or calculations on your own to</b> 3 <b>see what the losses were?</b> 4 A. No, I don't think that we would have been 5 equipped to do that. And, again, we're perfectly 6 comfortable to rely on the advice and information 7 provided by the portfolio manager. 8 <b>Q. What do you believe the losses are today on a</b> 9 <b>weekly and daily basis? Is it still about the same</b> 10 <b>amount?</b> 11 A. I don't know the actual amount. I think it's 12 probably not as much as that, but I don't know. 13 <b>Q. And \$300,000 a week. Five, six, seven</b> 14 <b>million dollars by this point of the year; is that a</b> 15 <b>good estimate. Is my math --</b> 16 A. Uh-huh. Yes. 17 <b>Q. Okay.</b> 18 A. Yes. 19 <b>Q. Pretty -- pretty significant loss you're</b> 20 <b>claiming.</b> 21 A. Yes. 22 <b>Q. And it's because you can't do anything with</b> 23 <b>your investments; is that your testimony?</b> 24 A. Well -- 25 MR. MALONEY: Objection to form and</p>
<p style="text-align: right;">Page 71</p> <p>1 fund, we have a duty if we think that there is any 2 opportunity to recover those losses, then obviously we 3 have to investigate our options. 4 <b>Q. (BY MR. WIELEBINSKI) Now, you're not talking</b> 5 <b>about the losses caused in the beginning of the fund,</b> 6 <b>correct? The loss as much as 25 percent of the net</b> 7 <b>asset value in the first six weeks --</b> 8 A. No. 9 <b>Q. -- those aren't the losses you're referring</b> 10 <b>to?</b> 11 A. No. 12 <b>Q. What losses are you referring to?</b> 13 A. The losses as a result of being -- the fund 14 being dragged into all of this litigation, and the fact 15 that our investments are effectively tied up and we 16 can't do what we want with them. 17 <b>Q. And Mr. Scott previously testified that the</b> 18 <b>losses were accruing at \$59,000 a day, \$300,000 a week.</b> 19 <b>Are you familiar with that testimony?</b> 20 A. Yes. Yes. 21 <b>Q. Do you agree with that testimony?</b> 22 A. That's certainly the information we were 23 given, yes. 24 <b>Q. By whom?</b> 25 A. By Highland.</p>		<p style="text-align: right;">Page 73</p> <p>1 foundation. Go ahead. You can answer. 2 <b>Q. (BY MR. WIELEBINSKI) Well, help me again.</b> 3 <b>What's the basis of that loss?</b> 4 A. We cannot do what we would like to do and as 5 we're entitled to do under the indentures which govern 6 the CLOs. We're engaged in the litigation, and 7 obviously, therefore, have lots of costs around counsel, 8 etcetera. So it's all of the costs around the 9 litigation on top of not being able to do the things we 10 would like to with those investments. 11 <b>Q. And what is it you'd like to do with those</b> 12 <b>investments?</b> 13 A. Well, we were aiming for resets, which was 14 stalled, and, of course -- again, I'm not an expert in 15 CLOs, but I'm advised that being unable to do a reset 16 means that our investments aren't performing -- 17 <b>Q. Have you looked --</b> 18 A. -- as they should. 19 <b>Q. I'm sorry, I didn't mean to interrupt. Have</b> 20 <b>you looked at other options to mitigate your losses?</b> 21 A. We've certainly attended mediation with a 22 view to hopefully settling, but that wasn't successful. 23 <b>Q. And anything else you've looked at besides</b> 24 <b>mediation?</b> 25 A. I can't think.</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 Mr. Terry. So there is an expectation that that would 2 be due and payable. 3 <b>Q. Is there an expectation that it will be paid?</b> 4 MR. MALONEY: Objection, foundation 5 knowledge of the witness, as well as a legal conclusion. 6 <b>Q. (BY MR. WIELEBINSKI) You don't have any 7 independent knowledge to know whether a judgment that 8 might be rendered in your favor is collectible, do you?</b> 9 A. I think that might be a legal technicality, 10 and I don't know the answer to it. 11 <b>Q. Have -- you had told me earlier that you had 12 seen the trustee's current plan.</b> 13 A. Yes. 14 <b>Q. And did you discuss it with Mr. Scott?</b> 15 A. Yes. 16 <b>Q. And you're not a creditor in the case, are 17 you?</b> 18 A. No. 19 <b>Q. HCLOF is not a creditor?</b> 20 A. (Shakes head negatively.) 21 <b>Q. Does the plan affect you at all?</b> 22 A. Does the plan affect the fund? 23 <b>Q. Yes.</b> 24 A. Yes. 25 <b>Q. How does it affect the fund?</b></p>		<p style="text-align: right;">Page 96</p> <p>1 optional redemption, which is part of the package of 2 rights that he would have as a holder of the equity 3 strips and the CLOs pursuant to the indentures. 4 (Exhibit 4 marked.) 5 <b>Q. (BY MR. WIELEBINSKI) Well, let me give you 6 what is Exhibit No. -- is it 4?</b> 7 A. Yes. 8 <b>Q. And what is that?</b> 9 A. This is titled the Third Amended Joint Plan 10 for ACIS. 11 <b>Q. And this is the plan you've been discussing?</b> 12 A. Yes. 13 <b>Q. Now you said that you're allowed to do a 14 reset but not a redemption.</b> 15 A. Uh-huh. 16 <b>Q. What's the difference and why does that 17 matter to you?</b> 18 A. The rights that you have as the holder of the 19 equity strips is that you can call for an option or 20 redemption which can take the form of a reset, but it 21 could also take the form of a liquidation into a 22 warehouse or a liquidation at the market, so it's the 23 optionality. 24 <b>Q. And your preferred option is what?</b> 25 A. Our preferred option has always been a reset,</p>
<p style="text-align: right;">Page 95</p> <p>1 A. It affects the fund because we'll be locked 2 into arrangements with ACIS and Brigade for a period of 3 up to two years, and that is not something that would be 4 of our choosing. We would have a plan injunction, which 5 would mean that we couldn't exercise our rights under 6 the CLO indentures, which we're entitled to do as a 7 noteholder. 8 <b>Q. What are you entitled to do? I'm sorry, I 9 didn't understand that.</b> 10 A. We have the right to call for a redemption 11 under the indentures. And, of course, if Mr. Terry is 12 made 100 percent owner of the reorganized debtor, then 13 clearly will be in a relationship with ACIS on that 14 basis. 15 <b>Q. So you told me that there's a two-year time 16 period during which you have to be involved with ACIS.</b> 17 A. Uh-huh. 18 <b>Q. And you told me that there's an inability to 19 call a redemption.</b> 20 A. (Nods head affirmatively.) 21 <b>Q. Are there any other ways the plan impacts 22 you?</b> 23 MR. MALONEY: Objection, foundation; 24 calls for a legal conclusion. 25 A. We are allowed to call for reset but not an</p>		<p style="text-align: right;">Page 97</p> <p>1 which is the original intention that we've been 2 prevented from doing. 3 <b>Q. Mr. Scott said that it was a reset. He said 4 it numerous times that was his first option.</b> 5 A. Uh-huh. 6 <b>Q. Indeed, it was, I believe, a basis for his 7 objection -- HCLOF's objection to the prior plan. Do 8 you recall that?</b> 9 A. Yes. 10 <b>Q. This plan allows you to do a reset. Why is 11 that a problem?</b> 12 A. Because the reset that it allows us to do is 13 with ACIS and Brigade, and we were set up to do 14 transactions involving Highland products, 15 Highland-managed CLOs, not managed by Brigade but by 16 Highland. 17 <b>Q. And that's the only problem you have with 18 that reset provision?</b> 19 A. We don't feel that -- 20 <b>Q. Let's -- I think just a yes or no. Is 21 that --</b> 22 A. Sorry, say the question again. 23 <b>Q. Is that the only problem you have with that 24 reset provision?</b> 25 A. I have a problem with who would be doing the</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 reset.</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. I'm not sure --</p> <p>4 <b>Q. No, that's fair enough. Can you explain that</b></p> <p>5 <b>to me?</b></p> <p>6 A. Well, we don't really feel that it's</p> <p>7 appropriate that we are effectively abrogating our</p> <p>8 rights under all the documentation with which we</p> <p>9 launched the fund and told the world that we were going</p> <p>10 to be investing in Highland products and</p> <p>11 Highland-managed products. And pursuant to this plan,</p> <p>12 we're being offered a reset with ACIS and Brigade. And</p> <p>13 we're not happy with that because ACIS and the trustee</p> <p>14 have been quite hostile to the fund throughout the</p> <p>15 course of these proceedings, and Brigade is associated</p> <p>16 with the people who are most hostile to us.</p> <p>17 And quite honestly, it's difficult to foresee</p> <p>18 how we could get comfortable with working with Brigade</p> <p>19 on those terms. We are cautious of that, and I think</p> <p>20 rightly so, when you consider the advice we've received</p> <p>21 from Highland and from our experts that it doesn't</p> <p>22 appear that Brigade are actually doing a very good job</p> <p>23 of managing the CLOs.</p> <p>24 I think we've had recent reports that the</p> <p>25 CLOs have not paid anything. I think they were the</p>		<p style="text-align: right;">Page 100</p> <p>1 <b>Q. But lower is better, correct?</b></p> <p>2 MR. MALONEY: Objection to form and</p> <p>3 foundation that it's lower.</p> <p>4 A. I think -- again, I would have to refresh my</p> <p>5 memory on this, but my understanding is that ACIS is</p> <p>6 actually getting now the same amount of fee that</p> <p>7 Highland was getting, but ACIS isn't doing much of the</p> <p>8 work. It's Brigade that's doing the work. I'd need to</p> <p>9 check that, but that's my understanding.</p> <p>10 So, in fact, ACIS is getting the same level</p> <p>11 of fees as Highland was getting.</p> <p>12 <b>Q. Let me ask you this: Are you filing an</b></p> <p>13 <b>objection today to the plan?</b></p> <p>14 A. We are.</p> <p>15 <b>Q. You've instructed your counsel to file it?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. And what are the bases for the objection?</b></p> <p>18 MR. MALONEY: I'm going to object to the</p> <p>19 foundation in asking this witness to catalog everything</p> <p>20 that's going to be in the objection. But she can answer</p> <p>21 to the extent that she can factually, but I think her</p> <p>22 knowledge is the product of legal consultation.</p> <p>23 But I'll allow the witness to answer</p> <p>24 factually, categorically to the extent she can, but I'm</p> <p>25 going to reserve the right to interject and oppose the</p>
<p style="text-align: right;">Page 99</p> <p>1 October reports. And even the senior noteholders, I</p> <p>2 think --</p> <p>3 COURT REPORTER: The what?</p> <p>4 A. -- senior noteholders in one instance weren't</p> <p>5 paid. So it seems to us that the CLOs are being managed</p> <p>6 to generate fees for the manager, but they're not being</p> <p>7 managed for the benefit of the investors, which is what</p> <p>8 they should be.</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) Let me just explore that</b></p> <p>10 <b>a little bit. Brigade is charging a fee significantly</b></p> <p>11 <b>lower than Highland is charging; isn't that correct?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. How much lower? Do you know?</b></p> <p>14 A. I think it's 15 basis points.</p> <p>15 <b>Q. And Highland was actually removed as a</b></p> <p>16 <b>service provider to ACIS because of mismanagement.</b></p> <p>17 <b>That's what was alleged by the trustee.</b></p> <p>18 A. That's what was alleged, yes, but --</p> <p>19 <b>Q. The judge found that, did the judge not?</b></p> <p>20 A. The judge did, but our investors didn't</p> <p>21 express any disquiet with the way that Highland was</p> <p>22 managing the fund. They came into the fund on the basis</p> <p>23 of the fee structure that was in place, so they were</p> <p>24 perfectly accepting of it. As far as I knew, there was</p> <p>25 no concern raised by investors about the level of fees.</p>		<p style="text-align: right;">Page 101</p> <p>1 revelation of any attorney-client communications.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) I'm not asking you for</b></p> <p>3 <b>any attorney-client revelations. But you're going to</b></p> <p>4 <b>file a public document this afternoon, so I'd like to</b></p> <p>5 <b>know the bases are for the objection that I would expect</b></p> <p>6 <b>to see in the public filing.</b></p> <p>7 A. I think it's probably arguments that have</p> <p>8 been used before in relation to the objection to the</p> <p>9 previous plans: That it prevents the fund doing what</p> <p>10 it's legally entitled to do under the indentures for the</p> <p>11 CLOs; it puts us into a relationship with people that we</p> <p>12 don't want to have a relationship with for the reasons</p> <p>13 that I've briefly explained. I think that's the basis</p> <p>14 of it.</p> <p>15 <b>Q. You've never worked with Brigade before, have</b></p> <p>16 <b>you?</b></p> <p>17 A. No.</p> <p>18 <b>Q. And you have worked with Mr. Terry before,</b></p> <p>19 <b>though, correct?</b></p> <p>20 A. Mr. Terry was part of the fund when it was</p> <p>21 launched, yes.</p> <p>22 <b>Q. You worked with him quite well, didn't you?</b></p> <p>23 A. We had no disagreements.</p> <p>24 <b>Q. And you never challenged any of his advice or</b></p> <p>25 <b>any recommendations; isn't that correct?</b></p>

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27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 A. I think we probably challenged them, but we 2 didn't not agree with the conclusion that he reached. 3 <b>Q. You do that with everybody, though, right?</b> 4 A. Yes. 5 <b>Q. You have robust discussions, but eventually 6 you come to an agreement with Mr. Scott and accept what 7 the portfolio manager recommends?</b> 8 MR. MALONEY: I'm going to object to 9 form; foundation. You can answer. Go ahead. 10 <b>Q. (BY MR. WIELEBINSKI) And you did that with 11 Mr. Terry when he served in that role, correct?</b> 12 A. Yes. 13 <b>Q. And, again, he served in a very significant 14 role, covered -- based on your lawsuit, there were a 15 number of things he was doing that were very fundamental 16 to the performance of your fund.</b> 17 A. Yes. 18 <b>Q. But you have a problem with him now coming in 19 and doing that, correct?</b> 20 A. I have a problem with him coming in, because 21 throughout these proceedings it seems that he's been 22 very hostile to the fund. And I think having a manager 23 who is hostile to a fund is not a good idea. 24 <b>Q. And tell me how he's been hostile to the fund 25 during these proceedings.</b></p>		<p style="text-align: right;">Page 104</p> <p>1 <b>lawsuit is about?</b> 2 A. Yes. 3 MR. MALONEY: Objection, foundation. 4 But you can answer. 5 <b>Q. (BY MR. WIELEBINSKI) Well, you're a lawyer, 6 right, and that's your understanding of what the thrust 7 of the lawsuit is, correct, disclosure of confidential 8 information by Mr. Terry; is that correct?</b> 9 MR. MALONEY: Same objection. 10 A. That's certainly the thrust of it. 11 <b>Q. (BY MR. WIELEBINSKI) What confidential 12 information did he disclose?</b> 13 A. I think it's any information that he would 14 have had by virtue of his role with the portfolio 15 manager prior to his termination. 16 <b>Q. Any information that he had?</b> 17 A. Confidential information. 18 <b>Q. What confidential information did he have? 19 Do you have any specifics?</b> 20 MR. MALONEY: I'm going to object on 21 foundation. The lawsuit is a matter of record, it 22 speaks for itself, but the witness can answer to the 23 extent she can recall. 24 <b>Q. (BY MR. WIELEBINSKI) Well, tell me, does the 25 lawsuit anywhere describe what that confidential</b></p>
<p style="text-align: right;">Page 103</p> <p>1 A. Because of the way that the case has 2 progressed. 3 <b>Q. Well, what has Mr. Terry done that has 4 exhibited his hostility towards the fund during these 5 proceedings?</b> 6 <b>MS. O'NEIL: Object to form.</b> 7 A. Everything that has happened that has 8 involved the fund since we were aware of it in April has 9 been connected to what Mr. Terry did in terms of putting 10 ACIS into involuntary proceedings, so is that not 11 evidence that it's a pretty hostile environment that we 12 find ourselves in? 13 <b>Q. (BY MR. WIELEBINSKI) Other than him 14 exercising a right he has to file an involuntary 15 bankruptcy that was hotly contested and that the Court 16 approved, what else has he done in these proceedings 17 that has been hostile versus what the trustee may have 18 done?</b> 19 MR. MALONEY: Objection, foundation. 20 A. I don't think there's anything I can add. 21 <b>Q. (BY MR. WIELEBINSKI) By the way, in your 22 lawsuit the basis for the damages is a disclosure of 23 confidential information, is it not?</b> 24 A. Uh-huh. Yes. 25 <b>Q. Isn't that what really the thrust of the</b></p>		<p style="text-align: right;">Page 105</p> <p>1 <b>information is?</b> 2 A. I don't -- I cannot tell you off the top of 3 my head what that is, but it's information that would 4 have been around the CLOs that I think we talked about 5 in -- we listed the CLOs, for instance, didn't we? So 6 all of the information in 22, the structuring of the 7 sub-notes, etcetera, that's information that would have 8 been come by as a result of working for the portfolio 9 manager. 10 <b>Q. Who did Mr. Terry share that information 11 with?</b> 12 MR. MALONEY: Objection, foundation. 13 You can answer if you can. 14 A. Well, my understanding is with the trustee. 15 <b>Q. (BY MR. WIELEBINSKI) The trustee of the 16 company that served as the portfolio manager for your 17 fund?</b> 18 A. Yes. 19 <b>Q. He shared that information that ACIS 20 acquired, or had, serving in that capacity; is that 21 correct?</b> 22 A. He personally had. And, you know, it's the 23 confidentiality obligations he has as an employee of 24 ACIS. 25 <b>Q. Right. But assuming there are</b></p>

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33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 board were told that -- from Harbour Vest that the 2 portfolio manager be changed, then that clearly was 3 something already discussed, and the share buyback was 4 much more of an internal thing. 5 <b>Q. And what independent investigation did you do 6 in connection with this Offering Memorandum?</b> 7 A. You mean taking any sort of external advice 8 on it? 9 <b>Q. Or investigating anything that was in the 10 Offering Memorandum to verify its accuracy or that it 11 was disclosed?</b> 12 A. Well, as I said earlier, we do rely on the 13 portfolio manager to provide information about the 14 portfolio. And so a lot of this clearly relates to 15 that, and we're happy to rely on -- 16 <b>Q. But did you do any independent investigation 17 as part of the securities offering?</b> 18 A. Not outside of reviewing it and making 19 whatever comments were made on it. 20 <b>Q. And Mr. Scott, did he do any independent 21 investigation?</b> 22 A. Not to my knowledge. 23 <b>Q. So everything was what was provided by 24 Highland or a Highland affiliate --</b> 25 A. And with lawyers, obviously, because, you</p>		<p style="text-align: right;">Page 128</p> <p>1 sensible, and we have in this case, because it's a 2 Guernsey entity -- Guernsey counsel preparing documents 3 including, for instance, the share buyback agreement 4 sets of resolutions which memorialize what the decisions 5 are, then we're content. 6 <b>Q. Did you tell me -- is there any disclosure in 7 here about the dispute with Mr. Terry and Highland over 8 his employment that ultimately led to the final award?</b> 9 A. No. 10 <b>Q. Do you think it should have been disclosed in 11 there?</b> 12 A. I'm struggling to understand why it would be 13 in an offering document. To the extent that the 14 investor, the new investor, needed to know or raised 15 questions, then that would be dealt with between 16 themselves. 17 <b>Q. How would the new investor know to ask those 18 questions when you, at that time, didn't even know about 19 what was going on with that litigation?</b> 20 MR. MALONEY: Objection, foundation. 21 A. I don't know. I can't speak to discussions 22 between Harbour Vest and Highland which I wasn't a 23 party. 24 <b>Q. (BY MR. WIELEBINSKI) But your answer was that 25 Harbour Vest might ask some questions and, therefore,</b></p>
<p style="text-align: right;">Page 127</p> <p>1 know, the lawyers would be advising on what needed to go 2 into the offering document, etcetera. 3 <b>Q. Did anybody, whether you -- well, you said 4 neither you nor Mr. Scott conducted any investigation, 5 but did the lawyers look at and bless this series of 6 transactions you just described?</b> 7 A. Well, yes, because they prepared the 8 documentation for it. 9 <b>Q. Well, not the ones involved. Any independent 10 lawyers look at the transactions and determine whether 11 they were valid and wouldn't be subject to subsequent 12 litigation, anything along those lines?</b> 13 MR. MALONEY: Objection, form; 14 foundation. You can answer if you know. 15 MS. O'NEIL: Objection -- I'm sorry, did 16 you finish, Mark? 17 MR. MALONEY: Go ahead. 18 MS. O'NEIL: Objection to the extent 19 that answering that question would require you to 20 consider privileged communication with counsel. 21 A. It wouldn't be the norm to have an external 22 review of absolutely everything that is around the 23 transaction. So if we are advised that we're going to 24 be pursuing a course of action and we're given a 25 rationale for it which seems perfectly reasonable and</p>		<p style="text-align: right;">Page 129</p> <p>1 <b>you might make some additional disclosures.</b> 2 A. No, no. What I meant was if Harbour Vest had 3 any questions during the course of the discussions being 4 had around which they were thinking of coming into the 5 fund, then they would be held with Highland. 6 <b>Q. Do you know if Highland had any of those 7 discussions with Harbour Vest regarding the litigation 8 with Mr. Terry?</b> 9 A. I don't know. 10 <b>Q. Do you think they should have? I mean, in 11 light of what you know today that litigation has ended 12 up causing, do you think they should have disclosed 13 that?</b> 14 A. I would imagine that as a very sophisticated 15 investor, they'd know what questions to ask which should 16 have been the responses around it, but I don't know 17 because I wasn't a part of the -- 18 <b>Q. Do you think they --</b> 19 A. -- conversation. 20 <b>Q. I'm sorry. Do you think they would have 21 known to ask those questions if nobody told them about 22 the litigation? I don't see how you could ask questions 23 about it and its impact if you weren't made aware of it.</b> 24 MR. MALONEY: I'm going to object to 25 foundation to the extent you're asking the witness to</p>

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34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 wonder what somebody else could, should, or would have 2 known. Object. You can answer if you know. 3 A. I don't know. 4 <b>Q. (BY MR. WIELEBINSKI) Give me a second. I</b> 5 <b>need to get a document.</b> 6 MR. WIELEBINSKI: Can we go off the 7 record? 8 THE VIDEOGRAPHER: Yes, sir. Off the 9 record at 11:57. This is Disk 3, Volume 1. 10 (Break taken.) 11 (Exhibit 6 marked.) 12 THE VIDEOGRAPHER: On the record at 13 12:03. This is Disk 3, Volume 1. 14 <b>Q. (BY MR. WIELEBINSKI) Ms. Bestwick, I'm going</b> 15 <b>to hand you what's been marked as Exhibit No. 6. Can</b> 16 <b>you take a look at that, please? Can you tell the Court</b> 17 <b>what this is?</b> 18 A. This is the Final Award. 19 <b>Q. And this is in the Josh Terry litigation that</b> 20 <b>we've been talking about?</b> 21 A. Yes. 22 <b>Q. That's the litigation -- the arbitration in</b> 23 <b>Dallas?</b> 24 A. Yes. 25 <b>Q. Have you seen this before?</b></p>		<p style="text-align: right;">Page 132</p> <p>1 <b>Q. Do you remember reading that provision?</b> 2 A. I obviously read it, but I don't remember. 3 <b>Q. Do you think it's important or troubling at</b> 4 <b>all?</b> 5 MR. MALONEY: Objection to the form. 6 A. I think it's evidence of the breakdown in 7 relationship between Mr. Terry and his previous 8 employer. 9 <b>Q. (BY MR. WIELEBINSKI) Right. And Highland,</b> 10 <b>who you have a lot of relationships with through your</b> 11 <b>fund, obviously created a pretext to try to terminate</b> 12 <b>somebody that you were working very closely with through</b> 13 <b>ACIS; isn't that correct?</b> 14 MR. MALONEY: Objection to form. And 15 the document speaks for itself. 16 A. That's what the document says. 17 <b>Q. (BY MR. WIELEBINSKI) What about paragraph 6,</b> 18 <b>do you remember reading that provision, "ACIS and ACIS</b> 19 <b>GP knowingly and willingly invoked Highland's false</b> 20 <b>pretext for cause termination to deny Terry the value of</b> 21 <b>his 25 percent limited partnership in ACIS"?</b> 22 A. I don't remember, other than reading it as 23 part of the award document, but... 24 <b>Q. Didn't have any reaction to it that it was</b> 25 <b>something you needed to investigate further or find out</b></p>
<p style="text-align: right;">Page 131</p> <p>1 A. Yes. I believe I have read this. 2 <b>Q. And do you know when you first saw this?</b> 3 A. I cannot say when, but it would have been in 4 the period between April and now. 5 <b>Q. But never before April of 2018, correct?</b> 6 A. No. No. 7 <b>Q. And other than -- well, did you know anything</b> 8 <b>about this arbitration prior to April?</b> 9 A. No. 10 <b>Q. Did you know anything about the litigation</b> 11 <b>that led up to this arbitration before April?</b> 12 A. No. 13 <b>Q. Okay. And, again, you did review this</b> 14 <b>previously once it was given to you?</b> 15 A. I have received a copy and read it, yes. 16 <b>Q. And can you look at page 21, please?</b> 17 A. Yes. 18 <b>Q. Paragraph 5. Can you just read that to</b> 19 <b>yourself? Do you see that it says Highland's</b> 20 <b>termination of Terry's employment was not, in fact, for</b> 21 <b>cause?</b> 22 A. I see that. 23 <b>Q. And that it was, in fact, pretextual and for</b> 24 <b>the purpose of denying Terry benefits of employment?</b> 25 A. I see that.</p>		<p style="text-align: right;">Page 133</p> <p>1 <b>about -- find more out about?</b> 2 MR. MALONEY: Object to form. 3 A. This was one of many documents that we 4 received following the update call in mid-April when we 5 were told about the case. 6 <b>Q. (BY MR. WIELEBINSKI) So six months after this</b> 7 <b>award is entered you find out about this, and it doesn't</b> 8 <b>cause you to want more information or get additional</b> 9 <b>information from Highland and others?</b> 10 MR. MALONEY: Objection -- 11 <b>Q. (BY MR. WIELEBINSKI) Is that what you're</b> 12 <b>telling me?</b> 13 MR. MALONEY: Objection, foundation. 14 You can answer. 15 A. My view continues to be that if an employment 16 relationship has gone wrong, then it's not necessarily 17 appropriate that I, as a director of the fund, should 18 know the level of detail. And my relationship is with 19 the portfolio manager who gives us sufficient 20 information in my view, and I'm happy to rely on that 21 information. 22 <b>Q. (BY MR. WIELEBINSKI) And you feel -- well,</b> 23 <b>let's read the next paragraph, paragraph 7. "ACIS and</b> 24 <b>ACIS GP paid Highland expenses in excess of the</b> 25 <b>contractual limit imposed by section 3.10(a) of the ACIS</b></p>

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35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 <b>LPA." Did that cause you any concern?</b></p> <p>2 A. I don't know what that means.</p> <p>3 <b>Q. Okay. What about paragraph No. 10, "ACIS</b></p> <p>4 <b>GP's actions were willful and wanton -- wanton breaches</b></p> <p>5 <b>of their fiduciary duties to Terry and their limited</b></p> <p>6 <b>partner"?</b></p> <p>7 MR. MALONEY: Objection to form.</p> <p>8 Question?</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) Did that cause you any</b></p> <p>10 <b>concern as a director, an independent director of the</b></p> <p>11 <b>fund?</b></p> <p>12 A. It created the picture of a relationship</p> <p>13 between employer and employee that's clearly broken</p> <p>14 down.</p> <p>15 <b>Q. What about paragraph 11, "All claims stated</b></p> <p>16 <b>by Highland subject to and without waiver against Terry</b></p> <p>17 <b>are not proved and as such none are an affirmative</b></p> <p>18 <b>defense or avoidance of Terry's claim stated against</b></p> <p>19 <b>ACIS and ACIS GP"?</b></p> <p>20 MR. MALONEY: Objection to form.</p> <p>21 Question?</p> <p>22 <b>Q. (BY MR. WIELEBINSKI) Did it cause you any</b></p> <p>23 <b>concern causing you to think you needed any additional</b></p> <p>24 <b>information or needed to do any kind of independent</b></p> <p>25 <b>investigation?</b></p>		<p style="text-align: right;">Page 136</p> <p>1 A. We were happy to rely on the relationship we</p> <p>2 had with Highland to keep us updated.</p> <p>3 <b>Q. (BY MR. WIELEBINSKI) Do you know at the time</b></p> <p>4 <b>this award was entered -- there was a judgment, a</b></p> <p>5 <b>monetary judgment, in favor of Mr. Terry for almost \$8</b></p> <p>6 <b>million, correct?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you know if that caused an insolvency of</b></p> <p>9 <b>the portfolio manager at that time?</b></p> <p>10 MR. MALONEY: I'm going to object,</p> <p>11 foundation and legal conclusion and form of the</p> <p>12 question.</p> <p>13 A. I didn't know.</p> <p>14 <b>Q. (BY MR. WIELEBINSKI) Did it cause you to be</b></p> <p>15 <b>concerned about that?</b></p> <p>16 A. That I didn't know?</p> <p>17 <b>Q. Well, did it -- no. Did -- did the idea that</b></p> <p>18 <b>there was now a monetary judgment against ACIS cause any</b></p> <p>19 <b>concern that that may create some issue or some problem</b></p> <p>20 <b>that you needed to get more information on or do</b></p> <p>21 <b>additional due diligence on?</b></p> <p>22 A. No. As I said, any information that we were</p> <p>23 receiving by way of updates was adequate and sufficient,</p> <p>24 and I didn't feel the need to have any further</p> <p>25 information.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. I was satisfied with the information that I'd</p> <p>2 received from Highland and didn't feel the need for</p> <p>3 anything else.</p> <p>4 <b>Q. Which was what? What was the information</b></p> <p>5 <b>from Highland other than sending this to you six months</b></p> <p>6 <b>after it occurred?</b></p> <p>7 A. Well, I think this document actually came via</p> <p>8 counsel rather than --</p> <p>9 <b>Q. Meaning your counsel?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. So Highland didn't even send this to you; is</b></p> <p>12 <b>that what you're saying?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. You had to go on your own and get your</b></p> <p>15 <b>counsel to dig it up and give it to you?</b></p> <p>16 MR. MALONEY: Objection to form.</p> <p>17 A. I wouldn't characterize it like that. This</p> <p>18 was one of a multitude of documents that the directors</p> <p>19 were provided with after we were made known in April of</p> <p>20 the situation.</p> <p>21 <b>Q. (BY MR. WIELEBINSKI) And when you were made</b></p> <p>22 <b>known of this in April of 2018, six months after it was</b></p> <p>23 <b>entered, did it cause you to do any further independent</b></p> <p>24 <b>investigation?</b></p> <p>25 MR. MALONEY: Objection, foundation.</p>		<p style="text-align: right;">Page 137</p> <p>1 <b>Q. And you say that even today knowing</b></p> <p>2 <b>everything you know that you feel like Highland gave you</b></p> <p>3 <b>all the appropriate information and all the answers you</b></p> <p>4 <b>needed to ask?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And is that why they never told you about the</b></p> <p>7 <b>involuntary bankruptcy that was filed in February of</b></p> <p>8 <b>2018 at the time?</b></p> <p>9 MR. MALONEY: Objection to the form of</p> <p>10 the question.</p> <p>11 A. I can't speak for Highland as to --</p> <p>12 <b>Q. (BY MR. WIELEBINSKI) Well, I'm asking you --</b></p> <p>13 <b>A. -- their rationale.</b></p> <p>14 <b>Q. -- to speak for you as to when you first</b></p> <p>15 <b>learned about the bankruptcy. When was it?</b></p> <p>16 A. In mid-April.</p> <p>17 <b>Q. Okay. So why the three-month delay before</b></p> <p>18 <b>you found out something that significant had occurred?</b></p> <p>19 MR. MALONEY: Objection to form and</p> <p>20 foundation.</p> <p>21 A. You'd have to ask Highland the reason for</p> <p>22 that. I don't -- I don't know. Because it wasn't a</p> <p>23 question we asked.</p> <p>24 <b>Q. (BY MR. WIELEBINSKI) Did -- did you ask</b></p> <p>25 <b>Highland why it took them so long to do that?</b></p>

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36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 A. No. We didn't ask the question because we 2 were content that the information we were given was 3 adequate until we had the call in April. 4 <b>Q. Did you know that HCLOF actually hired 5 counsel that was involved in the involuntary proceeding 6 and it was hired by counsel on your behalf? Did they 7 tell you that at the time?</b> 8 A. I'm now aware of that, but I'm -- 9 <b>Q. When did you first learn that?</b> 10 A. I can't give you a date. 11 <b>Q. After April?</b> 12 A. But it was after April. 13 <b>Q. Okay. Didn't cause you to question your 14 relationship with Highland? Is that norm -- well, let 15 me ask the question that's there. Didn't cause you to 16 question your relationship with Highland?</b> 17 A. I think that we have a relationship with 18 Highland such that we are content to rely on their 19 advice and their judgment as to what is in the best 20 interest of the investors because they are the portfolio 21 manager. 22 <b>Q. But isn't that your role to make sure that 23 your reliance on this third party is really designed to 24 maximize value for the investors?</b> 25 A. We have overall oversight.</p>		<p style="text-align: right;">Page 140</p> <p>1 course, we rely on our service providers to act properly 2 and in accordance with the contractual obligations they 3 have with the fund. 4 <b>Q. The final award, I think you said, caused a 5 problem with doing the Mizuho reset, correct?</b> 6 MR. MALONEY: Objection to form and 7 foundation. 8 A. We were advised in mid-April about the case 9 in Dallas, as a result of which was the inability to 10 proceed with the resets. 11 <b>Q. (BY MR. WIELEBINSKI) Didn't the final award 12 also lead to the filing of the involuntary bankruptcy?</b> 13 MR. MALONEY: Objection, legal 14 conclusion; foundation of the witness's knowledge. You 15 can answer if you can. 16 A. I assume that to be the case. 17 <b>Q. (BY MR. WIELEBINSKI) And didn't that 18 bankruptcy prevent you from doing redemptions of the 19 portfolio at least twice where you tried to do a 20 redemption, a liquidation, and weren't able to?</b> 21 A. We are Guernsey directors of the Guernsey 22 entity. What's happening in a U.S. bankruptcy court is 23 not something that we would have a lot of knowledge 24 around and so even more reason that we would be reliant 25 on our manager to keep us informed and tell us updates</p>
<p style="text-align: right;">Page 139</p> <p>1 <b>Q. Well, you -- you have overall responsibility, 2 do you not?</b> 3 A. Yes. 4 <b>Q. And do you feel like you honored your 5 responsibility by just deferring to Highland --</b> 6 MR. MALONEY: Objection. 7 <b>Q. (BY MR. WIELEBINSKI) -- on virtually 8 everything?</b> 9 MR. MALONEY: Objection to form and 10 foundation. 11 A. I don't believe we have deferred to Highland 12 on virtually everything. 13 <b>Q. Well, what have you not relied on them for?</b> 14 MS. O'NEIL: Object to form. 15 <b>Q. (BY MR. WIELEBINSKI) Other than the 16 administrative tasks that you mentioned, what has 17 Highland done that you have ever called into question or 18 said no to?</b> 19 A. The relationship with Highland is such that 20 we challenge any proposals or reports made, and that's 21 as it should be, and that's what the market recognizes 22 happens in structures such as this. We don't have 23 carriage of the day-to-day executive functions. That's 24 why Highland is the portfolio manager. That's why State 25 Street is the administrator and custodian. So, of</p>		<p style="text-align: right;">Page 141</p> <p>1 as and when they did. 2 <b>Q. Ten months have gone by since the filing of 3 the involuntary. Are you satisfied today with 4 everything that Highland has done in its various 5 capacities for the fund?</b> 6 A. Yes, I am. 7 MS. O'NEIL: Object to form. 8 <b>Q. (BY MR. WIELEBINSKI) And you have no reason 9 to question any advice or recommendations they've given 10 you?</b> 11 MS. O'NEIL: Object to form. 12 A. I'm content with the advice and information 13 we've been given. 14 <b>Q. (BY MR. WIELEBINSKI) And just so I 15 understand, you're content with the idea that they 16 didn't share with you the filing of the bankruptcy until 17 several months later and hired counsel in the meantime 18 for you that you weren't aware of? And you're saying, 19 as an independent director, you're content with that?</b> 20 A. I think we have to rely on our portfolio 21 manager to understand the American bankruptcy system far 22 better than two Guernsey directors could possibly do, so 23 I think we have to rely on the advice that we receive. 24 We have a common interest to ensure the success of the 25 fund, so there was no suggestion that Highland was doing</p>

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<p style="text-align: right;">Page 142</p> <p>1 anything remotely other than what they should be doing. 2 <b>Q. Well, that common interest that you</b> 3 <b>mentioned, do you see any variance in that interest</b> 4 <b>where Highland's interest may be different than yours as</b> 5 <b>an independent director of the fund?</b> 6 A. Well, it could happen if -- if Highland came 7 to us with a decision which contravened the investment 8 policy or the Portfolio Management Agreement, of course 9 we wouldn't agree to it, but that has never happened. 10 <b>Q. Could it ever diverge when it relates to the</b> 11 <b>legal positions taken and the results obtained?</b> 12 <b>MS. O'NEIL: Object to form.</b> 13 MR. MALONEY: Objection to form, legal 14 conclusion and speculation. 15 A. I didn't understand the question, actually. 16 <b>Q. (BY MR. WIELEBINSKI) Are you -- could</b> 17 <b>Highland have different objectives and motives in</b> 18 <b>connection with these bankruptcy proceedings that are</b> 19 <b>different from the funds of maximizing recovery for the</b> 20 <b>investors?</b> 21 <b>MS. O'NEIL: Object to the form of the</b> 22 <b>question.</b> 23 MR. MALONEY: And same objections as the 24 previous question. 25 A. I can't speak to that.</p>		<p style="text-align: right;">Page 144</p> <p>1 <b>to ask you specifically what information -- what</b> 2 <b>specific confidential information Mr. Terry has utilized</b> 3 <b>and shared with third parties?</b> 4 MR. MALONEY: Objection, foundation and 5 legal conclusion. 6 A. I take that advice and -- 7 <b>Q. (BY MR. WIELEBINSKI) Well, the advice was an</b> 8 <b>objection.</b> 9 A. -- I'm unable to -- 10 <b>Q. You can answer the question.</b> 11 A. The carriage of the litigation is in the 12 hands of our lawyers. 13 <b>Q. I understand. But you authorized the filing</b> 14 <b>of the lawsuit. You consulted with Mr. Scott regarding</b> 15 <b>that lawsuit, correct?</b> 16 A. Uh-huh. 17 <b>Q. You obviously knew what the basis was of the</b> 18 <b>litigation, you told me about it, and I'm sure you read</b> 19 <b>the pleadings beforehand. So I'm asking a simple</b> 20 <b>question: What confidential information do you believe</b> 21 <b>was taken and utilized by Mr. Terry?</b> 22 <b>MS. O'NEIL: Objection.</b> 23 MR. MALONEY: I'm going to continue to 24 object to foundation. The witness is not the legal or 25 factual architect of the complaint, but she can answer</p>
<p style="text-align: right;">Page 143</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) Do you believe that your</b> 2 <b>interests are completely 100 percent aligned in terms of</b> 3 <b>the bankruptcy proceeding?</b> 4 <b>MS. O'NEIL: Object to the form.</b> 5 MR. MALONEY: Same objections. 6 A. I'm not sure that I have enough knowledge 7 about the bankruptcy proceedings to enable me to respond 8 to that. 9 MR. MALONEY: Is anybody getting any -- 10 I'm sorry, is anybody getting any emails? 11 MS. O'NEIL: We need to ask her. 12 MR. MALONEY: Hello? Are we still on 13 the teleconference? Can you hear me? 14 MR. SEVILLA: I'm still here. 15 MR. MALONEY: Okay. 16 MR. WIELEBINSKI: Are you hearing -- are 17 you hearing some beeping that's intermittent? It just 18 occurred -- 19 MR. ALVES: I'm here. 20 MR. SEVILLA: No. 21 MR. WIELEBINSKI: Okay. 22 <b>Q. (BY MR. WIELEBINSKI) I want to go back and</b> 23 <b>ask a question about your lawsuit before I forget. You</b> 24 <b>said the basis of it was confidential information that</b> 25 <b>Mr. Terry has utilized and shared with others. I want</b></p>		<p style="text-align: right;">Page 145</p> <p>1 to the extent she knows. 2 MS. O'NEIL: It also calls for a legal 3 conclusion. 4 A. As I said, I think this is something that 5 we're advised on by our lawyers, so... 6 <b>Q. (BY MR. WIELEBINSKI) And you never questioned</b> 7 <b>them to say, Well, what information is that that you're</b> 8 <b>saying he took that wasn't already public or previously</b> 9 <b>disclosed? No independent investigation of anything?</b> 10 MR. MALONEY: I'm going to -- I'm going 11 to object to the extent you're asking for communications 12 and conversations with counsel. 13 And I instruct the witness not to answer 14 to the extent he's asking you for conversations you had 15 with your counsel. 16 <b>Q. (BY MR. WIELEBINSKI) I'm not asking for any</b> 17 <b>of those conversations. Just asking whether you did</b> 18 <b>anything independent to verify what you said was the</b> 19 <b>main basis for your complaint against Mr. Terry?</b> 20 A. I think that that would have been the subject 21 of discussions with counsel. 22 <b>Q. Well, let me ask you this: Who told counsel</b> 23 <b>about the confidential information that they had to look</b> 24 <b>at to put together the architecture for the lawsuit?</b> 25 <b>MS. O'NEIL: Same objection.</b></p>

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38 (Pages 146 to 149)

<p style="text-align: right;">Page 146</p> <p>1 MR. MALONEY: Yeah --</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) I'm not asking for your</b></p> <p>3 <b>communications. I'm just saying who would have given</b></p> <p>4 <b>them that information?</b></p> <p>5 A. I think that --</p> <p>6 MS. O'NEIL: Same objection.</p> <p>7 A. -- relates to conversations that we would</p> <p>8 have had with counsel.</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) But would it have been</b></p> <p>10 <b>you and Mr. Scott that would have said, This is the</b></p> <p>11 <b>confidential information that is the basis for this</b></p> <p>12 <b>lawsuit?</b></p> <p>13 A. I think this is all information that would</p> <p>14 have been part of the discussions we had with counsel.</p> <p>15 <b>Q. Well, would there have been anybody else that</b></p> <p>16 <b>could have given them that information?</b></p> <p>17 A. I think that to the extent that there is</p> <p>18 information that has been discussed with counsel, then</p> <p>19 I'm not sure I can respond to that.</p> <p>20 <b>Q. Going back to the trustee's plan. If it's</b></p> <p>21 <b>confirmed and a reset is done, that's not going to be a</b></p> <p>22 <b>bad result for your investors, correct?</b></p> <p>23 MR. MALONEY: I'm going to object to</p> <p>24 form, foundation, and speculation.</p> <p>25 A. I'm not sure we can do a reset. I'm not sure</p>		<p style="text-align: right;">Page 148</p> <p>1 <b>comfortable then to do a reset?</b></p> <p>2 MR. MALONEY: Objection, foundation and</p> <p>3 calls for a potential legal conclusion.</p> <p>4 <b>Q. (BY MR. WIELEBINSKI) You can answer if you</b></p> <p>5 <b>know.</b></p> <p>6 A. The Court doesn't -- if a Court were to do</p> <p>7 that, then the Court couldn't then tell me and tell Bill</p> <p>8 what our duties and authority were because that's a</p> <p>9 matter of Guernsey law.</p> <p>10 <b>Q. You told me you're going to object to the</b></p> <p>11 <b>plan. I assume -- well, you're not a creditor so you</b></p> <p>12 <b>don't get a vote. Would you agree that if the plan was</b></p> <p>13 <b>confirmed and a reset was authorized that that would be</b></p> <p>14 <b>a better result for your investors than the present</b></p> <p>15 <b>circumstances?</b></p> <p>16 MR. MALONEY: I'm going to object to</p> <p>17 form and foundation.</p> <p>18 A. As I said earlier, I don't believe that we,</p> <p>19 as a board, have the authority to do that and -- nor do</p> <p>20 I believe for reasons that I've explained earlier that</p> <p>21 it's in the best interest of our investors to have the</p> <p>22 relationship with Brigade that that would entail.</p> <p>23 <b>Q. (BY MR. WIELEBINSKI) But if the plan was</b></p> <p>24 <b>confirmed, you're going to have that relationship with</b></p> <p>25 <b>Brigade and ACIS. You -- you'll agree with me on that,</b></p>
<p style="text-align: right;">Page 147</p> <p>1 we have the authority as directors of this fund.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) Why is that? Why</b></p> <p>3 <b>wouldn't you have the authority to do a reset?</b></p> <p>4 A. Because in the offering documents we state</p> <p>5 quite clearly what the intention of the policy and</p> <p>6 strategy is, and it doesn't involve doing any</p> <p>7 transactions with Brigade.</p> <p>8 <b>Q. Right. But you also said there's no</b></p> <p>9 <b>requirement that you can't do what the plan proposes,</b></p> <p>10 <b>right? It doesn't have to be Highland managed. It's</b></p> <p>11 <b>not required that it be Highland managed; isn't that</b></p> <p>12 <b>correct?</b></p> <p>13 A. There's no text in the offering document to</p> <p>14 say that it is required. But as a director of this</p> <p>15 fund, I do not believe that we would have the authority</p> <p>16 to do a transaction with Brigade.</p> <p>17 <b>Q. Right. On your own, you couldn't do it</b></p> <p>18 <b>voluntarily. You would need the Court to order you to</b></p> <p>19 <b>do it; is that what you're saying?</b></p> <p>20 MR. MALONEY: I'm going to object to the</p> <p>21 form and foundation. I don't think the Court is</p> <p>22 ordering the fund to do anything. That misstates the</p> <p>23 plan.</p> <p>24 <b>Q. (BY MR. WIELEBINSKI) If the Court approves</b></p> <p>25 <b>the plan and says a reset is allowed, are you more</b></p>		<p style="text-align: right;">Page 149</p> <p>1 <b>correct? In other words, it will be ordered because</b></p> <p>2 <b>that's what the plan says.</b></p> <p>3 A. Yes, that's a term of the plan.</p> <p>4 <b>Q. And Highland's out. It's not a subservicer</b></p> <p>5 <b>or submanager at this point, correct?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. And at that point, at least you have the</b></p> <p>8 <b>option to do a reset if you felt you could approve that</b></p> <p>9 <b>or you're authorized to do that, correct?</b></p> <p>10 MR. MALONEY: I object to form.</p> <p>11 A. Under the plan, the fund would be allowed to</p> <p>12 proceed with a reset.</p> <p>13 <b>Q. (BY MR. WIELEBINSKI) And who would need to</b></p> <p>14 <b>give you authorization to do that, to proceed with a</b></p> <p>15 <b>reset that was proposed? Would it be the investors?</b></p> <p>16 A. It would be -- to do -- to take this out --</p> <p>17 well, the board have the authority, taking the advice of</p> <p>18 the investment manager, to do an action like a reset.</p> <p>19 But in this sort of circumstance where we are, if the</p> <p>20 plan is confirmed, forced into that relationship and we</p> <p>21 don't believe it's in the best interest of our</p> <p>22 investors, then perhaps we would need to seek approval</p> <p>23 or consent or an idea from the investors as to the views</p> <p>24 of that.</p> <p>25 <b>Q. So you might solicit their views and see if</b></p>

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39 (Pages 150 to 153)

<p style="text-align: right;">Page 150</p> <p>1 it's okay to proceed with a reset under the 2 circumstances with a confirmed plan? 3 A. It's a possibility. 4 Q. And they might say yes? 5 A. That's a possibility. 6 Q. And their alternative is they just keep 7 rocking along and losing \$300,000 a week, correct? 8 MR. MALONEY: I'm going to object. It 9 lacks foundation. It ignores legal remedies that I 10 believe counsel is aware of, such as an appeal, so I 11 object to the foundation. 12 Q. (BY MR. WIELEBINSKI) Is it better than losing 13 \$300,000 a week? 14 MR. MALONEY: Objection, foundation. 15 A. I think as counsel has indicated that, you 16 know, we would be evaluating our position at the time. 17 Q. (BY MR. WIELEBINSKI) Well, you're a lawyer. 18 You know that parties can appeal. Appeals can go on for 19 years. 20 MR. MALONEY: Objection, foundation. 21 Q. (BY MR. WIELEBINSKI) Isn't that correct? 22 A. I'll just make the point that I'm not a 23 practicing lawyer -- 24 Q. Okay. 25 A. -- and haven't been for some years. And I</p>		<p style="text-align: right;">Page 152</p> <p>1 was the subject of attorney-client communications. 2 Q. (BY MR. WIELEBINSKI) I'm not asking you for 3 those communications. I'm asking you simply, has 4 Highland offered any solution to this problem short of 5 objecting to the plan? 6 MR. MALONEY: Same objections. 7 MS. O'NEIL: I'm also going to object to 8 the extent it calls for a disclosure of common interest 9 privileged communications. 10 communications. 11 A. I think I have to listen to the objections 12 and -- 13 Q. (BY MR. WIELEBINSKI) As an independent 14 director, what steps have you taken to solve the 15 problems caused by this bankruptcy? 16 A. I think this goes to the point that I made 17 probably a few hours ago when I was talking about the 18 differing roles of entities within structures such as 19 this, and I think that we would be heavily reliant on 20 our service providers, and that means Highland in this 21 case. 22 Q. Well, it's actually a Cayman -- a newly 23 formed Cayman entity that's your service provider, 24 correct? 25 A. Yes. Q. And what have they offered to try to solve</p>
<p style="text-align: right;">Page 151</p> <p>1 was never a litigation lawyer, so I know nothing about 2 the appeal process -- 3 Q. Fair enough. If I told you -- 4 A. -- and particularly not American appeal 5 processes. 6 Q. If I told you in the American appeal process 7 it could go on for years, it would mean that rather than 8 doing a reset you would continue to lose what you allege 9 was \$300,000 a week for your investors as well as the 10 attorneys' fees that you'd be incurring in the meantime, 11 correct? 12 MR. MALONEY: I'm going to object to the 13 preface, foundation, speculation, form. 14 Q. (BY MR. WIELEBINSKI) Do you have a fiduciary 15 duty to Highland or any Highland entities or affiliates? 16 A. Our duties are to the investors and the 17 company. 18 Q. And your duties, as you told me, was to 19 maximize the return for investors, correct? 20 A. That's the idea, yes. 21 Q. To your knowledge, has Highland offered any 22 solution to this bankruptcy problem that we all face? 23 MR. MALONEY: I'm going to object to 24 foundation, to form, and also to the extent that any 25 information you have that would be responsive to that</p>		<p style="text-align: right;">Page 153</p> <p>1 this problem? 2 A. Well, again, I think this goes back to the 3 whole -- 4 MR. MALONEY: I'm going -- I'm going to 5 renew the same objections that I made before. I'm 6 sorry. You can answer to the extent you can with those 7 guidance. 8 Q. (BY MR. WIELEBINSKI) Have you personally had 9 any discussions with that service provider -- 10 A. We -- 11 Q. -- about solving the problems of this 12 bankruptcy? 13 A. We, the board, have had lots of conversations 14 with Highland, with counsel for Highland, and with our 15 own counsel about the circumstances. 16 Q. So who at Highland is -- is -- who have you 17 spoken with at HCF Advisors? 18 A. We have spoken with Hunter, who appears at 19 our board meetings on behalf of the portfolio manager. 20 Q. What does he do for that portfolio manager? 21 How -- what relationship does he have to the portfolio 22 manager? I understand he works for Highland Capital, 23 but does he do anything for Highland HCF Advisors? 24 A. He is provided to the portfolio manager to 25 the fund.</p>

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40 (Pages 154 to 157)

<p style="text-align: right;">Page 154</p> <p>1 <b>Q. How do you know that?</b> 2 A. Because he was effectively a replacement for 3 Mr. Terry. When we were advised of Mr. Terry's 4 departure, we were told that Hunter would be working 5 with the fund going forward. 6 <b>Q. Well, working with the fund. Does he -- is</b> 7 <b>he an officer or a director of that fund? Do you know?</b> 8 A. I can't remember what he -- 9 <b>Q. So you're not even certain whether --</b> 10 MR. MALONEY: What fund are we talking 11 about? I'm sorry. 12 MR. WIELEBINSKI: I'm sorry. HCF 13 Advisors. 14 <b>Q. (BY MR. WIELEBINSKI) Does he have any</b> 15 <b>position with HCF Advisors, to your knowledge?</b> 16 A. I don't know. 17 <b>Q. Who else do you speak with?</b> 18 A. The whole Highland team. 19 <b>Q. But who else from HCF Advisors?</b> 20 MR. MALONEY: I'm going to object to the 21 foundation. I think it's -- I think it's an unfair 22 premise. But you can answer if you can, Ms. Bestwick. 23 A. I don't think that we've made the distinction 24 that we're speaking to someone wearing one particular 25 hat or another particular hat in that way.</p>		<p style="text-align: right;">Page 156</p> <p>1 <b>know about that or familiar with it?</b> 2 A. No. 3 <b>Q. Did you know that Highland could file its own</b> 4 <b>plan in the bankruptcy case?</b> 5 A. (Shakes head negatively.) 6 <b>Q. You didn't know that?</b> 7 A. I don't think I did know that. 8 <b>Q. And did you know that HCLOF may be able to</b> 9 <b>file its own plan in the bankruptcy case?</b> 10 A. I wasn't aware that that was a -- 11 <b>Q. So --</b> 12 A. -- procedural thing. 13 <b>Q. -- if that was a procedural thing that could</b> 14 <b>try to solve the problem, do you think that would be</b> 15 <b>something you'd want to explore?</b> 16 MR. MALONEY: I'm going to object to 17 speculation and foundation. It calls for a legal 18 conclusion and perhaps -- and perhaps calls for 19 discussions with counsel. 20 <b>Q. (BY MR. WIELEBINSKI) As far as you know,</b> 21 <b>though, Highland hasn't proposed a plan --</b> 22 MR. MALONEY: Objection to form. 23 <b>Q. (BY MR. WIELEBINSKI) -- in the bankruptcy?</b> 24 A. I think -- 25 MR. MALONEY: Same objection.</p>
<p style="text-align: right;">Page 155</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) It's just one of the</b> 2 <b>many Highland affiliates and entity?</b> 3 A. No, no. We're talking about have any 4 solutions been proposed. And I think in the 5 circumstances, the conversations that we have are with 6 lots of people on a conference call. We don't go around 7 the table identifying who is who and who -- which hat 8 they're wearing at any particular time. 9 <b>Q. You don't think that's appropriate to know</b> 10 <b>who is talking and what hat they're wearing?</b> 11 A. I know who's talking, but I don't think it's 12 necessarily appropriate to have the hat disclosed. 13 <b>Q. Do you -- do you think that Highland Capital,</b> 14 <b>for example, might have differing interests than HCF</b> 15 <b>Advisors?</b> 16 MR. MALONEY: I'm going to object to 17 foundation and to form. 18 MS. O'NEIL: I also object to the extent 19 it calls for speculation. 20 A. I don't know. 21 <b>Q. (BY MR. WIELEBINSKI) Are you familiar with</b> 22 <b>the concept of exclusivity in a U.S. bankruptcy?</b> 23 A. No. 24 <b>Q. It's a concept of who has a right to file a</b> 25 <b>plan of reorganization or plan of liquidation. Do you</b></p>		<p style="text-align: right;">Page 157</p> <p>1 A. -- it's probably, you know -- the sorts of 2 discussions that we have are such that, you know, there 3 are things that are talked about that must be part of 4 the privileged conversations. 5 <b>Q. (BY MR. WIELEBINSKI) But -- but if they filed</b> 6 <b>a plan, it would be a public filing. So do you know if</b> 7 <b>Highland has filed a plan?</b> 8 MR. MALONEY: You're speaking of 9 Highland Capital? Who are you asking about? 10 MR. WIELEBINSKI: I don't think it 11 matters. 12 MS. O'NEIL: I object, clarity of the 13 record. Designate -- and you're indicating both, but -- 14 MR. WIELEBINSKI: I'll stand on my 15 question. 16 MS. O'NEIL: -- for the clarity of the 17 record -- can you repeat the question? 18 <b>Q. (BY MR. WIELEBINSKI) Do you know if Highland</b> 19 <b>has filed a plan?</b> 20 A. I'm not aware that they have. 21 <b>Q. And you know HCLOF has not filed a plan?</b> 22 A. Correct. 23 <b>Q. Are you familiar with the solution that the</b> 24 <b>Court has offered on at least three or four occasions to</b> 25 <b>try to remedy the problems that we're facing in the</b></p>

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41 (Pages 158 to 161)

<p style="text-align: right;">Page 158</p> <p>1 bankruptcy? 2 MR. MALONEY: Objection, form; vague. 3 A. If you could give me a bit more detail around 4 that. 5 Q. (BY MR. WIELEBINSKI) Judge has suggested at 6 some point that an amount of money be put up, and with 7 that money set aside that the parties could go about 8 their business and get out of the bankruptcy, something 9 along those lines she's inquired of that. 10 A. Yes, I'm aware of that. 11 Q. She's -- okay. And she's done it, like I 12 said, three or four times. You're aware of that? 13 A. Yes. 14 Q. Neither Highland -- Highland has never 15 accepted that offer or tried to fashion a remedy to 16 solve these problems along those lines, has it? 17 MR. MALONEY: Objection to form. 18 MS. O'NEIL: Objection to the extent it 19 calls for disclosure of common interest privileged 20 communications. 21 Q. (BY MR. WIELEBINSKI) Has Highland done that? 22 A. I think that this is something that has been 23 part of the discussions that we've been having on an 24 ongoing basis that I probably have to say are privileged 25 and can't go into the question.</p>		<p style="text-align: right;">Page 160</p> <p>1 A. No. But by the same token, we haven't had 2 any approaches ourselves. 3 Q. By the trustee, you're saying? 4 A. Yes. 5 Q. What could the trustee do that would allow 6 you to be able to resolve -- would allow all the parties 7 to be able to resolve their issues? Anything you can 8 think of? 9 A. I don't know. I don't know. 10 Q. You're familiar with the litigation the 11 trustee has commenced against Highland and HCLOF, 12 correct? 13 A. Yes. 14 Q. And you've read it, you sort of understand 15 what the nature of the claims are? 16 A. I think so. 17 Q. A lot of them result -- a lot of them arise 18 because of those transactions that you described, a 19 series of transactions, in October of 2017, correct? 20 A. Yes. 21 Q. Do you feel like Highland has gotten you into 22 a pickle -- that's maybe a Texas term -- but has gotten 23 you into a difficult situation because of those 24 transfers? 25 MR. MALONEY: Objection --</p>
<p style="text-align: right;">Page 159</p> <p>1 MR. MALONEY: Let me -- Joe, are you 2 saying is she aware of whether Highland has filed 3 something or said something publicly? 4 MR. WIELEBINSKI: I think she's answered 5 the question, I think. 6 Q. (BY MR. WIELEBINSKI) You know that there was 7 a mediation -- 8 A. Yes. 9 Q. -- that occurred? You participated, correct? 10 A. Yes. 11 Q. That didn't go anywhere, did it? 12 A. No. 13 Q. Have you ever reached out to the trustee to 14 try to solve the problems that HCLOF is facing to try to 15 come up with some solution that would work? 16 MR. MALONEY: Objection to form. Do you 17 mean her personally? 18 MR. WIELEBINSKI: Yes. 19 A. I haven't, no. 20 Q. (BY MR. WIELEBINSKI) Has Mr. Scott? 21 A. Not to my knowledge. 22 Q. Have you had any sit-downs with the trustee 23 over this latest plan to try to negotiate any of the 24 terms or provisions that might make it more workable 25 for you?</p>		<p style="text-align: right;">Page 161</p> <p>1 Q. (BY MR. WIELEBINSKI) You're now being sued 2 for them. 3 MR. MALONEY: Objection to form. 4 MS. O'NEIL: Object to form. 5 A. I -- we are where we are. 6 Q. (BY MR. WIELEBINSKI) Still comfortable with 7 Highland, though, and everything that it's -- 8 A. Yes. 9 Q. -- doing and has done? 10 A. Yes. 11 (Exhibit 7 marked.) 12 Q. (BY MR. WIELEBINSKI) I'm going to hand you 13 what's been marked as Exhibit No. 7. Have you seen this 14 before? 15 A. Yes. 16 Q. What is it? 17 A. It's the letter from Mr. Leventon. 18 Q. And who's it addressed to? 19 A. To the Chapter 7 trustee. 20 Q. And what's the substance of the letter? 21 MR. MALONEY: Objection, document speaks 22 for itself. 23 Q. (BY MR. WIELEBINSKI) What do you understand 24 it to be saying? 25 MR. MALONEY: Same objection.</p>

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42 (Pages 162 to 165)

<p style="text-align: right;">Page 162</p> <p>1 A. I think it says what it says. 2 <b>Q. (BY MR. WIELEBINSKI) Well, does it say that</b> 3 <b>you -- the trustee is being asked to liquidate the</b> 4 <b>portfolio?</b> 5 MR. MALONEY: Objection to form. 6 A. I think it's interpreted as something which 7 it wasn't intended to be. I think -- 8 <b>Q. (BY MR. WIELEBINSKI) Well, let me ask you</b> 9 <b>this: It talks about effectuating the optional</b> 10 <b>redemptions, correct? Do you see that on page 3?</b> 11 A. Yeah. 12 <b>Q. And it says that there are three mechanisms</b> 13 <b>for effectuating the optional redemptions, right? And</b> 14 <b>the three are: Reset transactions. That's Option 1.</b> 15 A. Uh-huh. 16 <b>Q. And then there is Option 2, sell the</b> 17 <b>collateral into a warehouse; and the third one is sell</b> 18 <b>all collateral into the market. How do you understand</b> 19 <b>that third one -- is that a liquidation?</b> 20 MR. MALONEY: I'm going to object to the 21 foundation of the witness as to her involvement and 22 understanding of this document at the time it was sent. 23 Object to the form of the question. 24 A. I think it describes what Option 3 is. 25 <b>Q. (BY MR. WIELEBINSKI) Which is a liquidation,</b></p>		<p style="text-align: right;">Page 164</p> <p>1 A. I think it's clear on the face of it. 2 <b>Q. To liquidate? Option 3.</b> 3 A. The sentence you're referring to is, 4 "Highland will prepare to effectuate Option 3 -- 5 <b>Q. -- to sell the collateral into --</b> 6 A. -- as the default instruction -- 7 COURT REPORTER: Hang on. 8 MR. WIELEBINSKI: I'm sorry. 9 COURT REPORTER: -- I didn't get the 10 whole answer. 11 A. -- as the default instruction under the 12 optional redemption." 13 <b>Q. (BY MR. WIELEBINSKI) Okay. What do you</b> 14 <b>understand that to mean?</b> 15 A. My understanding at the time was that the 16 Chapter 7 trustee had a limited period, I think, of 60 17 days in which she could operate ACIS, and there wasn't 18 much in the way of progress during those 60 days. So as 19 a party that was being harmed by that, I think that the 20 intent of this letter was to promote some action from 21 the Chapter 7 trustee and -- 22 <b>Q. And you were prepared to accept that if the</b> 23 <b>trustee would have gone forward with it, correct?</b> 24 MR. MALONEY: Objection to form. 25 MS. O'NEIL: Objection, calls for</p>
<p style="text-align: right;">Page 163</p> <p>1 <b>correct?</b> 2 A. "The Chapter 7 trustee's final option in 3 compliance with the redemption notices is to liquidate 4 the collateral into the market." 5 <b>Q. And you understand that to be a liquidation?</b> 6 A. Yes. 7 <b>Q. You're liquidating the portfolio's position,</b> 8 <b>correct?</b> 9 A. Uh-huh. Yes. 10 <b>Q. And then it says in that same -- under</b> 11 <b>Option 3, "The investors in the CLOs would then be able</b> 12 <b>to take this cash and reinvest it in CLOs, or other</b> 13 <b>investments, with a better return profile." And then at</b> 14 <b>the end isn't what's being requested of the trustee is</b> 15 <b>to authorize the liquidation of the collateral under</b> 16 <b>Option 3?</b> 17 MR. MALONEY: Objection, foundation. 18 The document says what it says. It's been the subject 19 of extensive testimony. I object to the foundation of 20 this witness. 21 <b>Q. (BY MR. WIELEBINSKI) What do you understand,</b> 22 <b>Ms. Bestwick? What do you understand was being</b> 23 <b>recommended to the trustee to do? And I'll point out</b> 24 <b>the second to last sentence of the last paragraph on</b> 25 <b>page 4.</b></p>		<p style="text-align: right;">Page 165</p> <p>1 speculation. 2 <b>Q. (BY MR. WIELEBINSKI) I definitely don't want</b> 3 <b>you to speculate, Ms. Bestwick. You saw this letter,</b> 4 <b>correct, at the -- at or about the time it was sent?</b> 5 A. Yes. 6 <b>Q. You had no objection to it; is that correct?</b> 7 A. I didn't have an objection to it, no. 8 <b>Q. And so you were prepared if the trustee would</b> 9 <b>not do Option 1 or 2 to accept Option 3, a</b> 10 <b>liquidation --</b> 11 MR. MALONEY: I'm going to object -- 12 <b>Q. (BY MR. WIELEBINSKI) -- is that correct?</b> 13 MR. MALONEY: I'm going to object to 14 form and foundation. 15 <b>Q. (BY MR. WIELEBINSKI) Is that correct,</b> 16 <b>Ms. Bestwick?</b> 17 A. I think that consistently there has been the 18 intent to go -- to do what we were poised to do 19 originally, which is to do the reset transactions, and 20 that was always going to be the option, the preferred 21 option. 22 <b>Q. But only under certain circumstances. I</b> 23 <b>mean, your statement that you just made has to be</b> 24 <b>qualified, correct?</b> 25 A. We're talking about the time that this was --</p>

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43 (Pages 166 to 169)

<p style="text-align: right;">Page 166</p> <p>1 Q. I understand. 2 A. Yeah. Yeah. 3 Q. Okay. But I'm correct, am I not, that you're 4 not prepared to do a reset under any circumstances, only 5 under specific circumstances that work for you and for 6 your fund? 7 A. The specific circumstances being in keeping 8 with the disclosure that -- in our offering documents 9 and in accordance with our investment policy. 10 Q. But just because I feel I have to: Not 11 because you're required to per those documents, correct? 12 MS. O'NEIL: Object to form. 13 MR. MALONEY: Object to form and 14 foundation. 15 A. Well, as I mentioned earlier, if I may say, I 16 am not convinced that we have the authority to do it in 17 any way other than as presaged by the offering document 18 in the investment policy. 19 Q. (BY MR. WIELEBINSKI) Okay. And if I 20 understand that -- I may have asked this before. If I 21 did, I apologize. But if the plan is confirmed, a reset 22 is offered and you're not certain you can do it, you're 23 prepared to maintain the status quo and not effectuate a 24 reset? 25 MR. MALONEY: Object to form and calls</p>		<p style="text-align: right;">Page 168</p> <p>1 so well organized. 2 A. That is the lawyer in me. 3 Q. That Exhibit No. 1 was a Portfolio Management 4 Agreement of December 22nd, correct? 5 A. Yes. 6 Q. Now, there were two other Portfolio 7 Management Agreements at or about that time, correct? 8 A. Portfolio Management Agreements in 2016? 9 Q. Oh, actually, no. Thank you. There were two 10 Portfolio Management Agreements in 2017, October and 11 November, correct? 12 A. Yes. 13 Q. Why were there two done in such close 14 proximity? Can you -- can you explain that to me? 15 A. My recall is that it was part of the step 16 plan that I referred to earlier. The replacement of the 17 portfolio manager had to take place as a condition 18 precedent to the incoming new -- 19 Q. That was to get rid of ACIS -- 20 COURT REPORTER: Wait. Wait. Precedent 21 to the incoming new? 22 THE WITNESS: Investor. 23 Q. (BY MR. WIELEBINSKI) So the first one was to 24 get rid of ACIS, correct, as the portfolio manager? 25 A. And then the subsequent one was for the</p>
<p style="text-align: right;">Page 167</p> <p>1 for speculation and ignores prior testimony of other 2 options. 3 A. I think we have to take a view at the 4 appropriate time with the information we have to hand. 5 Q. (BY MR. WIELEBINSKI) Sure. You know, besides 6 this default Option 3 -- that never went forward, 7 correct? 8 MR. MALONEY: Objection to form. 9 A. Correct. 10 Q. (BY MR. WIELEBINSKI) And there was another 11 attempt. It was a notice of redemption issued. You're 12 aware of that, correct? 13 A. Yes. 14 Q. That never went forward either. It was 15 actually voluntarily withdrawn by you. 16 A. The June, yes. 17 Q. Yes. And you've issued no subsequent notice 18 of redemption since then, correct? 19 A. Correct. 20 Q. Do you have Exhibit I there? 21 MR. MALONEY: Exhibit I? 22 MR. WIELEBINSKI: Yes. 23 Q. (BY MR. WIELEBINSKI) May I look at that? 24 A. Yeah. 25 Q. Thank you. And I appreciate you keeping that</p>		<p style="text-align: right;">Page 169</p> <p>1 transaction -- part of the transaction documentation 2 with the new investor. 3 Q. To bring in HCF Advisors? 4 A. Yes. 5 Q. I'm going to just mark these just so we can 6 get them in. 7 (Exhibits 8 and 9 marked.) 8 Q. (BY MR. WIELEBINSKI) I'll hand you what's 9 been marked as Exhibit No. 8. 10 MR. WIELEBINSKI: And there's 9. 11 Q. (BY MR. WIELEBINSKI) Have you seen these 12 before? 13 A. I just have the one. 14 Q. Sorry. There's Exhibit No. 9. 15 A. Yes. 16 Q. Have you seen these both before? 17 A. Yes. 18 Q. And these are the -- 19 MR. SHAW: Joe, do you have one more of 20 those by chance? 21 MR. WIELEBINSKI: Could you share one of 22 those? 23 MS. O'NEIL: These are different. 24 MR. WIELEBINSKI: Oh, they're not the 25 two that I handed you?</p>

HEATHER BESTWICK

44 (Pages 170 to 173)

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Page 171		Page 173

**Page 170**

1 MS. O'NEIL: You said 8 and 9, right?  
2 MR. WIELEBINSKI: Yes.  
3 MS. O'NEIL: These are two different  
4 documents.  
5 MR. WIELEBINSKI: Right. Do you mind  
6 showing those to Mr. Shaw?  
7 MR. SHAW: It's -- I mean, it's okay.  
8 I'm fine.  
9 MR. PHELAN: What are they, Joe?  
10 MR. MALONEY: Yeah. Exhibit 8 is  
11 November 15, 2017 and Exhibit 9 is 27 October 2017.  
12 MR. SHAW: Portfolio Management  
13 Agreement. All right.  
14 **Q. (BY MR. WIELEBINSKI) Sorry, Ms. Bestwick, so**  
15 **you have seen these before?**  
16 A. Yes.  
17 **Q. And obviously the October 27th occurred first**  
18 **and then the November 15th occurred second?**  
19 A. Yes.  
20 **Q. And I think you described that under the**  
21 **October 27th PMA that's where ACIS was removed,**  
22 **terminated?**  
23 A. Yes.  
24 **Q. Okay. And then the second one, November**  
25 **15th, is when Highland HCF Advisors took over?**

**Page 171**

1 A. Highland HCF Advisors were the incoming  
2 portfolio manager on the prior one as well, the 27th of  
3 October. But the difference was I think the governing  
4 law clause was changed in the later one.  
5 **Q. Why -- why is that? Do you know? Why was**  
6 **that change made?**  
7 A. I believe that it was a conforming exercise  
8 because it's governed by the law of Texas.  
9 **Q. Okay.**  
10 MR. WIELEBINSKI: Let's see if we can  
11 take a short break for 5 or 10 minutes, if that's okay.  
12 THE VIDEOGRAPHER: Off the record at  
13 1:01. This is Disk 3, Volume 1.  
14 (Break taken.)  
15 THE VIDEOGRAPHER: On the record at  
16 1:19, Disk 4, Volume 1.  
17 **Q. (BY MR. WIELEBINSKI) Ms. Bestwick, we're back**  
18 **on the record. I just wanted to ask some follow-up**  
19 **questions. So the first is, one option you have and**  
20 **have had to try to solve the problems we're all**  
21 **encountering is just to sell your debt, correct, sell it**  
22 **in the open market, sell the investors' debt, the notes?**  
23 MR. MALONEY: I'm going to object to  
24 foundation to whether that's actually an option.  
25 A. I think that would have been my question. It

**Page 172**

1 might be a possibility, it might be an option, but I  
2 don't know if that's possible as a matter of fact.  
3 **Q. (BY MR. WIELEBINSKI) Why not? Why would it**  
4 **not be an option? Do you know? Why would that not be**  
5 **an option?**  
6 A. I obviously have to defer to the greater  
7 knowledge of Highland and the experts, but I understand  
8 that it is unlikely to provide an optimal result for us.  
9 **Q. Okay. I understand that. Have you done an**  
10 **analysis of the pros and cons of selling the positions**  
11 **in your fund versus the current situation and the**  
12 **potential way things may play out?**  
13 A. I'm not aware. We have seen an awful lot of  
14 documentation and charts and things, so I'm not aware of  
15 what the current position is on that, so I couldn't say.  
16 **Q. Well, I don't know that I need to know**  
17 **specifics, but I need to ask, has that analysis been**  
18 **done?**  
19 A. I'm not sure. I'm not sure.  
20 **Q. Do you think it would be a helpful**  
21 **analysis --**  
22 A. I'd have to check.  
23 **Q. -- to look at to determine whether there's an**  
24 **option available for the investors short of accepting**  
25 **the plan?**

**Page 173**

1 A. I think it's always useful to have as much  
2 information as you possibly can.  
3 **Q. But you haven't ordered that kind of analysis**  
4 **from the PMA?**  
5 MR. MALONEY: Objection, foundation.  
6 A. I'm not aware that we have.  
7 **Q. (BY MR. WIELEBINSKI) Right. Is it the job of**  
8 **the portfolio manager to actually find investors like**  
9 **Harbour Vest and to negotiate the entire agreement with**  
10 **them?**  
11 A. I think that's the market norm that the  
12 portfolio manager has. I referred earlier to the whole  
13 investor relation's function. So to my knowledge, you  
14 have portfolio managers who have staff who, you know,  
15 are on the road most of the year trying to drum up  
16 business for the fund and speaking to investors and  
17 giving them information which might make them  
18 interested, so yes.  
19 **Q. All right. I want to go back to the lawsuit**  
20 **against Mr. Terry again with the confidential**  
21 **information. What information did you or Mr. Scott make**  
22 **available to the lawyers for them to do the analysis and**  
23 **develop the claims and causes of action against**  
24 **Mr. Terry?**  
25 A. I think that to answer that would probably be

HEATHER BESTWICK

45 (Pages 174 to 177)

<p style="text-align: right;">Page 174</p> <p>1 disclosing privileged information. 2 THE WITNESS: Can I defer to counsel on 3 that? 4 MR. MALONEY: I'll -- I will counsel you 5 and instruct you to the extent you're answering that 6 question would reveal conversations with counsel, yes. 7 But I can't -- if there's -- if it's not, then you can 8 certainly answer. 9 <b>Q. (BY MR. WIELEBINSKI) I'm not asking you for</b> 10 <b>any communications that you had with your counsel about</b> 11 <b>the confidential information, but I am trying to</b> 12 <b>understand, since you are the repository of that</b> 13 <b>confidential information, what you made available to</b> 14 <b>counsel.</b> 15 MR. MALONEY: I'm going to object to 16 foundation that she is the repository of that 17 confidential information. 18 <b>Q. (BY MR. WIELEBINSKI) Well, who else would</b> 19 <b>have confidential information of your fund that might</b> 20 <b>have made that information available to your lawyers?</b> 21 A. Well, clearly our delegated service 22 providers. 23 <b>Q. Did they sit down with your counsel to go</b> 24 <b>through that information? Do you know?</b> 25 A. I think information has obviously been</p>		<p style="text-align: right;">Page 176</p> <p>1 <b>Q. But in connection with this lawsuit, I want</b> 2 <b>to hone in on that group.</b> 3 MR. MALONEY: The Guernsey lawsuit? 4 MR. WIELEBINSKI: Yes. 5 MR. MALONEY: Okay. 6 A. I think that was Collas Crill. 7 COURT REPORTER: Who? 8 THE WITNESS: Collas Crill. 9 <b>Q. (BY MR. WIELEBINSKI) I'll take that at face</b> 10 <b>value. One of the allegations in that lawsuit had to do</b> 11 <b>with a payment that Mr. Terry is asking for. Do you</b> 12 <b>know anything about that \$750,000 payment?</b> 13 A. I'd have to look back and refresh my memory 14 on that. 15 <b>Q. Okay. Is it fair for me to assume that if</b> 16 <b>you were going to ask your investors about the reset,</b> 17 <b>for example, under the plan, that the main investor that</b> 18 <b>you need to discuss things with would be Harbour Vest</b> 19 <b>because the other Highland-related entities you'd</b> 20 <b>probably know what their position would be?</b> 21 MR. MALONEY: I'm going to object to 22 foundation and form. 23 A. Well, no. I think -- 24 THE WITNESS: If I may answer it. 25 MR. MALONEY: You can answer it.</p>
<p style="text-align: right;">Page 175</p> <p>1 requested of our service providers. To the extent that 2 they can provide it, they will have done it. 3 <b>Q. You're saying your lawyers would have</b> 4 <b>requested that information in connection with putting</b> 5 <b>the lawsuit together?</b> 6 A. To understand the case, yes. 7 <b>Q. And you know that for -- for a fact?</b> 8 A. I think that is correct. I think that our 9 lawyers would have made inquiry because they would have 10 needed to have known how to. 11 <b>Q. And they would have talked to, then, the HCF</b> 12 <b>Advisors?</b> 13 A. They would have talked to our service 14 providers, so our portfolio manager as well. 15 <b>Q. Okay. As well as HCF Advisors, State Street,</b> 16 <b>and others?</b> 17 A. Yes. 18 <b>Q. I don't want to put words into your mouth,</b> 19 <b>but is that what you -- you think is --</b> 20 A. That's my understanding of how it would work. 21 <b>Q. And what lawyers was that information being</b> 22 <b>made available to? When you say our lawyers, who would</b> 23 <b>that be?</b> 24 A. Well, we have, I think I said earlier, quite 25 a range of lawyers in Guernsey.</p>		<p style="text-align: right;">Page 177</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) You may.</b> 2 A. Harbour Vest is a 49 percent investor, and 3 the donor-advised fund that sits behind the sale of 4 holdco is the other main investor, and then you've got 5 the 2 percent Highland employees. But that -- 6 <b>Q. But the only independent investor is Harbour</b> 7 <b>Vest; is that a fair statement?</b> 8 MR. MALONEY: I'm going to object to the 9 foundation and to the extent it calls for legal or other 10 knowledge that this witness may not have. 11 MS. O'NEIL: Object to form. 12 A. (BY MR. WIELEBINSKI) Harbour Vest has no 13 connection to Highland other than as an investor in this 14 fund. 15 <b>Q. (BY MR. WIELEBINSKI) That's what I wanted to</b> 16 <b>confirm. Thank you. What attorneys from Highland were</b> 17 <b>on the April special call that you had regarding, among</b> 18 <b>other things, the final award?</b> 19 A. On the mid-April call, I think we had Tim 20 Cournoyer and Isaac Leventon from Highland. 21 <b>Q. And when you say from Highland, are they</b> 22 <b>counsel for HCF Advisors?</b> 23 A. No. Sorry. I misunderstood your question. 24 They are the counsel for Highland. We didn't have our 25 counsel on that initial call. Subsequent calls we did.</p>

**HEATHER BESTWICK**

51 (Pages 198 to 201)

<p style="text-align: right;">Page 198</p> <p>1 Q. Welcome to my world on keeping time. You 2 thought you'd gotten away from the law, but now 3 you're -- 4 A. Indeed. 5 Q. -- having to keep time again. Do you know 6 the hourly rate? 7 A. I think we agreed an hourly rate of 350 8 pounds. 9 Q. And that has been approved? 10 A. Yes. 11 Q. And who approved that? 12 A. Well, that would be Highland. Sorry, that's 13 not Highland. Of course it's not. It's the fund 14 because it's the fund who employs us. Apologies. 15 Q. So did the directors have a vote on whether 16 or not to compensate the directors for the work that 17 they're doing in conjunction with the litigation? 18 A. It's a director decision because the fund is 19 managed by the director. 20 Q. Did you consult with Highland with regard to 21 whether or not they would object to you and Mr. Scott 22 receiving additional compensation in connection with 23 this litigation? 24 A. Yes, we did. 25 Q. And did they have any objection?</p>		<p style="text-align: right;">Page 200</p> <p>1 Q. All right. So October 27th, seven days after 2 the arbitration award, you approve this new portfolio 3 manager of the fund that you are the director of. It's 4 called Highland HCF Advisors Limited, right? 5 A. Yes. 6 MR. MALONEY: Objection to form. 7 Q. (BY MR. SHAW) Do you understand that that 8 entity was formed on the same day that the portfolio 9 management services were transferred to it? 10 A. I don't think I did know that. 11 Q. And that's a Cayman entity, that Highland HCF 12 Advisors Limited, right? 13 A. Yes. 14 Q. What due diligence did you do with regard to 15 Highland HCF Advisors Limited? 16 A. We had the conversations with Highland. So 17 having been given the rationale for the decision to have 18 the existing portfolio management group terminated and a 19 new one with a new advisor, that was the extent of the 20 due diligence. It was a Highland entity. 21 We were comfortable that it was going to be 22 pretty much business as usual, no change in personnel, 23 so we were content that the information presented to us 24 was adequate. 25 Q. So, I mean, was this, the way that you saw</p>
<p style="text-align: right;">Page 199</p> <p>1 A. No. There was a full and frank discussion 2 about the time and the additional effort over and above 3 what we're paid for, and we came to an agreement. 4 Q. And do you have minutes memorializing that 5 director's meeting? 6 A. Yes. 7 Q. And those were prepared by State Street? 8 A. I believe they were prepared by Carey Olsen. 9 Q. Have you ever seen Mr. Terry in person before 10 this litigation? 11 A. No. 12 Q. Have you ever spoken to Mr. Terry before this 13 litigation? 14 A. I believe that for the first few board 15 meetings Mr. Terry gave the portfolio manager's report; 16 so we would be sitting in Guernsey around a table at the 17 board meeting, and Mr. Terry would have been one dialing 18 from Highland to give the report of the portfolio 19 manager. 20 Q. So you're in Guernsey and Mr. Terry is 21 somewhere else? 22 A. Yes. 23 Q. You've never seen Mr. Guern -- 24 Mr. Guernsey -- Mr. Terry in Guernsey, right? 25 A. No.</p>		<p style="text-align: right;">Page 201</p> <p>1 it, just a paper transaction? 2 MR. MALONEY: Objection to form. 3 Q. (BY MR. SHAW) I mean, if I'm 4 mischaracterizing it, I want to know how you perceived 5 what was going on here. You know, you have ACIS, which 6 was the portfolio manager, which is obviously a 7 significant role with the fund, right? I mean, you're 8 relying on the portfolio management -- portfolio manager 9 for almost everything, and then all of a sudden you have 10 this new Cayman entity come in. And so I just -- how 11 did you perceive what was going on there with that? 12 MR. MALONEY: I'm going to object to the 13 form and foundation of the question. 14 THE WITNESS: But I can answer? 15 MR. MALONEY: Yes. If you can. 16 A. It was our understanding that it was -- it 17 was pretty much no difference. The personnel were the 18 same. The entity was different because that was a CP to 19 the transaction involving a new investor, but everything 20 else would remain the same. 21 Q. (BY MR. SHAW) Now let's look at Exhibit 22 No. 4, please. That's the Guernsey lawsuit. And if you 23 will turn to paragraph 37. There are no page numbers, 24 but if you'll look at paragraph 37. 25 A. No. 3, I think.</p>

HEATHER BESTWICK

52 (Pages 202 to 205)

<p style="text-align: right;">Page 202</p> <p>1 Q. Oh, I'm sorry, I wrote it down wrong. No. 3. 2 My apologies. 3 A. I'm sorry, which page? 4 Q. There are no page numbers, but it's 5 paragraph 37. 6 A. Okay. 7 Q. Are you with me? 8 A. Yes. 9 Q. Okay. It says, "By 1 February 2018 the only 10 remaining condition precedent to the reset transaction 11 for CLO 3 was for a Portfolio Management Agreement to be 12 transferred from ACIS." Do you see that? 13 A. Yes. 14 Q. And I want to concentrate on those last three 15 words: transferred from ACIS. Do you see that? 16 A. Yeah. 17 Q. So you understood that the reset transactions 18 were not simply a standalone reset, but it was a reset 19 in conjunction with the transfer of the Portfolio 20 Management Agreements away from ACIS, right? 21 MR. MALONEY: Objection, form. 22 A. I would need to refresh my memory around the 23 time that this was being drafted. I'd need to go back 24 and have a look at -- the reason I'm saying that is 25 because the condition precedent was for the Portfolio</p>		<p style="text-align: right;">Page 204</p> <p>1 we're talking about transferring the Portfolio 2 Management Agreements for the CLO transferred from ACIS. 3 Do you see that? 4 A. Yes. Yes. 5 Q. So going back to my question. You understood 6 that the reset transactions that were contemplated were 7 not simply standalone resets, but they were in 8 conjunction with the transfer of the Portfolio 9 Management Agreement for the CLOs to a new entity. 10 MR. MALONEY: Objection, form and 11 foundation. 12 A. I think, if I can refer back -- and, again, I 13 just need to double check on this, but my understanding 14 that -- obviously, it's something that is happening as 15 part of the Chapter 7 bankruptcy proceedings, but I 16 think I referred earlier to the 60-day period during 17 which the Chapter 7 trustee had been appointed and had 18 the limited authority, and we weren't sure that any 19 activity was going to take place. 20 But as I recall, I think one option was that 21 the Portfolio Management Agreements could be transferred 22 from ACIS because that would mean that we could continue 23 with the reset and just continue as we had been as a 24 fund and we wouldn't be involved in this. 25 Q. (BY MR. SHAW) Okay. Here we're talking about</p>
<p style="text-align: right;">Page 203</p> <p>1 Management Agreement existing to be terminated and the 2 new one executed. 3 But we're talking about the new transaction 4 in October '17, and you're saying here that by this 5 paragraph we're talking about February 2018. And the 6 only remaining condition precedent to the reset 7 transaction was the Portfolio Management Agreement to be 8 transferred from ACIS. But that should be done in 9 October. 10 Q. Maybe I can help because I think we're 11 talking about two different things. 12 A. Okay. 13 Q. In this context -- on this context in 14 paragraph 37, we're talking about the portfolio 15 management agreements that are for the CLOs themselves. 16 A. Sorry. 17 Q. All right. 18 A. Apologies. 19 Q. As opposed to -- as opposed to in October 20 we're talking about the Portfolio Management Agreements 21 for the fund. 22 A. For the fund. 23 Q. Do you understand that? 24 A. Yes. 25 Q. And so you see here in that paragraph 37</p>		<p style="text-align: right;">Page 205</p> <p>1 February of 2018, so that was February 1st of 2018. Do 2 you see that? 3 A. Yeah. 4 Q. So we're not talking about the Chapter 7 5 trustee or anything like that. Do you see that? 6 A. I mean, I will have to go back and just -- 7 Q. Let's move on. 8 A. -- reconsider what was happening at that 9 time. Apologies. 10 Q. All right. And I'm trying to expedite so all 11 the lawyers can get to the investiture. Go to 12 paragraph 41, if you will, please. 13 A. Yes. 14 Q. All right. At the bottom of that paragraph 15 it says, "ACIS's trustee in bankruptcy disclosed that 16 the bankruptcy estate should pay a fee of some \$750,000 17 to the defendant in connection with assistance he had 18 been providing in connection with certain reorganization 19 proposals affecting the four CLOs and the company's 20 investments therein." Did I read that correctly? 21 A. Yes. 22 Q. Do you agree with that statement? 23 MR. MALONEY: Objection, foundation and 24 form. 25 A. I think it is the case that that fee was</p>

**WILLIAM SCOTT**

Page 1

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

IN RE: ) CASE NO. 18-30264-SGJ-11  
          ) CASE NO. 18-30265-SGJ-11  
ACIS CAPITAL MANAGEMENT )  
L.P., ACIS CAPITAL ) (Jointly Administered  
MANAGEMENT GP, L.L.C. ) Under Case No.  
                                  ) 18-30264-SGJ-11)  
Debtors. ) CHAPTER 11

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VIDEOTAPED ORAL DEPOSITION OF  
WILLIAM SCOTT  
DECEMBER 3, 2018  
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ORAL DEPOSITION OF WILLIAM SCOTT, produced as a witness at the instance of Robin Phelan, Chapter 11 Trustee, and duly sworn, was taken in the above-styled and numbered cause on December 3, 2018, from 9:43 a.m. to 6:36 p.m. before Brent Sturgess, CSR in and for the State of Texas, reported by machine shorthand at the law offices of Winstead, P.C., 500 Winstead Building, 2728 North Harwood Street, Dallas, Texas, 75201, pursuant to Notice, the Federal Rules of Civil Procedure, and the provisions stated on the record or attached hereto.

WILLIAM SCOTT

23 (Pages 86 to 89)

Page 86

1 discussed the Members Agreement and the offering  
2 memorandum. Indeed I think all -- all these things  
3 that counsel has shown to me are -- are documents that  
4 we have reviewed to some extent in the past week or at  
5 least touched upon.  
6 **Q. (By Mr. Wielebinski) Did you review the**  
7 **trustee's plan?**  
8 A. Not in the last week, no.  
9 **Q. Did you review the trustee's -- but you have**  
10 **reviewed it before; correct?**  
11 A. I've -- I've -- I've seen it in, I think,  
12 more than one iteration, but I haven't looked at it in  
13 the last couple of weeks. I'm not -- I'm not aware  
14 that it's changed.  
15 **Q. And when we're talking about the trustee's**  
16 **plan, we're talking about the latest plan that's up**  
17 **for confirmation next week; correct?**  
18 A. Yes, that's right. We're -- we're talking  
19 about what's colloquially referred to as Plan D.  
20 **Q. And the trustee's lawsuit recently filed,**  
21 **did you review that?**  
22 A. Which lawsuit do you refer to there?  
23 **Q. The one that was recently filed, and it**  
24 **named, among others, your company.**  
25 A. Okay. Yes. I have looked at it in very

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1 broad detail, but it wasn't -- well, it concerns  
2 principally Highland Capital. I mean, yes, there  
3 is -- we are a defendant, but it -- in respect of the  
4 fund, it hasn't really moved on very much since the  
5 early version of that, which I think I saw something  
6 around about the beginning of July or the end of June  
7 or something like that.  
8 **Q. Did you speak with anybody at Highland about**  
9 **your deposition?**  
10 A. No.  
11 **Q. Any Highland affiliates? Just to make sure**  
12 **that when I say "Highland," you're not thinking of one**  
13 **particular --**  
14 A. No.  
15 **Q. -- Highland entity.**  
16 **So no -- nobody at all?**  
17 A. You know, I -- I -- I'm -- I haven't talked  
18 to anybody affiliated with Highland or employed by  
19 Highland or whatever.  
20 **Q. And you represented through your counsel**  
21 **that you're not available next week to appear in**  
22 **person --**  
23 A. That's --  
24 **Q. -- is that correct?**  
25 A. That is correct.

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1 **Q. And why is that?**  
2 A. I'm -- I already have pre-existing board  
3 meetings for three other companies, and they are in  
4 Guernsey.  
5 **Q. All of the companies other than HCLOF that**  
6 **you serve as a director for, none of them are CLOs,**  
7 **are they?**  
8 A. No. I mean, HCLOF itself is not a CLO in  
9 the strict sense of it.  
10 **Q. Are any of the companies that you serve as a**  
11 **director for companies whose shareholders have**  
12 **invested in CLOs directly as a part of that company?**  
13 A. If I -- if I might sort of slightly expand  
14 the answer to make it a more helpful answer. Some of  
15 the funds companies on which I serve, upon the boards  
16 of which I serve, do invest both in CLOs and in  
17 portfolios of CLO equity strips, if -- if -- if that  
18 helps at all. So none of them is a CLO, but some of  
19 them do have within their portfolios investments in  
20 CLOs or in segregated accounts which invest in CLOs.  
21 Does -- does that help?  
22 **Q. It -- it does help. I appreciate that.**  
23 **But those investments in CLOs by those**  
24 **other companies are not what you are involved in as a**  
25 **director; is that correct?**

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1 MR. MALONEY: Object to form.  
2 A. How do you mean "involved in as a director"?  
3 **Q. (By Mr. Wielebinski) They --**  
4 A. As I say, I'm a director of these funds and  
5 they invest in these things, but --  
6 **Q. The actual funds that you are the director**  
7 **of invest in CLOs?**  
8 A. Yes. Some of them do.  
9 **Q. Okay. Which ones?**  
10 A. The particular one I'm referring to here is  
11 Absolute Alpha PCC, Ltd., which invests through FRM  
12 Diversified II Fund, Ltd., which then all invest in a  
13 wide range of funds and segregated accounts, which,  
14 amongst other things, includes CLOs and other forms of  
15 structured finance.  
16 **Q. And what's the name of the company that**  
17 **Absolute Alpha PCC invests in?**  
18 A. Oh, FRM Diversified II Fund SPC, Ltd., which  
19 is a part of -- which is another fund on which -- of  
20 which I used to be a director, but which is registered  
21 in the Cayman Islands. And I've recently come off  
22 that board in the last couple of years.  
23 **Q. You've never owned a CLO, have you?**  
24 A. Personally? No.  
25 **Q. Have you ever managed one?**

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24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 A. No.</p> <p>2 <b>Q. Have you ever sat on the board of a company</b></p> <p>3 <b>that managed a CLO?</b></p> <p>4 A. No.</p> <p>5 <b>Q. And would you say your experience with CLOs</b></p> <p>6 <b>and CLO investments is broad or limited?</b></p> <p>7 A. I have an adequate working knowledge. I</p> <p>8 would not hold myself out to be an expert in the way</p> <p>9 that, for example, Mr. Covitz at Highland is. But I</p> <p>10 understand the basics of it.</p> <p>11 <b>Q. Okay. I want to understand now your</b></p> <p>12 <b>connections with Highland and the Highland entities.</b></p> <p>13 <b>Do you, Mr. Scott, have any connections</b></p> <p>14 <b>with Highland or its affiliates or entity other than</b></p> <p>15 <b>through HCLOF?</b></p> <p>16 A. No.</p> <p>17 MR. MALONEY: Objection, foundation.</p> <p>18 A. Well, the answer's "No" anyway.</p> <p>19 <b>Q. (By Mr. Wielebinski) Do you have any</b></p> <p>20 <b>investments with Highland?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Do companies or entities you own have</b></p> <p>23 <b>investments with Highland?</b></p> <p>24 A. Companies' investments that I own do not</p> <p>25 have any investments with Highland.</p>		<p style="text-align: right;">Page 92</p> <p>1 <b>firm; is that correct?</b></p> <p>2 A. It was for a period, that's right.</p> <p>3 <b>Q. Who made that selection?</b></p> <p>4 A. Highland proposed it.</p> <p>5 <b>Q. And...</b></p> <p>6 A. And we then had a discussion with</p> <p>7 Ms. O'Neil.</p> <p>8 <b>Q. That discussion with Ms. O'Neil regarding --</b></p> <p>9 <b>I'm not trying to get into attorney-client privilege,</b></p> <p>10 <b>but I'm not sure how that -- where you're going with</b></p> <p>11 <b>that answer.</b></p> <p>12 A. Well, you asked me who selected them. And I</p> <p>13 said, you know, they were proposed by Highland, and</p> <p>14 then we had a discussion with Ms. O'Neil as a partner</p> <p>15 in that firm whereby Ms. Bestwick and I considered</p> <p>16 whether -- I can't remember whether they were then</p> <p>17 called Foley Gardere or whether they were Foley &amp;</p> <p>18 Lardner. It was an appropriate firm to represent us</p> <p>19 in the context of -- that we then find ourselves, and</p> <p>20 at the time her firm was also representing Highland</p> <p>21 Capital with its common interest.</p> <p>22 <b>Q. Did Highland already hire Gardere and just</b></p> <p>23 <b>tell you that they should serve as your counsel? Or</b></p> <p>24 <b>did they give you the option to go to somebody else?</b></p> <p>25 A. Well, we always have the -- the -- the --</p>
<p style="text-align: right;">Page 91</p> <p>1 <b>Q. To your knowledge, do relatives have</b></p> <p>2 <b>investments with Highland?</b></p> <p>3 A. Not as far as I'm aware.</p> <p>4 <b>Q. Okay. Do they have any position with</b></p> <p>5 <b>Highland?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Do you have any business relationships with</b></p> <p>8 <b>Mr. Dondero?</b></p> <p>9 A. None at all.</p> <p>10 <b>Q. Mr. Okada?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Mr. Ellington?</b></p> <p>13 A. No.</p> <p>14 <b>Q. Mr. Sevilla?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Any employee or representative of Highland?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Do you know if the answers would be the same</b></p> <p>19 <b>for Ms. Bestwick?</b></p> <p>20 A. I can't speak to Ms. Bestwick, but I would</p> <p>21 be very, very surprised. As far as I'm aware, the</p> <p>22 answer would be exactly the same for her. But, you</p> <p>23 know, I -- I don't have a detailed knowledge of her</p> <p>24 affairs.</p> <p>25 <b>Q. HCLOF used to be represented by the Gardere</b></p>		<p style="text-align: right;">Page 93</p> <p>1 the option. But it struck us that it was the most</p> <p>2 efficient way to proceed in the circumstances that we</p> <p>3 then found ourselves, which were in April of this</p> <p>4 year.</p> <p>5 <b>Q. Okay. And at some point you decided to</b></p> <p>6 <b>retain new counsel; correct?</b></p> <p>7 A. That's correct.</p> <p>8 <b>Q. Who recommended new counsel?</b></p> <p>9 A. That was adjunct decision arrived at partly</p> <p>10 with -- I mean, I hope I'm not waiving privilege here,</p> <p>11 but partly with Ms. O'Neil's advice.</p> <p>12 <b>Q. And did you know that King &amp; Spalding</b></p> <p>13 <b>served -- served or serves as counsel for Highland in</b></p> <p>14 <b>other matters?</b></p> <p>15 A. I'm -- I'm aware that King &amp; Spalding is the</p> <p>16 large practice, and other part -- partners may have</p> <p>17 representation engagements with other entities, as it</p> <p>18 were, somehow affiliated with Highland. But the</p> <p>19 details I know nothing about at all. And, as far as</p> <p>20 I'm aware, Mr. Maloney is not involved in it.</p> <p>21 <b>Q. Did you look at other firms besides King &amp;</b></p> <p>22 <b>Spalding?</b></p> <p>23 A. Not in any great detail, no.</p> <p>24 <b>Q. And what about Bell Nunnally? Are you</b></p> <p>25 <b>familiar with that firm?</b></p>

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25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 A. I'm not familiar with that firm. I've heard 2 the name, but I'm not familiar with them. 3 <b>Q. If I told you that HCLOF hired them in 4 connection with the involuntary, would that surprise 5 you?</b> 6 A. Well, we've already had a discussion 7 regarding that. Highland thought that it would be, as 8 it were, appropriate in the circumstances of the time 9 in context of those proceedings. I have no particular 10 sort of anything further to say about that really. 11 <b>Q. Well, it's true they hired them without you 12 approving them; isn't that correct?</b> 13 A. We didn't preapprove that, that's correct. 14 <b>Q. And it was without your knowledge that they 15 hired them; correct?</b> 16 A. At the time, that's correct. 17 <b>Q. And -- and they were actually appearing in 18 proceedings on your behalf without your knowledge or 19 approval; isn't that correct?</b> 20 MR. MALONEY: Objection to form. You 21 can answer. 22 A. Yes. I think it logically follows from 23 that. We had not been involved in those discussions. 24 As you quite rightly said, you know, Highland engaged 25 them on our behalf and -- and instructed them.</p>		<p style="text-align: right;">Page 96</p> <p>1 <b>providers for the fund, what other service providers 2 do you use?</b> 3 A. The principal service provider is State 4 Street (Guernsey) Limited, who are our designated 5 administrator. There are other entities in the State 6 Street group, State Street Ireland who act as our 7 custodian and also, I think, provide certain 8 bookkeeping services as subcontractors, if you will, 9 to State Street (Guernsey) Limited. 10 We've in the past had a registrar. But 11 as an ambition to become a listed entity has gone 12 away, the need for that appointment diminished. So we 13 terminated the external registrar, and that's now 14 carried out by State Street, also. And in the usual 15 way, you know, we have external counsel, and we also 16 have, of course, our external auditors as well. 17 <b>Q. Who's your external counsel?</b> 18 A. Well, we have a number of external counsel. 19 The ones who have handled the documentation and so on 20 hitherto have been Mourant Ozannes, who are a well- 21 known -- 22 I'm sorry. Would you like me to spell 23 that? 24 THE REPORTER: Please. 25 THE WITNESS: Okay. M-o-u-r-a-n-t, new</p>
<p style="text-align: right;">Page 95</p> <p>1 <b>Q. (By Mr. Wielebinski) Did you ever comment 2 to Highland about the appropriateness or lack thereof 3 with doing such a thing?</b> 4 A. We have had discussions on the matter. 5 <b>Q. And who communicates with your counsel? Is 6 it you or Ms. Bestwick?</b> 7 A. We both communicate with King &amp; Spalding. I 8 mean, we -- as -- as a matter of general rule, trying 9 to ensure that both directors are equally involved in 10 everything as much as possible simultaneously. So 11 there's no, if you like, information gap between the 12 two of us. 13 <b>Q. And Highland and Highland representatives 14 also speak with your counsel on a regular basis about 15 this matter; isn't that correct?</b> 16 MR. MALONEY: Objection, foundation. 17 But you can answer to the extent you know. 18 A. Well, I -- I believe that there are 19 interchanges between Foley Gardere and King &amp; 20 Spalding. There may be additional conversations 21 between internal counsel at Highland and those two 22 firms. I mean, it's no secret that I think we have a 23 common interest in some of this. 24 <b>Q. (By Mr. Wielebinski) Besides Highland 25 Capital Management serving as one of your service</b></p>		<p style="text-align: right;">Page 97</p> <p>1 word, O-z-a-n-n-e-s. 2 THE REPORTER: Thank you. 3 THE WITNESS: You're welcome. 4 So, as I say, we have Mourant Ozannes. 5 We have also engaged Carey Olsen. They handled the -- 6 the amendment to the Members Agreement. We thought it 7 more appropriate to use them than Mourant Ozannes 8 because personally they're a much bigger and, in my, 9 well, opinion, more appropriate firm, and also they 10 are correcting a drafting error in a Mourant Ozannes 11 document. So I think better for them to do it than 12 Mourant. I'm just trying to think about whether we 13 have engaged any other law firms locally in Guernsey. 14 I don't think we have, no. 15 <b>Q. (By Mr. Wielebinski) Who are the 16 shareholders of HCLOF?</b> 17 A. Who are the shareholders of HCLOF? Well, I 18 think I answered that earlier. There's CLO Holdings 19 or Holdco, which has 49 percent. There is the -- the 20 group of funds which are managed by the party we've 21 agreed to refer to as the investor. They also have 49 22 percent. 23 <b>Q. That's HarbourVest; correct?</b> 24 A. If you say so, yes. 25 MR. MALONEY: You can confirm that.</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 A. Okay. Yes, it is. And then there's the 2 balance, the 2 percent in the middle, so to speak, 3 which is held partly by Highland Capital Management 4 itself. I think they're about half of that. And then 5 the other bit is split amongst -- I forget exactly how 6 many. Well, actually it says on the front of the 7 Members -- set out in the front of the Members 8 Agreement. So it's one -- two -- three -- four -- 9 five -- five executives at Highland.</p> <p>10 <b>Q. (By Mr. Wielebinski) And you said part of</b> 11 <b>the split is the five executives, but also Highland</b> 12 <b>Capital Management itself?</b></p> <p>13 A. That's right.</p> <p>14 <b>Q. Is that through a director-advised fund?</b></p> <p>15 A. No. As far as I'm aware, that's directly 16 held by them.</p> <p>17 <b>Q. All right. Ms. Best -- Bestwick described</b> 18 <b>her position as a nonexecutive independent director.</b> 19 <b>Is that how you describe your position</b> 20 <b>for HCLOF?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And what does it mean, "independent</b> 23 <b>director"?</b></p> <p>24 A. Well, what it means is that we are not 25 beholden to any party. We act independently of</p>		<p style="text-align: right;">Page 100</p> <p>1 A. That's right.</p> <p>2 <b>Q. You're the chairman?</b></p> <p>3 A. That's right.</p> <p>4 <b>Q. Tell me about your relationship with</b> 5 <b>Ms. Bestwick other than your relationship as a fellow</b> 6 <b>board member on HCLOF.</b></p> <p>7 <b>Do you have any other connections with</b> 8 <b>her?</b></p> <p>9 A. No, I don't.</p> <p>10 <b>Q. Any other connections with her companies?</b></p> <p>11 A. No, I don't.</p> <p>12 <b>Q. Are there other companies you work for with</b> 13 <b>Ms. Bestwick?</b></p> <p>14 A. No, not at all.</p> <p>15 <b>Q. Did Highland select her as well?</b></p> <p>16 A. I believe so, but I didn't have visibility 17 into that process. But I -- I just assumed that it 18 was pretty similar to how they came to know me.</p> <p>19 <b>Q. And how often do you lead on HCLOF issues</b> 20 <b>normally?</b></p> <p>21 A. Normally. Normally we will have a quarterly 22 board meeting to review the progress of the company, 23 et cetera. And there will probably be perhaps two 24 board meetings which are concerned with the financial 25 statements of the company and the -- the audit</p>
<p style="text-align: right;">Page 99</p> <p>1 Highland or any shareholder or anybody on behalf of 2 the company.</p> <p>3 <b>Q. Well, isn't it true that you are beholden to</b> 4 <b>your shareholders? Highland being the largest one?</b></p> <p>5 A. No. I don't regard myself as being beholden 6 to them at all.</p> <p>7 <b>Q. Okay. How were you selected?</b></p> <p>8 A. Oh, that's a -- that's a long time ago. I 9 was approached, I think, by somebody who then worked 10 at Highland Capital. I think his name was Phillip 11 Braner if I remember correctly. And there were a 12 number of e-mails and discussions and telephone calls.</p> <p>13 Maybe you might even characterize some 14 in the nature of being an interview whereby we gained 15 a mutual understanding of the project as it then was 16 and the nature of the directors that they were looking 17 for and whether we could help them with that sort of 18 a -- you know, somebody else might be more 19 appropriate.</p> <p>20 <b>Q. Highland selected you?</b></p> <p>21 A. Yes. I mean, Highland were initially at 22 that time, you know, orchestrating the cre -- creation 23 of the fund.</p> <p>24 <b>Q. There's two members of your board of</b> 25 <b>directors; correct?</b></p>		<p style="text-align: right;">Page 101</p> <p>1 planning process with the auditors. And there will 2 occasionally be ad hoc board meetings if something 3 comes up that needs to be disposed of by the board of 4 directors. So it's sort of 4 plus 2 plus ad hoc.</p> <p>5 <b>Q. Ms. Bestwick told me that Highland sits in</b> 6 <b>on all of your board meetings; is that true?</b></p> <p>7 A. Well, Highland is normally there at all of 8 the quarterly board meetings certainly because the key 9 elements of that is for them to present their 10 investment report. And they are not always there 11 particularly where it comes to talking with the 12 auditors, and sometimes our discussions with the 13 auditors are just Ms. Bestwick and me and the auditors 14 not necessarily even including State Street.</p> <p>15 <b>Q. Otherwise, they're -- they've been at every</b> 16 <b>meeting; correct?</b></p> <p>17 A. Well, they've been at every sort of 18 business-as-usual meeting. Since the start of this 19 whole process, you know, we've had a number of 20 meetings which have not involved Highland because they 21 have related to legal matters.</p> <p>22 <b>Q. Do you vote on every issue that comes up</b> 23 <b>as -- as a board?</b></p> <p>24 A. Yes, we do. Well, where -- where -- where 25 we are required really either to pass a resolution</p>

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27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 or -- yes. I suppose we do, yes. Because sometimes 2 resolutions aren't necessarily required, but we review 3 and agree what we've been looking at. 4 <b>Q. And do you keep minutes of every board 5 meeting?</b> 6 A. Yes, we do. 7 <b>Q. And do you know if you've produced all of 8 the board minutes to the trustee through your counsel?</b> 9 A. So far as I'm aware, they've all been 10 produced. They may have been redacted for legal 11 reasons, but I'm not aware that there are any that are 12 being withheld. 13 <b>Q. Now, you said you vote on -- on most 14 matters that req -- on all matters that require a 15 vote.</b> 16 <b>Have you ever disagreed with 17 Ms. Bestwick on any substantive issue?</b> 18 A. No, no. No such issue has presented itself. 19 <b>Q. And have you ever disagreed with Highland's 20 advice?</b> 21 A. No. We haven't disagreed with Highland's 22 advice. I mean, we've had discussions. We've 23 explored what they mean. Sometimes when they say some 24 things, we have perhaps offered constructive 25 challenge. But, no. Highland has never sort of, if</p>		<p style="text-align: right;">Page 104</p> <p>1 sense, rubber-stamped them. 2 <b>Q. (By Mr. Wielebinski) What do you mean that 3 you've tested it?</b> 4 A. Well, I mean, we -- we'll discuss what 5 the -- so, for example, if we're talking about 6 acquiring some CLO holdings, you know, we will ask 7 them, you know, what anticipated rate of return is, 8 you know, how long the investment will last, what cash 9 flows we would expect from it, and whether it sits 10 with our overall investment objectives. So that's 11 what I mean by testing it. 12 And we might also actually sit back and 13 reflect, if I could use that metaphor, as to 14 whether what we're being told is consistent with what 15 we understand about the wider world. And that's, you 16 know, the context of those research notes and things 17 that we were talking about with Mr. Maloney a little 18 while ago. 19 <b>Q. You remember you answered the question that 20 CLO Holdco cannot remove you?</b> 21 A. That's correct. 22 <b>Q. Okay.</b> 23 A. Not on its own. 24 <b>Q. And HarbourVest cannot remove you; correct?</b> 25 A. That's also correct, yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 you like, proposed something that we have thought was 2 inappropriate, and therefore we should vote down if 3 that is what you mean. 4 THE REPORTER: Therefore we should? 5 THE WITNESS: Vote down. 6 THE REPORTER: Thank you. 7 <b>Q. (By Mr. Wielebinski) So there's no point 8 where you ever disregarded their advice; is that 9 correct?</b> 10 A. No. I'm sorry. Yes, that is correct. I 11 think it would be wrong to disregard it. I -- I can 12 envisage circumstances where we might disagree with 13 it, not that that's arisen. But I -- I think it would 14 be quite wrong to simply disregard it if that's what 15 you mean. 16 <b>Q. So whenever they've made a recommendation, 17 you've always accepted it?</b> 18 <b>Even though you might consult with 19 Ms. Bestwick and -- and flesh it out, you've always 20 agreed with what they've recommended or advised you to 21 do?</b> 22 MR. MALONEY: Objection, form. 23 A. Well, ultimately, yes. We've tested the 24 propositions and we've been okay with them. But 25 that's certainly not to imply that we have, in any</p>		<p style="text-align: right;">Page 105</p> <p>1 <b>Q. So to the extent that the party that 2 appointed you, Highland, wants to keep you as a board 3 member, they can block HarbourVest from ever removing 4 you.</b> 5 <b>Do I understand that correctly?</b> 6 A. Yes. I suppose that that's the consequence 7 of the Members Agreement as negotiated between the 8 parties. I mean, it's a negative control agreement, 9 not a, if you like, a positive assertive control 10 agreement. 11 <b>Q. So Highland controls you sitting on the 12 board and Ms. Bestwick sitting on the board?</b> 13 A. No, it doesn't. I mean, you say it controls 14 us. So that -- I mean, Highland can't fire us, they 15 can't stop us from resigning, and -- and neither can, 16 if you like, the -- the fund's represented by the 17 investor. So to say that fund controls us is not a 18 completely fair representation of the picture. 19 <b>Q. Okay.</b> 20 A. In a way you can say we're actually -- as a 21 consequence our independence is entrenched. 22 <b>Q. Who makes investment decisions for HCLOF?</b> 23 A. Well, investment decisions are formulated by 24 Highland. That's what we have a Portfolio Management 25 Agreement with them for.</p>

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28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 <b>Q. So what is it that you and Ms. Bestwick make</b> 2 <b>decisions on?</b> 3 A. Well, the governance of an investment fund 4 essentially is not that the board reperforms or 5 second-guesses the roles of any of our service 6 providers. What we do is, we police them, if I could 7 use that shorthand. We ensure that -- 8 THE REPORTER: If I could use that 9 short? 10 THE WITNESS: Shorthand. 11 THE REPORTER: Thank you. 12 THE WITNESS: As in shorthand. 13 So with -- I mean, you know, with -- to 14 get it offhand per se, you know, with respect to the 15 administrator, again, we review in great detail a 16 report from the administrator at each quarterly board 17 meeting and -- and how things have been going and 18 whether there have been any mistakes or errors or 19 whatever, and we assess their kperformance in context. 20 And similarly with Highland or, as I say, indeed any 21 other service provider. We -- we review the 22 performance of the auditors as well. 23 <b>Q. And the custodians?</b> 24 A. And the custodian, yeah. I mean, the 25 custodian really comes effectively as a package with</p>		<p style="text-align: right;">Page 108</p> <p>1 A. We -- we were comfortable with their 2 performance. It was certainly much better than it is 3 now. 4 <b>Q. And you were comfortable with their</b> 5 <b>performance when they were converting positions to</b> 6 <b>cash; correct?</b> 7 A. Well, now I -- I -- we -- we -- we have to 8 be clear about where we're -- we're talking about. 9 Are you talking within the CLOs? Or are you talking 10 about within the fund? Because the mission of the 11 fund is to own equity positions in CLOs. We don't get 12 into the, if you like, the -- an overly detailed 13 involvement in, if you like, each individual loan 14 position within those CLOs. I mean, that's a -- 15 that's a level of detail that's different. 16 So whether it's appropriate to cash out 17 of one loan or another -- or in some cases I think 18 there are bankruptcy proceedings. So the nature of 19 the position changes. That -- that -- that's not a 20 level of detail, I think, that is necessary for our 21 mission on a fund level. 22 <b>Q. So, if I understand it, you police the</b> 23 <b>service providers, but not on any kind of in-depth</b> 24 <b>level?</b> 25 MR. MALONEY: Objection to form. It</p>
<p style="text-align: right;">Page 107</p> <p>1 the administrator by State Street. 2 <b>Q. So you serve in a policing function as a</b> 3 <b>board member.</b> 4 <b>Is that what I understand?</b> 5 A. Yeah, absolutely. 6 <b>Q. And in that policing function you've yet to</b> 7 <b>have any disagreement or second-guessing of what</b> 8 <b>Highland has ever advised you or recommended to you?</b> 9 A. Well, we -- we have had no disagreements at 10 all about, if -- if you're getting at this, the -- the 11 conduct of the portfolio management. Although, it's, 12 strictly speaking, a discretion of the arrangement, 13 the practice has been hitherto that they always 14 discuss with us beforehand material, indeed any 15 investment transactions that they intend to propose so 16 they know we're onboard with them. I think that's a 17 good practice. 18 <b>Q. And are you pleased with their performance</b> 19 <b>today?</b> 20 A. Well, their performance is fine. Things 21 have obviously gone a bit pear-shaped since, you know, 22 Brigade were inserted, but that's a -- that's a 23 different matter. 24 <b>Q. But not before Brigade got in. You were</b> 25 <b>comfortable with everything that --</b></p>		<p style="text-align: right;">Page 109</p> <p>1 misstates the record. 2 A. No. We police them to a level that's 3 appropriate in the context in which we have engaged 4 them. 5 <b>Q. (By Mr. Wielebinski) Appropriate based on</b> 6 <b>what you and Ms. Bestwick think is appropriate?</b> 7 A. Well, necessarily, of course. I mean, we 8 wouldn't be doing it to a level that we thought was 9 inappropriate. 10 <b>Q. And you were satisfied with them --</b> 11 <b>You're -- you're aware that their</b> 12 <b>converting positions to cash was the basis for their</b> 13 <b>removal by the trustee as approved by the court; isn't</b> 14 <b>that correct?</b> 15 A. I think that's a mischaracterization. I 16 regarded -- at the time I think the trustee said, "I 17 don't trust them," quote-unquote. I think he said 18 that several times. 19 <b>Q. And do you know why he didn't trust them?</b> 20 <b>What's your recollection there?</b> 21 A. I have even today no understanding of why he 22 could make such an assertion. I mean, to me it just 23 doesn't make any sense. I think it was -- how do you 24 put it -- his strategic stance that he took. 25 MR. WIELEBINSKI: Are we at 13?</p>

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29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 THE REPORTER: Yes. 2 (Exhibit Number 13 marked.) 3 <b>Q. (By Mr. Wielebinski) I'm going to hand you</b> 4 <b>what's been --</b> 5 A. Okay. 6 <b>Q. -- marked as Exhibit 13.</b> 7 <b>Have you seen that before?</b> 8 A. Yes, I've seen it. Not -- not recently, but 9 some time ago. 10 MR. MALONEY: This is Exhibit 13? 11 Okay, sir. 12 THE WITNESS: Yeah. 13 <b>Q. (By Mr. Wielebinski) And this was the</b> 14 <b>motion filed by the trustee to bring in Cortland and</b> 15 <b>Brigade; correct?</b> 16 A. Yes, that's what it says. 17 <b>Q. And it was a motion to replace Highland as</b> 18 <b>subadvisor and shared service provider; correct?</b> 19 A. I believe so, yes. 20 <b>Q. Can you look at Page 4, please?</b> 21 <b>Do you see the statement -- it's in</b> 22 <b>Section 4 -- Highland's mismanagement of the CLOs?</b> 23 A. I see that statement. 24 <b>Q. Do you remember reading this?</b> 25 A. Yes, I do.</p>		<p style="text-align: right;">Page 112</p> <p>1 questionable. 2 <b>Q. Do you know if that was true that there were</b> 3 <b>questionable -- there were only questionable loans on</b> 4 <b>the market that were available, and that's why</b> 5 <b>Highland didn't do that?</b> 6 MR. MALONEY: Objection, form. 7 A. Well, I -- I believe from previous testimony 8 in court Highland expressed an opinion there was a 9 shortage of eligible collateral? 10 <b>Q. (By Mr. Wielebinski) And can you read the</b> 11 <b>next sentence for me, please?</b> 12 A. This is the top of Page 5? 13 <b>Q. Yes, sir.</b> 14 A. "Indeed Highlands has not purchased a loan 15 since prior to the trustee's appointment as a Chapter 16 11 trustee." 17 <b>Q. And this -- do you remember when the trustee</b> 18 <b>was appointed?</b> 19 A. The Chapter 11 trustee? 20 <b>Q. Yes, sir.</b> 21 A. Sometime around about the middle of May. 22 <b>Q. Okay. And this was filed in July, at the</b> 23 <b>end of July; correct?</b> 24 A. I think the document's dated the 30th of 25 July.</p>
<p style="text-align: right;">Page 111</p> <p>1 <b>Q. And trustee had some concerns about gross</b> 2 <b>mismanagement, did he not?</b> 3 A. That's what he said, yes. 4 <b>Q. And he's raised these concerns with</b> 5 <b>Highland?</b> 6 A. I don't know the details of the 7 conversations that he has had with Highland. I was 8 not a party to those. 9 <b>Q. Okay. Can you read the -- the sentence?</b> 10 <b>The third sentence?</b> 11 A. On which page now? 12 <b>Q. Paragraph 10, third sentence?</b> 13 A. Paragraph 10, third sentence. Well, "The 14 trustee has repeatedly expressed concern over the 15 bal -- cash balances which have accumulated in the 16 Acis CLOs and Highland's failure to recommend 17 purchases of eligible collateral in the CLOs." Yes, I 18 see it. 19 <b>Q. Do you know if that's true?</b> 20 A. Well, the trustee has said that. Whether 21 it's true or not is actually sort of slightly beside 22 the point. Because I do not accept the underlying 23 premise of the question that the CLO manager should go 24 out and willy-nilly buy, if you like, additional 25 assets, the quest -- the quality of which may become</p>		<p style="text-align: right;">Page 113</p> <p>1 <b>Q. Right. So several months had gone by where</b> 2 <b>Highland had not purchased a single loan?</b> 3 MR. MALONEY: Objection, form. 4 <b>Q. (By Mr. Wielebinski) That's what the</b> 5 <b>trustee alleges?</b> 6 A. Yes. 7 <b>Q. And do you know if that was true?</b> 8 A. I have no more detailed knowledge of it than 9 is set out in this document and similar pleadings. So 10 I'm -- I'm taking, for the sake of argument, that it's 11 true. 12 <b>Q. Okay. Did you do checking with Highland</b> 13 <b>to -- to determine whether any of this was true?</b> 14 A. The premise is actually entirely wrong. I 15 mean, we were happy that in overall terms the seer of 16 the CLOs were performing adequately in circumstances. 17 Well, let me wind back on that. We were happy that 18 the portfolio was being managed correctly. Although, 19 they needed to be reset in terms of the capital 20 structure. 21 <b>Q. So you --</b> 22 A. I do not accept the proposition, if that is 23 what you're trying to lead me to, that there is some 24 virtue in buying excessive amounts of collateral which 25 may not be eligible. And I have to s -- I -- I will</p>

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34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 THE WITNESS: Leverage. 2 THE REPORTER: Thank you. 3 THE WITNESS: -- on what we thought 4 were attractive terms. 5 <b>Q. (By Mr. Wielebinski) And it was recommended</b> 6 <b>by Highland; correct?</b> 7 A. It was recommended by Highland. That's 8 right. 9 <b>Q. And you never looked at another bank; is</b> 10 <b>that true, too?</b> 11 A. That's not quite correct. No, we did not 12 approach another lender, but we did since check the 13 terms and interest rate against other transactions. 14 <b>Q. And this balance sheet is as of October</b> 15 <b>31st; cor -- or statement of financial position --</b> 16 A. Yes. 17 <b>Q. -- as of October 31st?</b> 18 <b>It could be changed today; correct?</b> 19 A. Oh, it's -- it's almost inevitably the case 20 that it will have changed, but the end of November one 21 will not yet be available. For example, pricing the 22 investments of fair value, which are predominantly the 23 CLO investments, that's quite a long process. 24 Because, you know, it goes from pricing every 25 individual loan position up to working out the</p>		<p style="text-align: right;">Page 132</p> <p>1 <b>Q. (By Mr. Wielebinski) You -- I'm sorry. I</b> 2 <b>didn't mean to talk over you.</b> 3 A. No. I mean, you know, we could. We're 4 considering whether we should continue to pay a 5 dividend of the pre-existing quarterly rate. And so 6 there's all sorts of considerations that will go into 7 this. 8 <b>Q. Okay. And much like what occurred in</b> 9 <b>October of 2017, you could transfer these assets to</b> 10 <b>another entity; is that not correct?</b> 11 MR. MALONEY: I'm going to object to 12 found -- foundation as to what was done in 27 -- 2017. 13 You can answer. 14 A. Well, I -- I -- I -- I -- I think the 15 premise is mischaracterization. We could not transfer 16 away from HCLO Funding, Ltd., its assets. Why would 17 we do that? That would be a fraud on our 18 shareholders. I'm not quite sure what you mean 19 therefore. 20 <b>Q. (By Mr. Wielebinski) Were you ever made</b> 21 <b>aware of the Terry litigation in the United States</b> 22 <b>involving Josh Terry and the Highland entities?</b> 23 MR. MALONEY: Objection to form. 24 A. If you mean -- do you mean the arbitration 25 proceedings, the employment dispute and all that sort</p>
<p style="text-align: right;">Page 131</p> <p>1 aggregate valuation of the CLOs themselves, and then 2 translating that in here. 3 So the whole process, if -- if you 4 like, from end to end, from getting the -- the 5 individual loan positions through to -- 6 THE REPORTER: The individual what 7 positions? 8 THE WITNESS: Loan. 9 THE REPORTER: Thank you. 10 THE WITNESS: L-o-a-n positions through 11 to constructing this balance sheet is a process that 12 takes three and a half weeks or something like that 13 every month. 14 <b>Q. (By Mr. Wielebinski) And to the extent a</b> 15 <b>judgment was entered against Highland CLO funding,</b> 16 <b>changes could be made to this structure, these</b> 17 <b>numbers, very quickly, can't it?</b> 18 MR. MALONEY: I'm going to object -- 19 excuse me -- object to form and foundation. 20 A. Well, I'm not quite sure what you mean 21 exactly by that. But, yes, the numbers will change. 22 The accrual of expenses will erode the cash balance. 23 But if and when we ever get any income out of the 24 CLOs, then the cash balances will go up because of 25 that, which would be --</p>		<p style="text-align: right;">Page 133</p> <p>1 of stuff? 2 <b>Q. (By Mr. Wielebinski) Yes, sir.</b> 3 A. Well, as I've already explained, we were not 4 aware of that until sometime in 2018, certainly long 5 after October or November 2017. In fact, the full 6 extent of it, to be quite frank, we only really became 7 aware of as these processes dragged HCLO Funding into 8 it. 9 THE REPORTER: Repeat the last part of 10 your answer, please. 11 THE WITNESS: We only became aware of 12 it as these proceedings dragged HCLO Funding into it. 13 Probably not the best grammar, but... 14 <b>Q. (By Mr. Wielebinski) Who told you about the</b> 15 <b>Terry litigation?</b> 16 A. We had a -- I'm not quite sure whether it's 17 appropriate for me to -- whether this gets into 18 questions of attorney-client privilege. But a meeting 19 was arranged, a telephonic meeting, at which were 20 present Ms. Bestwick and myself, certain internal 21 counsel at Highland, and I think Ms. O'Neil may have 22 attended it as well. 23 <b>Q. And what did they tell you?</b> 24 MR. MALONEY: I'm going to instruct the 25 witness not to reveal any attorney-client privileges.</p>

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35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 I think your prior question, Mr. Wielebinski, was, 2 "Who told you about the Terry litigation?" If you can 3 answer that, that factually, I don't have an objection 4 to you answering that if that's your question. 5 A. Okay. We were told that by the internal 6 counsel at Highland during that call. 7 <b>Q. (By Mr. Wielebinski) And that would be who?</b> 8 <b>Mr. Sevilla?</b> 9 A. No. Mr. Sevilla -- we didn't come across 10 him for -- until some later time. There was certainly 11 a Mr. Leventon, and I think -- I'm trying to think of 12 the other guy's name. David -- I'm sorry. Tim 13 Courmoyer, I think. 14 <b>Q. And what did they tell you?</b> 15 MR. MALONEY: I'm going to object to 16 the extent that they've told you anything of -- of -- 17 other than a factual nature. Do not -- do not testify 18 to legal advice conveyed in the presence of your 19 counsel. 20 A. They apprised us of the facts of the 21 involuntary proceedings. 22 <b>Q. (By Mr. Wielebinski) Did they tell you</b> 23 <b>anything about the Terry litigation?</b> 24 A. Again, other than the fact of it, no. I 25 mean, we've -- we never got into the -- the rights and</p>		<p style="text-align: right;">Page 136</p> <p>1 A. I'm not at all sure why it should. As I've 2 said before, this is effectively a two-party dispute 3 between Mr. Terry and his former employers and/or 4 business partners within the Highland group. 5 So from that point of view, it's not 6 really our concern unless something emerges which 7 gives us cause. And nothing has emerged that's been 8 brought to our attention that gives us cause to, in 9 any way, doubt the -- the voracity of the relationship 10 that we have with Highland. 11 <b>Q. Nothing's caused you to doubt that, the</b> 12 <b>voracity of --</b> 13 A. Nobody has -- I mean, lots of people have 14 made lurid allegations about all sorts of things. But 15 I wasn't there, neither was Ms. Bestwick. And as I've 16 said in other context, I'm not going to take the 17 position one way or another about the rights and the 18 wrongs of the Terry dispute. 19 As far as we are concerned, it's an 20 internal Highland group matter. And it's simply, if 21 you like, a matter of established fact that, as a 22 consequence thereof, Mr. Terry is a judgment creditor 23 of Acis Capital Management. And that -- that really 24 is as far as -- as I go. 25 <b>Q. Well, isn't it true that the Terry</b></p>
<p style="text-align: right;">Page 135</p> <p>1 the wrongs of who did what to whom and when and all -- 2 all the rest of that. That's -- it's -- obviously 3 it's the foundation of the dispute between Mr. Terry 4 and the various Highland parties, but it's an internal 5 matter be -- employment matter between them, and it's 6 not strictly of itself a matter that is our -- our 7 matter. We're -- we're not involved. 8 <b>Q. And when were you told this?</b> 9 A. Well, as I've said, there was a call which 10 was arranged in April this year. 11 <b>Q. And that's the first time you became aware</b> 12 <b>of the involuntary bankruptcy or anything having to do</b> 13 <b>with this Terry litigation; is that correct?</b> 14 MR. MALONEY: Objection to form. 15 A. Yes, that's correct. 16 <b>Q. (By Mr. Wielebinski) Did they tell you why</b> 17 <b>Mr. Terry left Highland's employment?</b> 18 A. No. 19 <b>Q. When you found out about the involuntary and</b> 20 <b>the litigation with Mr. Terry, did that trouble you?</b> 21 A. Yes, it did. 22 <b>Q. Did it cause you to second-guess your</b> 23 <b>relationship with Highland?</b> 24 A. No. 25 <b>Q. Why not?</b></p>		<p style="text-align: right;">Page 137</p> <p>1 <b>litigation and then the involuntary, which was</b> 2 <b>subsequently turned into Chapter 11 proceedings --</b> 3 <b>haven't they just caused you to -- a number of</b> 4 <b>problems for you and HCLOF?</b> 5 MR. MALONEY: Objection, foundation and 6 form. 7 A. Well, they -- they -- they -- they have 8 caused us a number of problems for all sorts of 9 reasons. And, you know, go back to my answer a few 10 minutes ago. When we found out about the proceedings, 11 of course, it caused us concern because, you know, we 12 have no desire to be dragged into law disputes over 13 here, which are predominantly really disputes between 14 other parties. 15 <b>Q. (By Mr. Wielebinski) But you have been</b> 16 <b>drawn into those --</b> 17 A. Yes, we have. 18 <b>Q. -- proceedings, have you not?</b> 19 <b>You've been sued in those proceedings,</b> 20 <b>have you not?</b> 21 A. Yes, we have. That doesn't mean to say that 22 the party who's suing us is -- is -- is right. In 23 fact, actually objectively they're quite wrong in some 24 of the assertions they made. 25 <b>Q. And it's also caused you to lose Highland as</b></p>

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36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 <b>the portfolio manager at this point?</b> 2 MR. MALONEY: Objection. 3 A. Well -- 4 MR. MALONEY: Objection, foundation. 5 A. -- strictly speaking, it's caused -- 6 MR. WIELEBINSKI: Can we go off the 7 record for just a second? I'm sorry about that. 8 THE VIDEOGRAPHER: Yes, sir. Off the 9 record at 2:05. This is Disk 3, Volume 1. 10 (Break.) 11 THE VIDEOGRAPHER: On the record at 12 2:07. This is Disc 3, Volume 1. 13 MR. WIELEBINSKI: Would you read the 14 last question for me, please? 15 (Record read.) 16 MR. MALONEY: Objection, foundation and 17 form. Go ahead. You can answer. 18 A. Okay. Well, first of all, strictly port -- 19 Highland remains the portfolio manager of the fund. I 20 think what you mean is, it's caused the CLOs in which 21 we hold the equity strips to be deprived of Highland 22 as a submanager or advisor. I think that has been 23 very much to the detriment of the fund's investor in 24 the equity strips of those CLOs. It didn't have to be 25 like that, but that's how it's worked out.</p>		<p style="text-align: right;">Page 140</p> <p>1 But, you know, unfortunately it's -- it's -- it's -- 2 it's pointless as we cannot accede to, you know, what 3 we're trying to be pressured into. 4 <b>Q. (By Mr. Wielebinski) And the pressure was</b> 5 <b>coming from who? Mr. Terry?</b> 6 A. Well, I suppose you would say Mr. Terry, who 7 was using the trustee as his instrument to do that, 8 yes. 9 <b>Q. Caused by the litigation and the bankruptcy?</b> 10 MR. MALONEY: Objection to form. 11 A. Well, I'm not sure that litigation and 12 bankruptcy as such is the cause. It's more the tool. 13 <b>Q. (By Mr. Wielebinski) Who commenced that</b> 14 <b>litigation against Mr. Terry? Do you recall?</b> 15 A. I'm sorry. What litigation against 16 Mr. Terry? 17 <b>Q. The litigation in Dallas that led to the</b> 18 <b>arbitration award.</b> 19 A. As I say, I don't have any knowledge of 20 those proceedings. I'm simply aware after the event 21 of the fact of them and of their outcome. 22 <b>Q. So you never asked the question, "Who</b> 23 <b>commenced the litigation that caused all these</b> 24 <b>problems"?</b> 25 A. I -- I, honestly, really don't see the point</p>
<p style="text-align: right;">Page 139</p> <p>1 <b>Q. (By Mr. Wielebinski) Litigation has also --</b> 2 <b>and the bankruptcy have caused you to incur</b> 3 <b>significant legal fees; isn't that correct?</b> 4 A. Oh, absolutely, yes. 5 <b>Q. It's also caused your investors to have to</b> 6 <b>absorb your additional costs that you're now charging</b> 7 <b>to them; isn't that correct?</b> 8 A. That's absolutely right. 9 <b>Q. And it's also caused you not to be able to</b> 10 <b>do a reset that was planned around January-February of</b> 11 <b>2018; is that --</b> 12 A. That's right. 13 MR. MALONEY: I'm going to object to 14 foundation and form. 15 <b>Q. (By Mr. Wielebinski) It also caused you not</b> 16 <b>to be able to do a liquidation or any reset or</b> 17 <b>redemption over the last seven months; isn't that</b> 18 <b>correct?</b> 19 MR. MALONEY: Objection, foundation and 20 form. 21 A. Well, what's certainly true is giving the 22 trustee the opportunity to interfere very 23 detrimentally with our investments. None of it needed 24 to be like that. I entirely -- well, I -- I infer 25 that the reason largely was to pile pressure on us.</p>		<p style="text-align: right;">Page 141</p> <p>1 of it. People in the alternative asset management 2 world and others leave their employers all the time. 3 Sometimes it's amicable, sometimes it's acrimonious. 4 It's a fact of life, it happens. 5 So, you know, I'm -- as I've said 6 before, I'm not going to take a position on the rights 7 and wrongs of the case or whether Highland should or 8 should not defend itself and/or -- or -- or go on the 9 offensive. It's -- it's really not a matter that is 10 strictly within the purview of the fund. It is an 11 internal Highland versus Mr. Terry employment dispute. 12 <b>Q. I wasn't asking whether you knew the details</b> 13 <b>of the litigation. I was asking if you knew who</b> 14 <b>commenced the litigation that now has caused all these</b> 15 <b>problems in -- that we just walked through for HCLOF.</b> 16 A. I -- I'm -- 17 MR. MALONEY: I'm going to object to 18 foundation and form. You can answer. 19 A. I don't know whether Mr. Terry sued Highland 20 or Highland sued Mr. Terry. 21 <b>Q. (By Mr. Wielebinski) Would it have mattered</b> 22 <b>to you?</b> 23 A. Not really. 24 <b>Q. So it doesn't matter who called -- who</b> 25 <b>generated the problems that you're now having to deal</b></p>

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37 (Pages 142 to 145)

<p style="text-align: right;">Page 142</p> <p>1 with? 2 MR. MALONEY: Objection to foundation 3 and form. 4 A. Well, if one goes further back -- I mean, 5 lawsuits inevitably result from disputes. And whether 6 it's having to do with money or to do with other 7 matters, there's a dispute between parties. They have 8 a different perception perhaps of a set of 9 circumstances. 10 I am aware that both Mr. Terry and 11 Highland have said things about each other that are 12 not exactly complimentary. But I -- I -- I -- I -- as 13 I've said before, I don't know the circumstances, I 14 wasn't there, I haven't heard the evidence, and I'm 15 not going to express an opinion on it because I'm -- 16 I'm not in a position to. 17 <b>Q. (By Mr. Wielebinski) Did you take any steps</b> 18 <b>to investigate the situation?</b> 19 MR. MALONEY: Objection to form. 20 A. What investigation do you think we should 21 have? I mean, we were simply aware that the 22 litigation -- well, actually we were aware that the 23 arbitration award had been converted into a judgment 24 and that it spilled over into a Chapter 11 bankruptcy 25 proceeding. That's all I really need to know. So I</p>		<p style="text-align: right;">Page 144</p> <p>1 MR. MALONEY: Objection to form and 2 foundation. You can answer if you understand. 3 A. Yes, I do. And I -- I stand by that, and 4 it's qualified only to the extent that we have 5 specifically agreed with our shareholders in the 6 Members Agreements and the amendment thereto to adhere 7 to certain procedures, consents and negative control 8 rights that we thereby run them. But other than that 9 they're completely standard. 10 <b>Q. (By Mr. Wielebinski) But other than that?</b> 11 A. They're completely standard. 12 <b>Q. What's not standard is the mess that's been</b> 13 <b>created in the bankruptcy because of the litigation...</b> 14 MR. MALONEY: Objection -- 15 <b>Q. (By Mr. Wielebinski) ...correct?</b> 16 MR. MALONEY: Objection to form and 17 foundation. 18 A. I don't have enough experience of U.S. 19 bankruptcy procedures to know whether or not a mess of 20 this cataclysmic proportion is normal or not. But 21 that, I think, I do not lay either at the door of 22 Highland or indeed any of the other service providers. 23 <b>Q. (By Mr. Wielebinski) But you've not taken</b> 24 <b>any additional steps to investigate any background</b> 25 <b>information regarding the Terry litigation. That's</b></p>
<p style="text-align: right;">Page 143</p> <p>1 don't need to get into whether Mr. Terry breached his 2 employment contract or not as the case might be. 3 <b>Q. (By Mr. Wielebinski) But didn't you tell</b> 4 <b>Mr. Maloney at the beginning that, as an independent</b> 5 <b>board member, you engaged in very -- a very great</b> 6 <b>level of interest, inquiry, scrutiny and challenge...</b> 7 A. Yeah. 8 <b>Q. ...in your role?</b> 9 A. Correct. 10 <b>Q. That -- that's what you -- you testified to;</b> 11 <b>correct?</b> 12 A. Yes, and -- and -- and in terms of the 13 discharge by various service providers of their duties 14 to the company. 15 <b>Q. Okay. And you told me you were -- you were</b> 16 <b>ultimately responsible for the company?</b> 17 A. We, the board, are, yes. 18 <b>Q. Okay. And that you had ultimate control of</b> 19 <b>running the company, including governance, oversight,</b> 20 <b>including the portfolio management administration --</b> 21 <b>administrator and custodian?</b> 22 MR. MALONEY: Objection to form and 23 foundation. 24 <b>Q. (By Mr. Wielebinski) Do you remember that</b> 25 <b>testimony?</b></p>		<p style="text-align: right;">Page 145</p> <p>1 <b>what you testified to.</b> 2 A. Yes, because I -- 3 MR. MALONEY: Objection to form and 4 foundation. You may answer. 5 A. I -- I don't think it's relevant. What is 6 relevant is the fact that Mr. Terry has his judgment 7 creditor status. And as a consequence the Chapter 11 8 trustee has been appointed, and these proceedings are 9 grinding on as they are. That's what matters. 10 <b>Q. (By Mr. Wielebinski) And are -- are you</b> 11 <b>aware that Mr. Terry was not terminated for cause?</b> 12 A. I am aware that there have been various 13 statements made by both sides, which are arguably 14 incompatible, which is correct. I don't know. 15 Highlands say that he was terminated for cause. He 16 says he wasn't. 17 <b>Q. Do you know how the arbitrators ruled?</b> 18 A. Well, obviously to an extent the arbitrators 19 ruled in his favor, but I haven't read their detailed 20 judgment... 21 <b>Q. And --</b> 22 A. ...or the detailed awards or whatever the 23 correct expression is. 24 <b>Q. "In his favor" meaning Mr. Terry's favor;</b> 25 <b>correct?</b></p>

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38 (Pages 146 to 149)

<p style="text-align: right;">Page 146</p> <p>1 A. Well, yes, because he obviously has his near                  2 \$8 million award as a consequence.                  3 (Exhibit Number 14 marked.)                  4 <b>Q. (By Mr. Wielebinski) I'm going to hand you                  5 what's been marked as Exhibit 14.</b>                  6 A. Thank you.                  7 <b>Q. Can you take a look at that, please?                  8 Have you seen that before, Mr. Scott?</b>                  9 A. I do not recall having read it. No, I don't                  10 think I have...                  11 <b>Q. Well, let's take a minute --</b>                  12 A. ...seen it before...                  13 <b>Q. -- to go through it.</b>                  14 A. ...no.                  15 <b>Q. Can you look on Page 9, please, at the top?</b>                  16 A. This is 9 of 9?                  17 <b>Q. Correct.</b>                  18 A. Okay.                  19 <b>Q. No. It is 10 of 28, but it's actually at                  20 the bottom, 9 -- Page 9.</b>                  21 A. Okay. Is this the one headed Analysis of                  22 Facts and Claims?                  23 <b>Q. Yes, sir.</b>                  24 A. Okay.                  25 <b>Q. Can you read the first sentence?</b></p>	<p style="text-align: right;">Page 148</p> <p>1 pretextually characterized Ter -- Terry's termination                  2 from Highland as a, quotes, for cause, end quotes,                  3 termination to deny Terry the value of his limited                  4 partnership interest, all in contractual breach of the                  5 Acis LPA and in breach of fiduciary duty to Terry as                  6 its limited partner."                  7 <b>Q. Thank you. Will you also read the first                  8 sentence of the next paragraph?</b>                  9 A. "The evidence establishes that Highland's                  10 termination of Terry was, in fact, pretextual without                  11 basis of cause and only because Dondero wanted him                  12 gone."                  13 <b>Q. And can you read the last sentence in that                  14 paragraph?</b>                  15 A. "Dondero was simply angry and realized Terry                  16 was not a, quotes, yes man, end quotes, willing to let                  17 Dondero have his wrongheaded way. So Dondero fired                  18 Terry on the spot and later sought to characterize                  19 Terry's termination of employment as a, quote, for                  20 cause, end quote."                  21 <b>Q. What's your reaction to those -- those                  22 findings?</b>                  23 A. Well, as I said before, factually they                  24 exist. They are what they are. I haven't read the                  25 evidence or heard it. I'm simply taking this and the</p>
<p style="text-align: right;">Page 147</p> <p>1 A. "The panel first addresses Terry's claims                  2 for breach of contract stated against Acis and Acis GP                  3 and breach of fiduciary duties stated against Acis                  4 GP."                  5 <b>Q. Can you look at the bottom paragraph and                  6 read that to me, just the -- the first two sentences?                  7 I'm sorry.</b>                  8 MR. MALONEY: Which paragraph?                  9 MR. WIELEBINSKI: It's the bottom                  10 paragraph, "The evidence establishes..."                  11 THE WITNESS: Okay. So "The evidence                  12 establishes that Acis and Acis GP did not just simply                  13 rely on Highland's statement of terminating Terry for                  14 cause."                  15 Do you want me to go on to the next                  16 sentence?                  17 <b>Q. (By Mr. Wielebinski) Yes, please.</b>                  18 A. Okay. "Acis and Acis GP became part of                  19 Highland's and Dondero's efforts to cons -- to                  20 construct a pretext of, quotes, for cause, end quotes,                  21 termination so Terry could be deni -- could be denied                  22 the value of his limited partnership interest in                  23 Acis."                  24 <b>Q. Go on.</b>                  25 A. "Acis and Acis GP knowingly and willingly</p>	<p style="text-align: right;">Page 149</p> <p>1 award, the consequence of it, as a given fact.                  2 <b>Q. Doesn't paint Highland in a very good light,                  3 does it?</b>                  4 A. No, it doesn't.                  5 <b>Q. That doesn't im -- impact in any way,                  6 though, your view of -- of Highland and your                  7 interaction with Highland; correct?</b>                  8 A. It has no relation at all on Highland as a                  9 portfolio manager and the performance and capabilities                  10 of the portfolio and management team headed by Hunter                  11 Covitz. This relates to the breakdown in the                  12 relationship between Mr. Dondero and Mr. Terry.                  13 And I -- I have, as I say, no comment                  14 really to make on the arbitration award other than to                  15 note that it is what it is and it exists. And I --                  16 I -- I have no reason to sort of cast aspersions on                  17 the process. I mean, I understand Highland may think                  18 that they have grounds to appeal. I have no basis or                  19 standing on which to comment on that one way or                  20 another. It just is what it is.                  21 <b>Q. But this third-party dispute over an                  22 employment arrangement and whatever else --</b>                  23 A. Hmm.                  24 <b>Q. -- has caused and had a negative impact on                  25 HCLOF.</b></p>

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54 (Pages 210 to 213)

<p style="text-align: right;">Page 210</p> <p>1 Mr. Sevilla.                  2 (Exhibit Number 17 marked.)                  3 <b>Q. (By Mr. Wielebinski) Okay. Let me hand you</b>                  4 <b>what's been marked as Exhibit Number 17.</b>                  5 <b>Have you seen that before?</b>                  6 A. Yes. I think I've seen this before.                  7 <b>Q. And when did you see it?</b>                  8 A. Well, it's dated the 13th of November. So                  9 it would be sometime subsequent to that. Probably                  10 very soon thereafter. I would think about a couple of                  11 weeks ago.                  12 <b>Q. All right. And you see that HCLOF is named</b>                  13 <b>as a party, do you not?</b>                  14 A. Yes. We're named there as a third-party                  15 defendant.                  16 <b>Q. Okay.</b>                  17 A. And also as a counter-defendant.                  18 <b>Q. All right. And will you look at Paragraph 1</b>                  19 <b>on Page 2 of 80?</b>                  20 A. Yes.                  21 <b>Q. Now, do you understand that this lawsuit or</b>                  22 <b>the claims that are asserted by the trustee are in</b>                  23 <b>response to claims that were brought by you and</b>                  24 <b>Highland Capital Management? "You" being HCLOF?</b>                  25 MR. WIELEBINSKI: I'm going to object</p>	<p style="text-align: right;">Page 212</p> <p>1 <b>Q. Uh-huh.</b>                  2 A. Yes, I see that.                  3 <b>Q. And were you aware that claims that were</b>                  4 <b>asserted by you and Highland Capital had been</b>                  5 <b>dismissed without prejudice?</b>                  6 A. I was aware that on one of the many, many                  7 hearings in this whole process some claims had been                  8 dismissed without prejudice for various technical                  9 reasons.                  10 <b>Q. Okay. And will you look at the heading</b>                  11 <b>where it's titled Parties?</b>                  12 MR. MALONEY: Where are you? What                  13 page?                  14 MR. WIELEBINSKI: Page 4 of 80.                  15 <b>Q. (By Mr. Wielebinski) Do you see Paragraph</b>                  16 <b>9?</b>                  17 A. I do.                  18 <b>Q. Highland Funding is listed as one of the</b>                  19 <b>parties?</b>                  20 A. Yes.                  21 <b>Q. All right. Do you know what claims you're</b>                  22 <b>being named as a party for?</b>                  23 A. Well, as I say, I've not read this                  24 particular document. I -- I'm going to speculate and                  25 give you the opportunity to correct me, but I think</p>
<p style="text-align: right;">Page 211</p> <p>1 to foundation. It calls for a legal conclusion or to                  2 the extent his answer reflects any information he                  3 received from counsel.                  4 A. Let me say a number of things. The first                  5 one is, I've not read this document in detail. We                  6 have had a lot to deal with. So our focus at the                  7 moment has been on this Plan D confirmation process.                  8 So this, if you like, is in the "In"                  9 tray to be dealt with at a future date. Quite what,                  10 if you like, the -- if you like, the stimulants to                  11 which the trustee is -- is reacting. To the many                  12 different things that there have been in this action,                  13 I -- I couldn't really say at this juncture.                  14 <b>Q. (By Mr. Wielebinski) Okay. Look again at</b>                  15 <b>Paragraph 1, Page 1.</b>                  16 A. Yes.                  17 <b>Q. I'm sorry, Page 2. Do you see the first</b>                  18 <b>sentence where it says "All claims asserted in the</b>                  19 <b>original complaint by Highland Capital and Highland</b>                  20 <b>CLO Funding --," which is referred to as Highland</b>                  21 <b>Funding --," have been dismissed without prejudice"?</b>                  22 A. This is on the -- the second line --                  23 <b>Q. Correct.</b>                  24 A. -- of Paragraph 1 underneath Answer and                  25 Affirmative Defenses?</p>	<p style="text-align: right;">Page 213</p> <p>1 these are in relation to the allegations of some form                  2 of fraudulent transfer.                  3 <b>Q. Would that be the transactions that you</b>                  4 <b>described were a unitary transaction around October of</b>                  5 <b>2017?</b>                  6 MR. MALONEY: I'm going to object to                  7 form, foundation, particularly with respect to the                  8 specific transactions you may be referring to.                  9 A. I -- I think there's an overlap there, but I                  10 don't think everything that we did in October and                  11 November of 2017 is, if you like, the subject of such                  12 claims. I think there are some things which have been                  13 picked out.                  14 My recollection is, I think there are                  15 probably three sets of -- broadly, of things that the                  16 trustee alleges that we've done somehow wrongful acts,                  17 and in his characterization designed to strip Acis of                  18 value or words to that effect. So, I mean, that --                  19 that's my understanding. Now, as I say, I've not read                  20 this document, which is 80 pages long. So if I'm                  21 incorrect in what I've just said, please, do correct                  22 me.                  23 <b>Q. (By Mr. Wielebinski) Okay. If you would</b>                  24 <b>look at -- well, just go to the headings. Look at</b>                  25 <b>Count Number 10.</b></p>

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55 (Pages 214 to 217)

<p style="text-align: right;">Page 214</p> <p>1 A. Which page am I on now? 2 <b>Q. That's Page 38 of 80.</b> 3 A. 38. 4 MR. MALONEY: Page 38? 5 MR. WIELEBINSKI: Page 38 of 80 at the 6 bottom. 7 THE WITNESS: Where there's the heading 8 Count 10, and then we have Paragraphs 121 and 122. 9 <b>Q. (By Mr. Wielebinski) Right. One of the --</b> 10 <b>the transfers that's sought to be avoid -- avoided is</b> 11 <b>the ALF PMA transfer.</b> 12 <b>Do you see that?</b> 13 A. Yes, I understand that. 14 <b>Q. Okay. And then Count 13 as well as Count</b> 15 <b>14, Count 15...</b> 16 A. 13, right. And 14? 17 <b>Q. And 15 and 16.</b> 18 A. And 16. 19 <b>Q. Those all relate to alleged fraudulent</b> 20 <b>transfer for the ALF share transfer?</b> 21 A. Well, that's what the subheadings say. I 22 haven't had time to read the whole document, but -- 23 <b>Q. What -- what are the shares -- do you</b> 24 <b>know -- that were transferred at or about that time?</b> 25 A. The only shares that I'm aware of being</p>		<p style="text-align: right;">Page 216</p> <p>1 <b>the note transfer?</b> 2 MR. MALONEY: Objection to foundation 3 and form. 4 A. No. I think we discovered it in various 5 filings in and around that time. It was -- it was 6 sort of brought up, as it were, I think, by the 7 trustee, to be frank. 8 <b>Q. (By Mr. Wielebinski) And then if you would</b> 9 <b>look at the Count 21, 22, 23, 24, you notice those are</b> 10 <b>all counts to seek to avoid as fraudulent transfers</b> 11 <b>the 2017-7 equity and 2007 -- 2017-7 agreement</b> 12 <b>transfers.</b> 13 <b>Are you familiar with those at all?</b> 14 A. Not at all. I -- I'm -- I -- I wasn't aware 15 that there was any issue to do with alleged transfers 16 of agreements in respect of that entity. 17 <b>Q. Okay. Will you look at Paragraph 198? It's</b> 18 <b>on Page 58.</b> 19 A. 198, initial transfer -- transferee. 20 MR. MALONEY: Wait, one -- one second. 21 Let me make sure I get there. Are you talking about 22 Paragraph 198? 23 MR. WIELEBINSKI: Yes. 24 MR. MALONEY: Okay. 25 <b>Q. (By Mr. Wielebinski) And you'll see it's</b></p>
<p style="text-align: right;">Page 215</p> <p>1 dealt with at that time was the repurchase by the fund 2 for cancellation of the, roughly, \$1 million worth or 3 0.7 percent of the shared capital of HCLOF. 4 <b>Q. Okay. And if you'd look at Count 17, 18,</b> 5 <b>19, 20, you see that they're all attempts to avoid as</b> 6 <b>fraudulent transfers the note transfer?</b> 7 MR. MALONEY: Objection, foundation. 8 A. Well, that's what the document appears to 9 say. 10 <b>Q. (By Mr. Wielebinski) And what was the note</b> 11 <b>that was transferred at or about that time? Do you</b> 12 <b>know?</b> 13 A. Well, that's a very good question. We knew 14 nothing about this note. Those are an internal 15 arrangement within various parties loosely within, 16 what you might call, the Highland affiliation or 17 whatever. 18 <b>Q. Okay.</b> 19 A. So we didn't know anything about that until 20 about June this year. The fund was not a party to the 21 note, and it was not involved in any way in any 22 transfer or whatever in relation to the note. So 23 it's -- it's an -- it's an item that we know nothing 24 about and have no involvement in. 25 <b>Q. So Highland is the one that told you about</b></p>		<p style="text-align: right;">Page 217</p> <p>1 <b>under something described as Count 26, Liability for</b> 2 <b>Avoided Transfers under 11 U.S.C., Section 550.</b> 3 A. Uh-huh. 4 <b>Q. Do you see that Highland Funding is listed</b> 5 <b>there?</b> 6 A. Yes. 7 <b>Q. And can you read that out loud for me,</b> 8 <b>please?</b> 9 A. 198? 10 <b>Q. Yes.</b> 11 A. Yeah. Well, I'm not necessarily agreeing 12 with what it says. 13 <b>Q. Sure.</b> 14 A. But, as a matter of fact, what the -- the 15 words on the page say is that "Highland Funding is an 16 initial transferee of all transfers sought to be 17 avoided in Counts 13 to 16 above, and Highland Capital 18 is an entity for whose benefit such transfers were 19 made. The trustee may recover all avoided transfers 20 from Highland Funding and Highland Capital pursuant to 21 Section 550." 22 <b>Q. What do you understand that to say, if you</b> 23 <b>know?</b> 24 MR. MALONEY: I'm going to object to 25 the extent the witness has any understanding. I'm</p>

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56 (Pages 218 to 221)

<p style="text-align: right;">Page 218</p> <p>1 also going to object to the extent that these 2 proceedings are being used to get some sort of 3 preanswer. This document has not been answered or 4 responded to, and I'd also object to the extent it 5 calls for a legal conclusion. And I would caution the 6 witness not to speculate.</p> <p>7 A. Well, the answer is, I don't know. I'm not 8 an expert on U.S. bankruptcy law. I have no idea what 9 Section 550 means. It talks about transfers to be 10 avoided in Counts 13 to 16 above. We've discussed 11 some of those a moment -- a moment ago. And, as I 12 say, they are -- to the extent that they are 13 transactions at all, they are transactions in which 14 HCLOF had no involvement at all or any immoral or 15 illegal intent.</p> <p>16 MR. WIELEBINSKI: Hey, guys, can you 17 moot your phone, your lines, please, if you're 18 talking?</p> <p>19 Q. (By Mr. Wielebinski) So you're saying that 20 HCLOF knew nothing about the share transfers that's 21 Counts 13 to 16?</p> <p>22 A. Well --</p> <p>23 MR. MALONEY: Objection. Objection to 24 form and -- and foundation. And I'm also going to 25 again object to the extent that this deposition is</p>		<p style="text-align: right;">Page 220</p> <p>1 THE WITNESS: That's a net asset 2 value -- in a normal way, and we paid Acis Capital 3 Management in cash their proportionate share of the 4 fund on that basis. So there's no value transfer 5 there.</p> <p>6 With respect to the note, as I say, 7 it's a matter to which we were not a party. We've 8 never had any involvement in it, and we knew nothing 9 about it until it popped up in the proceedings 10 sometime in June or whatever this year. And -- and 11 the bit about the Acis CLO equity 2017-7 or whatever, 12 I simply don't know what you're talking about there. 13 That's a new one on me.</p> <p>14 Q. (By Mr. Wielebinski) Fair enough. Will you 15 look at Count 28, please, that's on Page 60 of 80?</p> <p>16 A. 60 of 80. 28, Civil Conspiracy to Breach 17 Fiduciary Duties.</p> <p>18 Q. And do you see down below in the left-hand 19 corner right at the bottom of the page Highland 20 Funding is named down there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It's the sentence that reads 23 "Finally, Highland Capital, Highland Funding, Dondero 24 and Waterhouse conspired to make numerous transfers to 25 denude Acis," and then it goes on.</p>
<p style="text-align: right;">Page 219</p> <p>1 being used to get a preanswer on a document that has 2 not yet been formally responded to in the court in 3 which -- in the proceeding in which it's filed.</p> <p>4 A. Well, I -- I don't know whether this is 5 exactly answering your question on point, but in 6 substance it is. We have not participated in any 7 fraudulent transfers. And we can argue about this at 8 a later date, which I think Mr. Maloney is saying is 9 the appropriate time to do it. But there was no value 10 in the ALF PMA in the way that the Chapter 11 trustee 11 suggests. It could not be used in the way that he 12 suggests to generate value for the estate or for Acis 13 Loan Funding to the detriment of its investors. Now, 14 that's my position. I know that you disagree with it, 15 but that's what it is.</p> <p>16 With respect to the ALF shareholding in 17 HCLOF, they were bought back for full value on the 18 same terms as would be offered to any other investor, 19 and they were paid out in cash on the dollar. And 20 they were -- when we calculated our NAV in a normal 21 way and they were given the --</p> <p>22 THE REPORTER: When we calculated what 23 in a normal --</p> <p>24 THE WITNESS: Our NAV.</p> <p>25 THE REPORTER: Thank you.</p>		<p style="text-align: right;">Page 221</p> <p>1 A. Yeah. Well, just because somebody makes an 2 allegation doesn't mean to say it's true. I think 3 I've already dealt with the ALF PMA transfer, the 4 share transfer, the note transfer, and the 2017-7 5 transfer, and the rest of it.</p> <p>6 And this thwarting some Universal/BVK 7 agreement transfer, again, that's a subject that I 8 know nothing about in which the funds -- I had no 9 involvement. And, therefore, I don't see why we -- or 10 how we could possibly conspire with anybody in respect 11 to that. It just doesn't make sense.</p> <p>12 Q. You -- will you look at Paragraph 29 for me, 13 please? That's on -- I'm sorry.</p> <p>14 A. You mean Count 29?</p> <p>15 Q. Count 29 --</p> <p>16 A. Right.</p> <p>17 Q. -- right. It's on Page 62.</p> <p>18 A. Yes.</p> <p>19 Q. And you see that's Aiding and Abetting 20 Breach of Fiduciary Duties?</p> <p>21 A. I see that.</p> <p>22 MR. MALONEY: One second.</p> <p>23 Q. And you see in Paragraph --</p> <p>24 MR. MALONEY: I'm not on the same 25 place. Are we on Count 29? What --</p>

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57 (Pages 222 to 225)

<p style="text-align: right;">Page 222</p> <p>1 THE WITNESS: Yeah. This is Page 62 of 2 80. It's over the page, Paragraph 216. 3 MR. MALONEY: Oh. It appears there's 4 two Count 29s. Nevertheless. 5 MR. WIELEBINSKI: I don't see two 29s. 6 Maybe yours is different. Maybe the paging pagination 7 is different. Oh, there are. I've got it. 8 THE WITNESS: No. There's two 29s, but 9 it's a different page. 10 MR. WIELEBINSKI: Thank you. So the 11 first Count 229. 12 MR. MALONEY: Or 29. You said 229. 13 MR. WIELEBINSKI: Yes, sorry. 14 <b>Q. (By Mr. Wielebinski) The first Count 29,</b> 15 <b>Aiding and Abetting Breach of Fiduciary Duties.</b> 16 A. Uh-huh. 17 <b>Q. And if you'll look at Paragraph 220 and 221,</b> 18 <b>you'll see that Highland Funding is named there, too.</b> 19 A. I see that we're named. 20 <b>Q. Okay. And do you see the Count 33 entitled</b> 21 <b>Alter Ego/Collapsing Doctrine/Unjust Enrichment?</b> 22 A. Yes, I see that. 23 <b>Q. If you look at Paragraph 244, do you see</b> 24 <b>Highland Funding is named there as well?</b> 25 A. Yes. I see that we're named there.</p>		<p style="text-align: right;">Page 224</p> <p>1 A. Yes. 2 <b>Q. And then Paragraph xi Highland Funding is</b> 3 <b>named for -- as -- as one of the parties for</b> 4 <b>attorney's fees and costs?</b> 5 A. I see that. 6 <b>Q. And then also in xii Highland Funding's</b> 7 <b>named?</b> 8 A. Yes, I see that. 9 <b>Q. "Fully liable for any judgment entered for</b> 10 <b>the trustee in this adversary proceeding."</b> 11 <b>Do you see all that?</b> 12 A. I see all that. 13 <b>Q. Okay. So you haven't had a chance yet to</b> 14 <b>file an answer in this case; correct?</b> 15 A. Well, personally I haven't, as I say, read 16 this document. 17 <b>Q. Uh-huh.</b> 18 A. We have other more pressing things to deal 19 with. I'm sure that an answer will be put forward in 20 due course. I don't know what more you want me to 21 say. I mean, you know, I -- I could pass comment on 22 the facts. I've already said what I've -- I've -- I 23 know about the ALF PMA, the share transfer and/or 24 don't know about the note or any of those other 25 matters which were alleged by the trustee in his usual</p>
<p style="text-align: right;">Page 223</p> <p>1 <b>Q. Do you see that it's saying "Should be</b> 2 <b>liable for any damages awarded under any count in this</b> 3 <b>amended -- amended answer as each is the alter ego of</b> 4 <b>the others"?</b> 5 <b>Do you see that?</b> 6 A. I see that it says that. 7 <b>Q. All right. And if you -- finally you'd look</b> 8 <b>on Page 77 under the Prayer, do you see in iii it asks</b> 9 <b>for a judgment against Highland Funding?</b> 10 A. Yes, I see that. 11 <b>Q. Okay. And then in vii it asks for a</b> 12 <b>judgment against Highland Capital and Highland</b> 13 <b>Funding?</b> 14 A. I see that, yes. 15 <b>Q. And then in iv it asks for a judgment</b> 16 <b>against Highland Funding among others?</b> 17 A. Yes. 18 <b>Q. And you see it says repunitive damages;</b> 19 <b>correct?</b> 20 A. I haven't seen -- yes, okay. Yes. 21 <b>Q. Okay. And also in x Highland Funding is</b> 22 <b>named?</b> 23 A. Yes. 24 <b>Q. For prejudgment and post-judgment and</b> 25 <b>interest?</b></p>		<p style="text-align: right;">Page 225</p> <p>1 highly inventive way to somehow conspire with the 2 various other Highland entities. 3 <b>Q. I know there's been no determination on</b> 4 <b>liability in this lawsuit, but part of the reason that</b> 5 <b>this lawsuit was filed was to undo those -- that</b> 6 <b>series of transfers and transactions in October of</b> 7 <b>2017.</b> 8 <b>Is that a fair statement?</b> 9 MR. MALONEY: Object to the form and 10 foundation and legal conclusion. 11 A. Well, I -- I think personally it was filed 12 at this time strategically to try to color these 13 present proceedings in respect of Plan D. But, I 14 mean, the -- if you like, the -- the -- the -- the 15 sort of apparent foundation of it is to undo these 16 supposed transfers or these transfers that were 17 supposedly somehow of fraudulent intent. 18 <b>Q. (By Mr. Wielebinski) And -- and those</b> 19 <b>transfers were all implemented by Highland.</b> 20 <b>Is that a fair statement?</b> 21 MR. MALONEY: I'm going to object to 22 the form and the foundation of the witness. 23 A. Well, I mean, to the extent that I've 24 already said, some of these matters are matters 25 outside our knowledge. So, for example, the note</p>

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65 (Pages 254 to 257)

<p style="text-align: right;">Page 254</p> <p>1 <b>Q. Is that your understanding of your duties</b> 2 <b>and obligations as a director of HCLOF?</b> 3 A. Well, it's -- yes. It's a general statement 4 of the duties of the directors of a fund. Therefore, 5 it applies to us. 6 <b>Q. Do you believe you've satisfied those</b> 7 <b>fiduciary -- or those duties in your role --</b> 8 A. Absolutely. 9 <b>Q. -- as a director of HCLOF?</b> 10 A. I certainly do. 11 MR. MALONEY: Is this 18? Exhibit 18? 12 THE WITNESS: Yes. 13 MR. WIELEBINSKI: Can we go off the 14 record for a minute? I've got to get a document. 15 THE VIDEOGRAPHER: We are off the 16 record at 5:11. This is Disc 4, Volume 1. 17 (Break.) 18 THE VIDEOGRAPHER: On the record at 19 5:23. This is Disc 5, Volume 1. 20 <b>Q. (By Mr. Wielebinski) Was it your</b> 21 <b>understanding that HarbourVest required the removal of</b> 22 <b>Acis as portfolio manager and some of the transactions</b> 23 <b>that were done in October of 2017?</b> 24 A. We were told that it was a condition of the 25 transaction that Acis Capital Management depart as the</p>		<p style="text-align: right;">Page 256</p> <p>1 <b>bankruptcy court?</b> 2 A. I don't know. I've -- I've not been in 3 court when Mr. Ellington testified. 4 (Exhibit Number 19 marked.) 5 <b>Q. (By Mr. Wielebinski) Will you take a look</b> 6 <b>at Exhibit Number 19 for me, please?</b> 7 MR. MALONEY: Thanks. 19? 8 MR. WIELEBINSKI: Yes. 9 THE WITNESS: Okay. 10 <b>Q. (By Mr. Wielebinski) Do you see that's a</b> 11 <b>deposition of a representative of HarbourVest?</b> 12 A. Yes, I do. 13 <b>Q. Can you look at Page 31 for me, please?</b> 14 A. 31. Okay. Yes, I'm on Page 31. 15 <b>Q. Actually, could you look at Page 30? Start</b> 16 <b>with Line 1.</b> 17 A. "Are you aware that during the involuntary 18 trial...?" That line? 19 <b>Q. Yes, sir. Can you read that?</b> 20 A. Okay. "Are you aware that during the 21 involuntary trial a number of representations were 22 made to the court by counsel for Acis at that time 23 that HarbourVest only invested in HCLOF on the 24 condition that Acis would not have anything to do with 25 Acis CLOs going forward, and that the investor would</p>
<p style="text-align: right;">Page 255</p> <p>1 portfolio manager to the fund. And at the time we 2 interpreted that as being a, if you like, a condition 3 precedent set by HarbourVest. 4 But I understand on subsequent 5 clarification that that may not have been the reason 6 why there was a condition to the transaction. It may 7 have been a matter to do with the then applicable risk 8 retention rules and Acis being noncompliant in that 9 regard. So that's a sort of, if you like, a further 10 clarification that's been provided to us more 11 recently. 12 <b>Q. And who provided that to you?</b> 13 A. I think that that has come from, well, from 14 Mr. Maloney actually, but I don't want to -- 15 MR. MALONEY: Just to be clear, I don't 16 want you to reveal anything that you heard from 17 counsel; all right? 18 THE WITNESS: Okay. 19 MR. MALONEY: Okay? Let's -- let's be 20 clear about that. 21 THE WITNESS: Yeah. I don't think 22 Mis -- Mr. Maloney was necessarily providing advice in 23 that regard. I think he was passing something on. 24 <b>Q. (By Mr. Wielebinski) Do you know if</b> 25 <b>Mr. Ellington represented something different to the</b></p>		<p style="text-align: right;">Page 257</p> <p>1 demand its money back if a reset transaction was not 2 done with Acis. Are you aware of that 3 representation?" 4 <b>Q. Okay. And then if you could skip down to</b> 5 <b>Line 15, do you see it says "Okay. Do you agree with</b> 6 <b>that statement"?</b> 7 A. I see that. 8 <b>Q. And then the answer is "No"?</b> 9 A. I see that answer. 10 <b>Q. And then the question "Why not"?</b> 11 A. Yes. 12 <b>Q. Can you read that answer?</b> 13 A. Starting with Line 18, "We made an 14 investment here into a Highland-managed fund. I would 15 say that we very much viewed Acis and Highland as 16 interchangeable from the perspective of the, you know, 17 the actual investment opportunity. It was merely a 18 sort of name or branding issue from our perspective. 19 And so ultimately our investment was with the existing 20 Highland platform and the team and the strategy on a 21 go-forward basis. And so the naming convention around 22 the vehicle we invested into or the underlying CLO 23 vehicles was really of no concern from our 24 perspective." 25 <b>Q. Okay. Are you surprised by that statement?</b></p>

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66 (Pages 258 to 261)

<p style="text-align: right;">Page 258</p> <p>1 <b>Those statements?</b></p> <p>2 MR. MALONEY: Stop. Let -- let me</p> <p>3 object. I'm going to object to the premise. I'm</p> <p>4 going to object to having the witness read this</p> <p>5 transcript into the record and having asked questions</p> <p>6 based upon the premise that this -- this is the</p> <p>7 transcript. I have no reason to believe that it's</p> <p>8 not. But I object on the basis that it's inserting</p> <p>9 hearsay into the proceedings, and I object on the</p> <p>10 basis that the witness has no foundation other than</p> <p>11 you're showing him a document and he's reading it.</p> <p>12 <b>Q. (By Mr. Wielebinski) Are you surprised by</b></p> <p>13 <b>those statements?</b></p> <p>14 A. Yes, I'm surprised by that.</p> <p>15 <b>Q. And if you look on Page 31, do you see the</b></p> <p>16 <b>Line 3 and 4, "And HarbourVest made no demand upon</b></p> <p>17 <b>Highland with respect to the name"?</b></p> <p>18 A. I see that.</p> <p>19 <b>Q. And the answer is "No"?</b></p> <p>20 A. Yep, I see that.</p> <p>21 <b>Q. Will you read the next line -- the next</b></p> <p>22 <b>questions up to Line 12?</b></p> <p>23 A. "Are you aware that Scott Ellington, general</p> <p>24 counsel for HCM, testified that HarbourVest said with</p> <p>25 absolute certainty that they had no interest in doing</p>		<p style="text-align: right;">Page 260</p> <p>1 What I'm sort of surprised about in a</p> <p>2 way is the apparent conflict between, you know, what's</p> <p>3 said here by -- and I think Mr. Pugatch, or -- or</p> <p>4 however one pronounces the name, is a representative</p> <p>5 of Highland. And what we were told and what our</p> <p>6 lawyer was told at the time -- and I'm treading</p> <p>7 slightly carefully here because I -- I don't want to</p> <p>8 go into a situation of supposedly waiving privilege.</p> <p>9 But we were told in writing that the change from Acis</p> <p>10 was a condition of the transaction, quote-unquote.</p> <p>11 <b>Q. Imposed by HarbourVest?</b></p> <p>12 A. I didn't say that actually.</p> <p>13 <b>Q. They did not?</b></p> <p>14 A. They said it was a condition of the</p> <p>15 transaction. We might have been left to infer that,</p> <p>16 but it didn't actually say that.</p> <p>17 <b>Q. Are you surprised that -- are you surprised</b></p> <p>18 <b>that at least the statement seems to be that what</b></p> <p>19 <b>Mr. Ellington told the court was inaccurate?</b></p> <p>20 MR. MALONEY: Objection, form,</p> <p>21 foundation.</p> <p>22 A. Well, I -- I -- I know no more about what</p> <p>23 Mr. Ellington told the court than what you've just</p> <p>24 told to me and what is put to the -- to Mr. Pugatch in</p> <p>25 this deposition.</p>
<p style="text-align: right;">Page 259</p> <p>1 business with Acis because the Acis brand was</p> <p>2 purportedly toxic, and consequently nothing associated</p> <p>3 with Acis could be managed or marketed as a CLO? Are</p> <p>4 you aware of that statement?"</p> <p>5 <b>Q. Okay. And then if you skip down to Line 17,</b></p> <p>6 <b>18, "Okay. Is that statement true?" That's from</b></p> <p>7 <b>Mr. Prostok. And the answer?</b></p> <p>8 MR. MALONEY: I'm going to object</p> <p>9 again, same basis as before. You're asking the</p> <p>10 witness to read another transcript into the record,</p> <p>11 and I -- I object to that. I object on hearsay. I</p> <p>12 object on foundation. I object to the form of the</p> <p>13 question.</p> <p>14 MR. WIELEBINSKI: Okay.</p> <p>15 <b>Q. (By Mr. Wielebinski) And are you surprised</b></p> <p>16 <b>by those answers?</b></p> <p>17 A. Well, the -- the -- the answer is "Yes" and</p> <p>18 "No." I'm surprised -- well, firstly, I'm not</p> <p>19 surprised actually that an investor regards Acis and</p> <p>20 Highland in some senses as interchangeable. Because,</p> <p>21 remember, Acis was nothing more really than a paper</p> <p>22 company. The investment engine was the team at</p> <p>23 Highland. So, as far as HarbourVest is concerned, I</p> <p>24 can see the point that they would perceive it's just a</p> <p>25 bit of Highland. So I -- I can totally get that.</p>		<p style="text-align: right;">Page 261</p> <p>1 <b>Q. (By Mr. Wielebinski) Okay. Will you look</b></p> <p>2 <b>at Page 58, please?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Let me ask you this: Did you make your</b></p> <p>5 <b>investor, HarbourVest, aware of the litigation you</b></p> <p>6 <b>commenced in Guernsey against Mr. Terry?</b></p> <p>7 A. We fund -- I don't think consulted with</p> <p>8 HarbourVest beforehand or reported it directly to them</p> <p>9 afterwards.</p> <p>10 <b>Q. So they're not aware of it today?</b></p> <p>11 A. They may or may not be aware of it. I don't</p> <p>12 know if Highland told them about it.</p> <p>13 <b>Q. Do you think it was appropriate --</b></p> <p>14 THE REPORTER: I don't know what?</p> <p>15 THE WITNESS: If Highland told them</p> <p>16 about it.</p> <p>17 <b>Q. (By Mr. Wielebinski) Do you think it's</b></p> <p>18 <b>important that they know?</b></p> <p>19 A. I think it would be interesting for them to</p> <p>20 know, but it's not a requirement necessarily they be</p> <p>21 informed. I mean, they will necessarily, I think, be</p> <p>22 informed in due course.</p> <p>23 <b>Q. Could you look at Page 64, please?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Take a look at -- at the question starting</b></p>

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67 (Pages 262 to 265)

<p style="text-align: right;">Page 262</p> <p>1 with Line 13, please. I'll read it to you. "But have 2 you expressed an opinion in this case different than 3 Highland's at any point?" And there's some 4 objections, "With respect to the bankruptcy matters?" 5 And there's an objection. And then Mr. Prostok says 6 "Yes, to Highland." Deponent, "I think the --," and 7 Ms. O'Neil objects, and the deponent then answers in 8 Line 23. 9 Can you read that to me, please? 10 A. "The primary opinion we've expressed to 11 Highland, I would say, is a desire to see this all go 12 away quickly, to be able to get back to the original 13 investment thesis or premises of the investment that 14 we had made, which would have included the ability to 15 refinance or reset the underlying CLOs, given that the 16 current situation, you know, in our view, is untenable 17 vis-a-vis the go-forward equity returns of holding 18 those positions in their current capital structure or 19 form today." 20 Q. You haven't talked to HarbourVest; correct? 21 MR. MALONEY: Objection. I'm going to 22 object to the premise of the question, the reading 23 into the record of the transcript, which may or may 24 not be hearsay, may or may not have a basis to be read 25 into the record, and the foundation of the quest --</p>		<p style="text-align: right;">Page 264</p> <p>1 have said in terms of the specific parts that you have 2 drawn to my attention because I've not seen this 3 transcript before today. So I've only got knowledge 4 of the bits that you've drawn my attention to. But 5 there's nothing in it in that sense that's a surprise 6 about HarbourVest's view of life. 7 Q. You're taking that view into consideration, 8 though, when you act as a director. 9 Is that a fair statement? 10 MR. MALONEY: Objection, foundation and 11 form. 12 A. What we're doing when we're acting as a 13 director is acting in the best interest of the company 14 as we see it on the basis of the information that's 15 available to us. And, you know, we're acting in good 16 faith in that regard. 17 Q. (By Mr. Wielebinski) Sometimes the 18 information hasn't been made available to you, though, 19 has it, by Highland? 20 You've -- you've given me a few 21 examples today. 22 A. It's -- it's -- it's al -- 23 MR. MALONEY: Object -- objection to 24 form and foundation. 25 A. It's always going to be the case in any sort</p>
<p style="text-align: right;">Page 263</p> <p>1 question and the form of the question. 2 Q. (By Mr. Wielebinski) You've had no 3 communications with HarbourVest directly; correct? 4 A. Well, I've had no direct communication with 5 HarbourVest. The view that's expressed there doesn't 6 surprise me. It's an entirely rational view of an 7 investor to express. 8 Q. Including they want an expedient result; 9 correct? 10 Isn't that what they're saying? 11 MR. MALONEY: Objection -- 12 A. Well -- well -- 13 MR. MALONEY: -- foundation. 14 A. We would all be delighted, the board 15 included, if the trustee would just fold up his tents 16 and go away, and that would be a very quick and 17 expedient resolution. Unfortunately I don't think 18 it's going to happen. But, yes, we would all love 19 this to go away. Of course, we would. 20 Q. (By Mr. Wielebinski) Did Highland 21 communicate this view from HarbourVest to you as a 22 director of HCLOF? 23 A. Yes. We've had -- well, we've had periodic 24 verbal reports about liaison with HarbourVest. And, I 25 mean, there's nothing, as I say, in what HarbourVest</p>		<p style="text-align: right;">Page 265</p> <p>1 of business situation that there are going to be 2 pieces of the information matrix that you don't have 3 either because people haven't told you or because 4 they're not discoverable or -- or whatever. So you 5 have to make judgments based on what you have. 6 Q. (By Mr. Wielebinski) In -- in this 7 circumstance, though, where it certainly, I think it's 8 fair to say, has been time-consuming and frustrating, 9 it's important that you have as much information as 10 possible, isn't it? 11 MR. MALONEY: Objection, form, 12 foundation. 13 A. I agree that as a matter of general 14 principle, that applies equally to this situation, the 15 more information and insight you have, the better. 16 Q. (By Mr. Wielebinski) Have you been 17 satisfied with the information flow that you've 18 received from Highland in -- in this matter? 19 A. Broadly, yes. I mean, there are bound to be 20 areas where I think the information flow has been less 21 good than it should have been. And I certainly would 22 have liked it to have been much better with hindsight, 23 yes. 24 Q. Can you look at Page 85 for me, please? And 25 if you would read Line 4 through 17.</p>

WILLIAM SCOTT

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<p style="text-align: right;">Page 266</p> <p>1 A. 85, Lines 4 through 17? 2 <b>Q. Yes, sir.</b> 3 MR. MALONEY: Object again to reading 4 into the record. 5 A. "I just want --." I don't believe this -- 6 oh, this is the man from HarbourVest. "I just wanted 7 to also sort of make the point that I think a 8 continuation of the status quo -- i.e., the situation 9 that we're in, without the ability to refind -- 10 refinance or reset in the immediate term -- is 11 probably the most detrimental as we think about the 12 returns -- the return potential for HCLOF and, in 13 turn, us vis-a-vis the equity investment in these 14 CLOs. So, you know, something happening -- whether 15 that's a refinancing or a reset in the near term -- or 16 absent all of that, even a redemption or call of those 17 vehicles is a better option for us, purely 18 economically speaking as an investor in HCLOF, versus 19 just a continuation of the current situation -- 20 management by Brigade, but without the ability to 21 reset or refinance the capital structure of those 22 CLOs." 23 <b>Q. (By Mr. Wielebinski) Management by Brigade.</b> 24 <b>What does that mean? Do you know? Do</b> 25 <b>you think -- do you have a -- any comment to that?</b></p>		<p style="text-align: right;">Page 268</p> <p>1 A. I didn't disagree with that. 2 MR. MALONEY: I'm going to object to 3 form, foundation. You can answer. 4 A. I mean, as -- as the -- the mess that 5 Brigade is currently making of it, yes, I'm -- I'm -- 6 agree -- agree with that. It's not the optimal 7 solution, but it might be better than what we have at 8 the moment. 9 <b>Q. (By Mr. Wielebinski) It may be better, a</b> 10 <b>redemption? A liquidation may be better than what we</b> 11 <b>have at the moment?</b> 12 <b>Is that what you were saying?</b> 13 A. It may be. 14 <b>Q. Does it -- does it concern you at all as a</b> 15 <b>director that the 49 percent investor in your company</b> 16 <b>is -- is giving these kinds of statements?</b> 17 A. No. 18 <b>Q. And -- and why is that?</b> 19 A. Well, there's nothing in the statements 20 there that he said with which I fundamentally 21 disagree. 22 <b>Q. Can you look back at Exhibit Number 10 for</b> 23 <b>me?</b> 24 A. Uh-huh. These are the board minutes. 25 <b>Q. Yes, sir. Two things. One, can you look at</b></p>
<p style="text-align: right;">Page 267</p> <p>1 MR. MALONEY: I'm going to object again 2 to the premise, to the potential hearsay premise of 3 the entire question, reading into the record of a 4 deposition transcript, object to the form of the 5 question, and foundation. 6 A. Well, you're -- you're sort of taking me 7 selectively to various paragraphs, perhaps out of 8 contextual, I know. But the section that you just got 9 me to read, I don't disagree with that at all. And 10 when it says "management by grade -- Brigade," I don't 11 know if this is what the person who is speaking meant. 12 But what I interpret by that is, he's talking about 13 the de facto management or submanagement -- call it 14 what you will -- of the CLOs by Brigade as is the 15 current situation. 16 <b>Q. (By Mr. Wielebinski) He actually says in</b> 17 <b>here that even a redemption, essentially a</b> 18 <b>liquidation, would be better than what the alternative</b> 19 <b>is.</b> 20 MR. MALONEY: Objection -- 21 <b>Q. (By Mr. Wielebinski) Do you see that there?</b> 22 <b>"Even a redemption or call of those vehicles is a</b> 23 <b>better option for us."</b> 24 A. Uh-huh. Yes, I've just read that. 25 <b>Q. And you said you didn't disagree with that?</b></p>		<p style="text-align: right;">Page 269</p> <p>1 <b>6.3, Section 6.3?</b> 2 A. Yes. 3 <b>Q. Do you see where it says "It was noted that</b> 4 <b>each director undertook to disclose to the company and</b> 5 <b>his fellow directors any manner or circumstance of</b> 6 <b>which he or she was or became aware or which would</b> 7 <b>make the offering mem -- memorandum or any statement</b> 8 <b>in it misleading," and then it goes on?</b> 9 A. I see that paragraph, yes. 10 <b>Q. But you didn't have all the information to</b> 11 <b>determine whether any statement would be misleading</b> 12 <b>because Highland didn't share all the information with</b> 13 <b>you.</b> 14 <b>Isn't that a fair statement?</b> 15 MR. MALONEY: Objection, foundation. 16 A. Well, what this paragraph is saying is that 17 if any of the directors knows about something, then 18 they should disclose it to the -- the boards. But, 19 you know, you're talking now about things that we 20 didn't know about. 21 <b>Q. (By Mr. Wielebinski) Could that have an</b> 22 <b>impact on your investors, not being able to share</b> 23 <b>information that you subsequently have learned like</b> 24 <b>you have in this case?</b> 25 MR. MALONEY: I'm going to object to</p>

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

-----	X
	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	: Hearing Date: November 10,
	: 2020
	: Objection Deadline: November
	: 8, 2020
-----	X

**DECLARATION OF MICHAEL PUGATCH IN SUPPORT OF MOTION OF  
HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF CLAIMS FOR  
PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

---

I, Michael J. Pugatch, declare as follows:

1. I am a managing director of HarbourVest Partners, LLC. I submit this Declaration in support of the *Motion Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* filed on behalf of HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “HarbourVest”) being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge.

2. HarbourVest is a passive minority investor in Highland CLO Funds (“HCLOF”), a vehicle managed by Highland Capital Management LP (“Highland”). HarbourVest initially invested \$73,522,928 for a roughly 49% interest in HCLOF, on November 15, 2017. On February 9, 2018, HarbourVest contributed an additional \$4,998,501 following a capital call. To date, HarbourVest has received three dividends from HCLOF, each totaling \$1,570,429.

3. The unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228. HarbourVest’s expected proceeds from the original HCLOF investment were projected to exceed \$135 million.

4. Highland has charged over \$15 million in attorneys’ fees for HCLOF, Highland, Acis, Highland HCF, and others, to HCLOF. We, as shareholders, were made to pay these entities’ legal fees. HarbourVest’s share of these fees stands at more than \$7.5 million (as of June 30, 2020).

5. HarbourVest’s own legal fees spent protecting its interests have reached more than \$1 million to date, which include legal fees associated with HarbourVest responding to Rule

2004 discovery requests seeking documents and a deposition from HarbourVest in the Acis bankruptcy, monitoring the Acis bankruptcy for false statements regarding HarbourVest, assessment of legal claims and damages to HarbourVest attributable to Highland's conduct, as well as protecting HarbourVest's rights in the Highland bankruptcy, including through filing proofs of claim regarding HarbourVest's claims. These fees continue to accrue.

*[Remainder of page left intentionally blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 18, 2020  
Needham, MA, USA

By: /s/ Michael J. Pugatch  
Michael J. Pugatch  
Managing Director  
HarbourVest Partners, LLC

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

-----	<b>x</b>
	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	: Hearing Date: November 10,
	: 2020
	: Objection Date: November 8,
	: 2020
-----	<b>x</b>

**MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF  
CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) hereby moves (this “**Motion**”) this Court pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”) for entry of an order temporarily allowing HarbourVest’s claims for the purpose of voting to accept or reject the Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”) Plan (as defined below) in the above-captioned Chapter 11 case (“**Chapter 11 Case**”). In support of the Motion, HarbourVest respectfully represents the following:

### INTRODUCTION

1. In its Solicitation Motion, the Debtor proposes to disallow for voting purposes all claims to which it has objected for any reason. The Debtor objected to the HarbourVest Claims (as defined below) on a perfunctory and unfounded basis, by tucking them in among the 92 claims in the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**” or “**Objection**”), which was an omnibus objection simply claiming, with no substance or explanation, that there was “no liability” for HarbourVest’s Claims. More than a month ago, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the “**Response**”), which amply

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not included in the Claim Objection (as defined herein); however, the Debtor has represented to HarbourVest that it was inadvertently omitted, and that Highland objects to it on the same grounds as other HarbourVest Claims.

detailed the legal and factual predicates for its claims. To date, that Response remains entirely un rebutted.

2. If the Solicitation Motion is granted, HarbourVest—one of Highland’s most significant creditors—would be disenfranchised in this Chapter 11 Case on the basis of a meritless, one-sentence “no liability” objection that is wholly insufficient to rebut HarbourVest’s prima facie case for its Claims. To avoid this unjust result, HarbourVest has filed this Motion pursuant to Bankruptcy Rule 3018, and seeks that the HarbourVest Claims be temporarily allowed for purposes of voting in full recognition of HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### **JURISDICTION AND VENUE**

3. The United States Bankruptcy Court for the Northern District of Texas (the “**Court**” or “**Bankruptcy Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief requested herein are sections 502 and 1126 of the Bankruptcy Code (“**Bankruptcy Code**”) and Bankruptcy Rules 3001 and 3018(a).

### **BACKGROUND**

#### **A. Case Background**

7. On October 16, 2019 (“**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

8. Since filing the petition, the Debtor has been operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On September 21, 2020, the Debtor filed the *First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1079] (the “**Plan**”) and related *Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1080] (the “**Disclosure Statement**”).

10. On September 28, 2020, the Debtor submitted the *Debtor’s Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice* [Docket No. 1108] (“**Solicitation Motion**”). The Solicitation Motion requests that the confirmation hearing for the Plan be held on December 3, 2020 at 9:30 a.m. (prevailing Central Time), or such other date as may be scheduled by the Court, and requests a Voting Deadline (as defined in the Solicitation Motion) of November 20, 2020 at 5:00 p.m. (prevailing Central Time).

### **B. HarbourVest Claims**

11. HarbourVest’s claims against Highland arise out of its November 15, 2017, investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s pattern of fraudulent behavior preceding and following the Investment, including its scheme to drain Acis Capital Management L.P. of assets and its many lies and omissions regarding this scheme to (and, in this Court, about) HarbourVest, and the subsequent fallout, caused serious injury to HarbourVest. This caused HarbourVest damages in excess of \$100 million, as detailed below. As a consequence of those damages, on April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”). In

addition, in its still-unrebutted response to Highland’s Claim Objection filed on September 11, 2020, HarbourVest described the HarbourVest Claims, and the supporting facts and law, in significant detail.<sup>2</sup>

12. As described in the Response, HarbourVest has strong claims against Highland under a number of legal theories, including but not limited to claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duties, misuse of fund assets, U.S. state and federal securities law claims, violations of the federal Racketeer Influenced and Corrupt Organizations Act (“**RICO**”), and unfair prejudice under the Guernsey Companies Law.

13. These claims entitle HarbourVest to recovery of the significant damages it has experienced following Highland’s fraudulent inducement of HarbourVest into the HCLOF investment, which include:

- Investment-related losses as of August 31, 2020 of **more than \$100 million**, taking into account the original expected proceeds<sup>3</sup> from HarbourVest’s **\$78,521,429 of contributions to HCLOF<sup>4</sup> plus 5% interest per year<sup>5</sup>**;

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<sup>2</sup> The Response, which is incorporated into this Motion by reference to avoid repetition, provides an extensive description of the HarbourVest Claims, as well as a thorough demonstration of the fatal defects of the Claim Objection as applied to them, which are only summarized herein.

<sup>3</sup> 41 Tex. Jur. 3d Fraud and Deceit § 105; *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768 (Tex. 2009). As discussed further in the Response, separate from the remedies available to HarbourVest for its claims under U.S. federal and state law, the court’s remedial powers for a Guernsey unfair prejudice claim, *see* Response at 23–25, are broad. Section 350 of the Guernsey Companies Law provides: “[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.” Such relief may include ordering a buyout of the applicant’s interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; *see also Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420.

- HarbourVest’s share of years of staggering legal fees inappropriately charged to HCLOF: **more than \$7.5 million to date**<sup>6</sup>;
- **Exemplary or punitive damages** for Highland’s fraudulent behavior<sup>7</sup>;
- HarbourVest’s own legal fees incurred as a result of the Acis Trustee’s investigation of HarbourVest in the Acis bankruptcy and HarbourVest’s protection of its own rights: **more than \$1 million to date**.<sup>8</sup>

### C. Highland Objection and Subsequent Discussions

14. After HarbourVest filed its Proofs of Claim, Highland filed its Claim Objection.

While styled as a procedural and technical objection to claims which are facially deficient (such

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<sup>4</sup> See Pugatch Decl. ¶¶ 2–3. See also *Language People, Inc. v. Barish*, No. 03-18-00538-CV, 2019 WL 5057659, at \*7 (Tex. App. Oct. 9, 2019). For reference, the unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228.

<sup>5</sup> See, e.g., Tex. Rev. Civ. Stat. Ann. art. 581-33(D)(1) (“On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).”); see also *Duperier v. Texas State Bank*, 28 S.W.3d 740, 754 (Tex. App. 2000); *Covenant Capital Partners v. Soil Savers, Inc.*, No. 3:06-CV-0399-O, 2008 WL 2941125, at \*9 (N.D. Tex. July 30, 2008); Tex. Fin. Code Ann. § 304.003; Judgment Rate Ceilings Tex. Fin. Code §304.003 (2019), <https://occc.texas.gov/sites/default/files/uploads/interest/19.judgement-rate-summary.pdf>. Such remedies are available to HarbourVest for its securities fraud claims, among others.

<sup>6</sup> Pugatch Decl. ¶ 4.

<sup>7</sup> *Gen. Res. Org., Inc. v. Deadman*, 907 S.W.2d 22, 32 (Tex. App. 1995) (“Given the egregiousness of this scheme to defraud investors of large amounts of money we feel the award of punitive damages is warranted.”); *Artripe v. Hughes*, 857 S.W.2d 82, 87 (Tex. App. 1993) (“Fraudulent misrepresentations used to induce the creation of a contract, coupled with damages caused by the misrepresentation, will support an award for exemplary damages.”).

<sup>8</sup> Pugatch Decl. ¶ 5; see also *supra* n. 3, *Aquaplex*, 297 S.W.3d at 775-777. Under the Texas Securities Act, a party may also be entitled to recover reasonable attorney’s fees if the court finds that such recovery would be equitable. Tex. Rev. Civ. Stat. Ann. art. 581–33D(7); *Lane Hartman Ltd. v. P.R.O. Missions, Inc.*, No. 3:95-CV-0869, 1997 WL 457512, at \*9 (N.D. Tex. Aug. 5, 1997).

as late-filed claims and duplicate claims), it also included conclusory assertions of “no liability” regarding a number of claims, including the HarbourVest Claims. The Claim Objection—which makes no attempt to rebut any of the factual or legal bases of the well-founded HarbourVest Claims—fails for all the reasons set forth at length in the Response.

15. The Debtor advised HarbourVest that its objection to the Highland Claims was scheduled to be heard on October 6, 2020. However, after the Response was filed, recognizing that the HarbourVest Claims could not be easily disposed of, the Debtor sought to adjourn the hearing on its objection to the HarbourVest Claims. In an effort to be accommodating, and in light of the competing demands on the Court’s time and docket, HarbourVest agreed to temporarily adjourn the hearing.<sup>9</sup> Counsel to the respective parties continue to discuss an appropriate discovery and trial schedule.

### **RELIEF REQUESTED**

16. By this Motion, HarbourVest seeks entry of an order temporarily allowing the Claims for voting purposes, pursuant to Bankruptcy Rule 3018(a), in an amount that recognizes HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### **BASIS FOR RELIEF**

#### **A. Legal Authority**

17. Holders of allowed claims or interests are permitted to vote to accept or reject a chapter 11 plan. 11 U.S.C. § 1126. A claim represented by a timely and properly filed proof of claim “is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Once a party in interest objects to a filed claim, the holder of that claim may not (absent other relief) be entitled to vote on a chapter 11 plan while the objection is pending. *See* 11 U.S.C. § 1126. The

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<sup>9</sup> HarbourVest reserves all rights in connection with such adjournment.

proposed Solicitation Procedures, which provide that holders of claims that are subject to a pending objection are not entitled to vote on account of the disputed portion of their claims, reflects this statutory structure. *See* Solicitation Motion ¶ 43(d).

18. However, where a claim is not yet allowed (due to a pending objection or otherwise), bankruptcy courts “may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018. The policy behind Bankruptcy Rule 3018(a) is “to prevent possible abuse by plan proponents” who attempt to ensure acceptance of a plan by strategically objecting to the claims of dissenting creditors. *In re Armstrong*, 292 B.R. 678, 686 (10th Cir. B.A.P. 2003). Unless HarbourVest is permitted to vote the estimated amount of its claim, exactly this sort of abuse will be at play in this Chapter 11 Case.

19. Bankruptcy courts are given significant discretion and flexibility in estimating claims, with the goal that the process “must be accomplished quickly and efficiently.” *In re Adelpia Bus. Sols., Inc.*, 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003); *see also In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771, 774 (Bankr. S.D.N.Y. 1996). Bankruptcy courts also have flexibility to “employ whatever method is best suited to the circumstances of the case” when determining whether and in what amount to allow a claim for voting purposes. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. at 775; *see also In re Frascella Enters., Inc.*, 360 B.R. 435, 458 (Bankr. E.D. Pa. 2007). Rule 3018(a) contemplates only a summary estimation proceeding, not a full trial on the merits of the claim. *See, e.g., In re Windsor Plumbing Supply Co.*, 170 B.R. 503, 521 (Bankr. E.D.N.Y. 1994); *In re Zolner*, 173 B.R. 629, 633 (Bankr. N.D. Ill. 1994).

20. Although the Bankruptcy Code and the Bankruptcy Rules do not dictate a formal procedure for calculating a claim for voting purposes, courts have held that the calculation

“should ensure that the voting power is commensurate with the creditor’s economic interests in the case.” *In re Quigley Co.*, 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006). When determining whether to temporarily allow a claim, courts may look to (1) the debtor’s scheduling of the claim, (2) the details of the claim itself, and (3) the debtor’s objection to determine parties’ expectations regarding the amount and nature of the claim to be voted. *In re Stone Hedge Props.*, 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995). Calculation of a claim under Bankruptcy Rule 3018(a), however, is not determinative or preclusive of the ultimate validity or amount of the claim or any causes of action before a non-bankruptcy court. *See In re Quigley*, 346 B.R. at 654.

### **B. Argument**

21. The Debtor is well aware that the HarbourVest Claims cannot be disposed of through any rote objection—or even through briefing. Indeed, this is why the Debtor has sought to adjourn the hearing on the HarbourVest Claims. In three steps, the Debtor seeks to avoid having to litigate the HarbourVest Claims on a timely basis, while simultaneously denying HarbourVest a voice on the Plan and the ultimate treatment of its substantial claims in this Chapter 11 Case:

Step 1: File a one-line, baseless, procedurally improper, and facially insufficient objection to the HarbourVest Claims to render them *technically* “disputed” (without actually providing any facts or even argument to refute their validity).

Step 2: Refuse to withdraw the frivolous objection when HarbourVest provides a detailed basis for the HarbourVest Claims and emphasizes the impropriety of including the HarbourVest Claims in an unsupported omnibus objection.

Step 3: When publicly challenged in the Response—a pleading demonstrating the strength of the HarbourVest Claims, the extent of the Debtor’s deception and misconduct, and the vacuity of the Debtor’s objection——adjourn the hearing on that objection.

The result, if successful? The Debtor would have handily disenfranchised one of its largest creditors—located in what is likely to be a key class for its Plan—on the eve of confirmation.

22. Bankruptcy Rule 3018 is precisely the mechanism designed to avoid this sort of mischief. The Debtor contends that it cannot resolve the HarbourVest Claims prior to the confirmation hearing. While HarbourVest reserves its rights to seek formal allowance of its claims prior to confirmation, it acknowledges that a Rule 3018 valuation of its claims in full for voting purposes would allow the Debtor and the Court to focus time and resources on the Plan process while avoiding prejudice to HarbourVest.

23. Nonetheless, it is worth underscoring that the time pressure here was manufactured by the Debtor—it did not have to file a baseless objection it was unprepared to defend. It could instead have deferred litigation on the HarbourVest Claims and filed an objection later in the case (but for its desire to wrongfully strip HarbourVest, a major economic stakeholder, of its rightful say in the Plan process without a hearing). Or, the Debtor could have timely engaged with and provided a substantive response to HarbourVest’s detailed support of its claim filed weeks ago. The Debtor has done neither, however, and it would be unfair to permit the Debtor to strip HarbourVest of its voting rights based on an entirely unsupported objection that it is not timely pressing forward. Bankruptcy Rule 3018(a) “was designed to give all creditors, *even those holding disputed claims*, the opportunity to vote.” *In re Century Glove, Inc.*, 88 B.R. 45, 46 (Bankr. D. Del. 1988) (emphasis added).

24. HarbourVest has presented substantial and credible evidence and arguments in support of the validity and amount of its more than \$100 million damages directly caused by Highland's behavior. These damages are appropriately recoverable for the HarbourVest Claims.<sup>10</sup> In addition, HarbourVest's RICO claim entitles it to treble damages, which are properly considered in the claims estimation process. *See In re Hydrox Chem. Co.*, 194 B.R. 617 (Bankr. N.D. Ill. 1996) (estimating value of claim for Rule 3018 purposes based off of trebled RICO damages). Thus, for purposes of this Rule 3018 motion and without prejudice to its right to adduce additional evidence in the future regarding its damages, HarbourVest respectfully requests that its claims be estimated at \$300 million for voting purposes.

25. To date, the Debtor has provided no evidence, no factual assertions, and no analysis of the HarbourVest Claims under the applicable standard, to rebut the prima facie case that HarbourVest has put forward on its claims. To the contrary, Highland has unjustly attempted to disenfranchise HarbourVest on the eve of confirmation of the Plan by filing an objection to the HarbourVest Claims that does not satisfy the Debtor's minimal burden to provide sufficient evidence that an actual dispute exists as to the validity or amount of HarbourVest's Claims. Under the circumstances present here, the Court should exercise its discretion to temporarily allow the HarbourVest Claims in their full face amount for purposes of voting on the Plan. Allowing HarbourVest to vote the full face value of its claims comports with the spirit of the Bankruptcy Code, which encourages creditor voting and participation in the reorganization process. *In re Amarex Inc.*, 61 B.R. 301, 303 (Bankr. W.D. Okla. 1985) (“[T]o allow [the disputed claims] to vote on the plans, even though some may be eventually disallowed

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<sup>10</sup> *See supra* nn. 3–8.

for purposes of distribution, is more in keeping with the spirit of Chapter 11 which encourages creditor vote [sic] and participation in the reorganization process”).

26. In sum, the HarbourVest Claims should be entitled to temporary allowance for purposes of voting on the Plan because: (i) HarbourVest’s filing of proofs of claim constitutes prima facie evidence of the validity of the Claims and HarbourVest’s Response—now filed more than a month ago—provides credible and detailed descriptions of the HarbourVest Claims and remains unrebutted; (ii) the Debtor’s Objection is procedurally and substantively deficient, and (iii) even if the Debtor’s Objection were not flawed, it would have been filed with insufficient time and insufficient specificity to be addressed prior to the deadline for voting on the Plan. Allowing the full amount of the HarbourVest Claims for voting purposes simply restores the status quo that would have obtained if Highland had not engaged in yet another scheme—this time to deprive a major creditor of its voting rights—and had instead only filed objections it was prepared to defend, when it was prepared to do so. This is the precise circumstance for which temporary allowance of claims was created.

#### **RESERVATION OF RIGHTS**

27. The liquidation of the HarbourVest Claims is only for voting on the Plan and shall not constitute or be construed as an admission by HarbourVest of any limitation on the ultimate allowed amount of the HarbourVest Claims or the classification of such claims. HarbourVest does not waive, and expressly reserves, all rights, arguments, counterarguments, and defenses, including, without limitation, the right to contest in any court of competent jurisdiction any objection to the basis and/or validity of the ultimate amounts of the HarbourVest Claims.

### **NOTICE**

28. HarbourVest will provide notice of this Motion to: (a) the Debtor; (b) counsel to the Debtor; (c) the United States Trustee; and (d) all parties that have filed a notice of appearance and request for service of papers pursuant to Local Bankruptcy Rule 2002. In light of the nature of the relief requested herein, HarbourVest respectfully submits that such notice is sufficient and that no other or further notice is necessary.

### **NO PRIOR WRITTEN REQUEST**

29. No prior written request for the relief sought herein has been made to this Court or any other court.

### **CONCLUSION**

WHEREFORE, for the reasons set forth herein, HarbourVest respectfully requests that this Court enter an order granting the relief requested in the Motion and temporarily allowing the HarbourVest Claims for voting on the Plan and granting such other and further relief as the Court deems just and proper.

*[Signatures on Next Page]*

Dated: Dallas, Texas

October 18, 2020

Respectfully submitted,

*/s/ Vickie L. Driver*

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HarbourVest Partners L.P., on behalf of funds  
and accounts under management*

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

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	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	:
	:
	:
-----	X

**ORDER SUSTAINING MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A)  
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY  
ALLOWANCE OF CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT  
THE PLAN**

CAME ON to be considered the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. [1207] (the “**Motion**”), which was filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”). As more fully set forth in the Motion, this Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; that consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; that due and proper notice of the Motion has been provided to the necessary parties; that no other or further notice need be provided; that the relief sought in the Motion is in the best interests of the Debtor<sup>1</sup>, their creditors, and all parties in interest; that HarbourVest has established just cause for the relief requested in the Motion; and that, upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is hereby SUSTAINED; and it is further

ORDERED that claim Nos. 143, 147, 149, 150, 153, and 154 are temporarily allowed in the aggregate amount of \$300,000,000.00; and it is further

ORDERED that notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim; (b) a waiver of any party’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section

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<sup>1</sup> All capitalized terms uses but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

365 of the Bankruptcy Code; or (e) a waiver of the Debtor's or HarbourVest's rights under the Bankruptcy Code or any other applicable law.

**### End of Order ###**

Submitted by:

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001906



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed April 13, 2018

  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-7  
§  
Alleged Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-7  
L.L.C., §  
§  
Alleged Debtor. §

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
ORDERS FOR RELIEF ISSUED AFTER TRIAL ON  
CONTESTED INVOLUNTARY BANKRUPTCY PETITIONS**

Joshua N. Terry (the "Petitioning Creditor" or "Mr. Terry") filed involuntary bankruptcy petitions (the "Involuntary Petitions") against each of the two above-referenced related

companies (the “Alleged Debtors”) on January 30, 2018.<sup>1</sup> The Involuntary Petitions were contested, and the court held a multi-day trial (the “Trial”) spanning March 21, 22, 23, 27, and March 29, 2018.<sup>2</sup> This constitutes the court’s findings of fact, conclusions of law and ruling, pursuant to Fed. Rs. Bankr. Proc. 7052 and 9014.<sup>3</sup> As explained below, the court has decided that Orders for Relief are legally required and appropriate as to each of the Alleged Debtors.

## **I. FINDINGS OF FACT**

### **A. Introduction.**

1. The Alleged Debtors—Acis Capital Management, L.P. (“Acis LP”), a Delaware limited partnership, and ACIS Capital Management GP, L.L.C. (“Acis GP/LLC”), a Delaware limited liability company—are two entities in the mega-organizational structure of a company that is known as Highland Capital Management, L.P. (“Highland”).

2. Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 (changing its original name from “Protective Asset Management” to Highland in 1997) by James D. Dondero (“Mr. Dondero”), originally with a

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<sup>1</sup> Exhs. 50 & 51.

<sup>2</sup> Shortly after the Involuntary Petitions were filed, the court held hearings on February 6-7, 2018, on the Petitioning Creditor’s Emergency Motion to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Import, Inter Alia, 11 U.S.C. § 363 [DE # 3] (the “303(f) Motion”) and the Alleged Debtors’ Emergency Motion to Seek Emergency Hearing on the Alleged Debtors’ Motion to Dismiss Involuntary Petitions and Request for Award of Fees, Costs, and Damages [DE # 9] (the “Emergency Motion to Set Hearing on Motion to Dismiss”). The court ultimately granted the 303(f) Motion and denied the Emergency Motion to Set Hearing on Motion to Dismiss. Both the Petitioning Creditor and the Alleged Debtors have proposed that the court should consider the evidence it heard at the hearings held on February 6-7, 2018, in determining whether it should enter orders for relief. The court has, accordingly, considered such evidence in this ruling.

<sup>3</sup> Bankruptcy subject matter jurisdiction exists in this contested matter, pursuant to 28 U.S.C. § 1334(b). This is a core proceeding over which the bankruptcy court may exercise subject matter jurisdiction, pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This bankruptcy court has Constitutional authority to issue a final order or judgment in this matter, as it arises under a bankruptcy statute—11 U.S.C. § 303. Venue is proper in this district, pursuant to 28 U.S.C. § 1409(a), as the Alleged Debtors have their business headquarters in this district.

75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest.<sup>4</sup>

3. Both Mr. Dondero and Mr. Akada provided witness testimony at the Trial on the Involuntary Petitions, and their names are mentioned numerous times herein—since they were generally the subject of significant evidence and argument presented at the Trial. Mr. Dondero is the chief executive officer for Highland and Mr. Akada is the chief investment officer. Mr. Dondero is also the president of each of the two Alleged Debtors.

4. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles ranging from: collateral loan obligation funds (“CLOs”); private equity funds; and mutual funds.

5. Highland’s CLO business was front-and-center at the Trial on the Involuntary Petitions. The Alleged Debtor, Acis LP, for approximately the past seven years, has been the vehicle through which Highland’s CLO business has been managed.

6. The Petitioning Creditor, Mr. Terry, became an employee of Highland in the year 2005, starting as a portfolio analyst, promoting to a loan trader, then ultimately becoming the portfolio manager for (and 25% limited partner in) Highland’s CLO business—specifically, Mr. Terry was the human being who was acting for the CLO manager, Acis LP.

7. Mr. Terry was highly successful in his role in the CLO business, managing billions of dollars of assets during his tenure, but Mr. Terry and Mr. Dondero had a bitter parting of ways on June 9, 2016. Specifically, Mr. Terry’s employment was terminated on that date (for

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<sup>4</sup> Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and Akada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable.

reasons that have been highly disputed) and his 25% limited partnership interest in Acis LP was deemed forfeited without any payment of consideration to him.

8. In September 2016, Highland sued Mr. Terry in the 162<sup>nd</sup> Judicial District Court of Dallas County, Texas (“State Court 1”) for breach of fiduciary duty/self-dealing, disparagement, breach of contract, and various other causes of action and theories. Mr. Terry asserted his own claims against Highland, and also claims against the two Alleged Debtors, Mr. Dondero, and others and demanded arbitration. On September 28, 2016, State Court 1 stayed the litigation and ordered the parties to arbitrate. The parties participated in ten days of arbitration in September 2017 before JAMS. On October 20, 2017, Mr. Terry obtained an Arbitration Award (herein so called),<sup>5</sup> jointly and severally against both of the Alleged Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate, which was based on theories of breach of contract and breach of fiduciary duties.

9. There are still claims pending between and among the Petitioning Creditor, Highland, and others (not including the Alleged Debtors) in State Court 1.

10. A Final Judgment (herein so called) confirming the Arbitration Award was entered by the 44<sup>th</sup> Judicial District Court of Dallas County, Texas (“State Court 2”) on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.<sup>6</sup>

11. Mr. Terry began pursuing post-judgment discovery soon after obtaining his Arbitration Award and even more so after entry of the Final Judgment. Mr. Terry undertook a UCC search on November 8, 2017, to investigate whether there were any liens on the Alleged

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<sup>5</sup> Exh. 1.

<sup>6</sup> Exh. 105.

Debtors' assets (none appeared).<sup>7</sup> Mr. Terry also pursued a garnishment of an Acis LP bank account (at a time when there was only around \$2,000 in the account). Mr. Terry's counsel deposed Highland's General Counsel Scott Ellington (who sat for the deposition as a representative of Acis, LP) on January 26, 2018, and asked numerous questions about: (a) how many creditors the Alleged Debtors had,<sup>8</sup> and (b) whether Acis LP was able to pay its debts as they became due,<sup>9</sup> but did not receive meaningful answers.

12. Mr. Terry requested a temporary restraining order ("TRO") from State Court 2, on January 24, 2018, after discovering certain transactions and transfers involving Acis LP's interests, that he believed were pursued without any legitimate business purpose and with the purpose of denuding Acis LP of its assets and to make it judgment proof. Most particularly, it appeared as though Highland was engaged in a scheme to transfer certain fee-generating CLO management contracts of Acis LP away from it and into a Cayman Island affiliate of Highland.<sup>10</sup> At a January 24, 2018 hearing on the request for a TRO, Acis LP agreed and State Court 2 ordered that, between that hearing and a later hearing on a request for a temporary injunction, no CLO management contracts would be transferred away from Acis LP and that no monies would be diverted from it.<sup>11</sup>

13. Then, on January 29, 2018, the Controller of and CPA for Highland (David Klos) submitted a Declaration to State Court 2 concerning the net worth of the Alleged Debtors, stating

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<sup>7</sup> Exh. 84.

<sup>8</sup> Exh. 25, pp. 7-9.

<sup>9</sup> *Id.* at pp. 102-04.

<sup>10</sup> Exh. 27.

<sup>11</sup> Exh. 28.

that Acis GP/LLC had a net worth of \$0 and that Acis LP might have a net worth, at best, of \$990,141.<sup>12</sup> Mr. Terry thought this was preposterous—given the management fees that Acis LP was entitled to and the receivables that should be owing to it. Mr. Terry believes that the collateral management agreements on which Acis LP receives management fees have a present value of \$30 million (about \$6 million for each of the five CLOs which Acis LP has been managing).

14. On January 29, 2018, the Alleged Debtors filed a motion for leave to post a supersedeas bond in the amount of \$495,070.50 with State Court 2 (purportedly half of the net worth of the two Alleged Debtors—as stated in the David Klos Declaration), so that they could suspend enforcement of the Final Judgment while they appealed it.<sup>13</sup> Although there is a very stringent standard for appealing an Arbitration Award, the Alleged Debtors apparently believe they have an argument that State Court 2 lacked the subject matter jurisdiction to confirm the Arbitration Award (a motion to vacate the Final Judgment based on this argument has previously been denied by State Court 2).<sup>14</sup>

15. Meanwhile, Mr. Terry was learning of more transactions and transfers involving Acis LP's assets and interests. On January 29, 2018, Mr. Terry filed supplemental pleadings with State Court 2, alleging that further shenanigans (*i.e.*, transfers and transactions that would amount to fraudulent transfers) were underway at Acis LP and seeking a receiver.<sup>15</sup> Also, at

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<sup>12</sup> Exh. 26.

<sup>13</sup> Exh. 73.

<sup>14</sup> See DE # 35, in Case No. 18-30264 and DE # 34 in Case No. 18-30265. Unless otherwise noted, references to “DE #” herein refer to the docket entry number at which a pleading appears in the docket maintained with the Bankruptcy Clerk in the Acis Capital Management L.P. bankruptcy case (Case No. 18-30264).

<sup>15</sup> Exhs. 28-31.

some point, in the weeks leading up to this, an Acis LP lawyer represented to Mr. Terry's counsel that the Alleged Debtors were "judgment proof."<sup>16</sup>

16. At approximately 11:57 p.m. on January 30, 2018 (on the evening before a scheduled temporary injunction hearing in State Court 2—at which time State Court 2 presumably might have considered the Alleged Debtors' request to post the \$495,070.50 supersedeas bond to stay enforcement of the Final Judgment), Mr. Terry filed the Involuntary Petitions, as a sole petitioning creditor, against both Acis LP and Acis GP/LLC.

17. For purposes of this Trial (and this Trial only), the Alleged Debtors do not dispute that Mr. Terry has standing to be a petitioning creditor pursuant to Bankruptcy Code section 303(b)—in other words, they do not dispute that Mr. Terry is a holder of a claim against the Alleged Debtors that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount and that aggregates at least \$15,775 in unsecured amount. However, the Alleged Debtors argue that: (a) the Alleged Debtors have *12 or more creditors* and, thus, three or more petitioning creditors were required to prosecute the Involuntary Petitions pursuant to Bankruptcy Code section 303(b)(1); (b) the Petitioning Creditor did not establish, pursuant to Bankruptcy Code section 303(h)(1), that the Alleged Debtors are not *generally paying their debts as such debts become due* unless such debts are the subject of a bona fide dispute as to liability or amount; (c) regardless of whether the Petitioning Creditor has met the statutory tests in sections 303(b)(1) and (h)(1), the Petitioning Creditor has acted in *bad faith*—which serves as an equitable basis for dismissal of the Involuntary Petitions; and (d) if the court disagrees with the Alleged Debtors and determines that the section 303(b) and (h) statutory tests are met, and also determines that the Petitioning Creditor has not acted in bad faith, the court should

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<sup>16</sup> Exh. 27 (exhibit 3 thereto).

nevertheless *abstain* in this matter, pursuant to Bankruptcy Code *section 305*, since this is essentially a two-party dispute and the interests of creditors and the debtor would be better served by dismissal.

18. The Petitioning Creditor argues that he has met the statutory tests of sections 303(b) and (h) but, even if he has not, there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor—which “special circumstances,” Mr. Terry alleges, have been established here. Moreover, the Petitioning Creditor argues that the facts here *do not warrant section 305 abstention* because the interests of creditors and the Alleged Debtors would not be better served by dismissal.

19. As further explained below, the court finds and concludes that the Petitioning Creditor has met his burden of proving by a preponderance of the evidence that the statutory tests of sections 303(b) and (h) are met here. Thus, the court does not need to reach the question of whether there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor, and—if so—whether the exception is applicable here.<sup>17</sup>

20. Moreover, the Alleged Debtors have not shown by a preponderance of the evidence that the Petitioning Creditor acted in bad faith, such that the Involuntary Petitions should be dismissed.

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<sup>17</sup> See e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

21. Finally, the Alleged Debtors also have *not shown facts here that warrant section 305 abstention* because they have not shown that the interests of creditors and the Alleged Debtors would be better served by dismissal.

**B. The CLO Business: Understanding the Alleged Debtors' Business Operations, Structure, and What Creditors and Interest Holders They Actually Have.**

22. Highland set up its first CLO in the year 1996. Highland was one of the early participants in the CLO industry.

23. The Alleged Debtors were formed in 2011 to be the new “brand” or face of the Highland CLO business, after Highland’s name had suffered some negative publicity in the marketplace.

24. Acis LP has acted as the portfolio manager of Highland’s CLOs since 2011. Acis LP currently has a contractual right to CLO portfolio management fees on five CLOs<sup>18</sup> which were referred to at the Trial as CLO 2013-1; CLO 2014-3; CLO 2014-4; CLO 2014-5; and CLO 2016-6. CLOs typically have an 8-12 year life. Thus, there are still several years of life left on these CLOs (since the oldest one was established in the year 2013).

25. The key “players” in and features with regard to the Highland CLOs, during the time period relevant to the issues adjudicated at the Trial, have been:

- (a) The CLO manager. As mentioned earlier, the CLO manager is the Alleged Debtor, Acis LP. Acis LP, has collateral management agreements (hereinafter, the “CLO Collateral Management Agreements”) with the CLOs (which CLOs were set up as special purpose entities) and, pursuant thereto, receives

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<sup>18</sup> There is still another Highland CLO (CLO 2017-7), set up in April 2017, as to which Acis LP’s contractual right to manage was terminated shortly before the Petition Date, as will be further described herein.

management fees<sup>19</sup> from the CLOs in exchange for managing the pool of assets within the CLOs and communicating with investors in the CLOs.<sup>20</sup> As mentioned earlier, Mr. Terry was the human being that performed the management function at Acis LP until Highland fired him on June 9, 2016 and also terminated his limited partnership interest in Acis LP. Mr. Terry, and all employees who have ever provided services to the CLO manager, are Highland employees—which were provided to Acis LP through shared and sub-advisory services agreements—as further explained below. Thus, to be clear, Acis LP has always essentially subcontracted its CLO managerial function out to Highland.

- (b) The pool of assets. Within each CLO that the CLO manager manages is a basket of loans that the CLO manager purchases. The basket of loans typically consists of approximately 200 loans-payable (or portions of loans payable), on which large well-known companies typically are the makers/obligors (and which loans, collectively, provide a variable rate of interest).<sup>21</sup> The CLO manager can typically decide to buy and sell different loans to go into the pool of assets, with certain restrictions, during a four or five year reinvestment time period.

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<sup>19</sup> These fees typically include “senior fees” (*e.g.*, 15 basis points); additional “subordinate fees” (*e.g.*, 25 basis points) if the CLOs are passing certain tests; and perhaps even an “incentive fee” beyond a certain hurdle rate (*e.g.*, after the equity in the CLO received an internal rate of return of 10%, the CLO manager would get 15% of the excess). Exh. 82, p. 59, lines 14-25.

<sup>20</sup> *See*, as an example, Exh. 3 (the collateral management agreement between Acis LP and CLO 2014-3). Note that the document is entitled “Portfolio Management Agreement” but, to avoid confusion with other similarly titled documents and to highlight the true nature of the agreement, the court uses the defined term “CLO Collateral Management Agreement,” which terminology the lawyers also sometimes used at the Trial.

<sup>21</sup> Exh. 8.

- (c) The CLO investors (*i.e.*, CLO note holders). These may be any number of persons or entities, including pension funds, life insurance companies, or others who decide to invest in the CLOs and contribute capital to fund the purchase of a CLO's loan pool, and, in return, receive fixed rate notes payable—the ratings on which can range anywhere from Triple-A to Single-B, depending upon the risk option the investor chooses. There are typically five or six tranches of notes issued by the CLO (with the top AAA-rated tranche being the least risky and the bottom tranche being the most risky) and—to be clear—the CLO itself (again, in each case, the CLO is a special purpose vehicle) is the obligor. As the CLO manager receives income from the pool of loans in the CLO, he distributes that income to the CLO investors, in accordance with their note indentures,<sup>22</sup> starting with the top tranche of notes and then down to the other tranches. The top tranche of notes (AAA-rated) is considered the “controlling” class and a majority of holders in this class can terminate the CLO manager (*i.e.*, Acis LP) for cause on 45 days' notice, although all parties seem to agree this would be a rare event.
- (d) The CLO equity holder. The CLO equity holder actually is a holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash

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<sup>22</sup> The indenture trustee on the CLO notes may actually operate as a payment agent in some cases, for purposes of making the quarterly note payments to holders.

flow from the CLOs. It, in certain ways, controls the CLO vehicle<sup>23</sup>—for example, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. (“ALF”), which was incorporated under the laws of the island nation of Guernsey,<sup>24</sup> was the CLO equity holder. To be clear, *ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP*. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the “ALF Portfolio Management Agreement”—not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements). The complicated structure of the CLO business—all parties seemed to agree—has been developed, among other reasons, to comply with “risk-retention requirements” imposed by the U.S. Congress’s massive Dodd-Frank financial reform legislation<sup>25</sup> enacted in year 2010, in response to the financial crisis and recession that first began in 2008.

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<sup>23</sup> The top tranche of AAA notes also has certain control—such as the ability to terminate the portfolio manager for cause, on notice.

<sup>24</sup> Guernsey is located in the English Channel. ALF was created in August 2015.

<sup>25</sup> Simply put, one of the results of the Dodd-Frank legislation (*i.e.*, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Congress, effective July 21, 2010), which was implemented over a period of several years, was that, *subsequent to December 2016*, managers of securitizations needed to retain at least a 5% interest in that securitization. Thus, if a \$400 million CLO were to be

(e) The Equity Owners of ALF. Until recently (*i.e.*, until October 24, 2017—four days after the Arbitration Award), Acis LP itself, as required for a CLO manager, had a 15% indirect ownership in ALF, in order to be regulatory compliant.<sup>26</sup> The parties sometimes refer to ALF (and the web of ownership between it and Acis LP) as the “risk retention structure.”<sup>27</sup> The evidence at the Trial revealed that ALF (which has recently been renamed), now, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from Highland, is managed/advised by Highland, and whose independent trustee is a long-time friend of Highland’s chief executive officer, Mr. Dondero; (ii) 2% is owned by Highland employees; and (iii) finally, ALF *may* be 49% owned by a third-party institutional investor based in Boston that Highland believed it was required to keep anonymous at the Trial. Not only is the court unaware of who this independent third-party is, but the evidence seems to suggest that it may have acquired its interest fairly recently or may have simply committed to invest recently.<sup>28</sup>

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issued, the CLO manager would need to retain at least 5% or \$20 million of the assets in the CLO (which 5% could be either all at the equity level or vertically, up and down the note tranches). There are multiple ways to accomplish this 5% retention (*i.e.*, with either the CLO manager directly investing in at least 5% of the CLO or doing it through a controlled subsidiary). This particular rule was announced in **December 2014** and the SEC thereafter issued a no action letter stating that *if a CLO was issued prior to December 2014*, then any refinancing of such CLO that happens within four years can be done without risk retention in place. Resets of any CLO (*i.e.*, changes in terms and maturity—as opposed to mere changes in interest rates), on the other hand, must have risk retention in place. **Four of Acis LP’s current CLOs were issued prior to December 2014**. Thus, these four CLOs are still technically able to do a refinancing without a risk retention structure in place. In any event, by early-to-middle 2017, Acis LP was risk retention compliant. Exh. 82, pp. 65-69 & 75. That was recently changed—on October 24, 2017—four days after the Arbitration Award—as later explained herein.

<sup>26</sup> See n.23, *supra*.

<sup>27</sup> See Demonstrative Aid No. 3.

<sup>28</sup> See Exh. 173, which seems to suggest that the only equity owners of ALF just prior to October 24, 2017 were Acis LP and the DAF, until Acis LP’s interest in ALF was sold back to ALF on October 24, 2017. See also Exh. 82, p. 162, lines 2-7.

- (f) The underwriter for the CLO notes. As with any publicly traded notes, there is an underwriter for the CLO notes which solicits investors for the CLO notes (examples given at the Trial: Mizuho Securities USA, LLC; Merrill Lynch; JP Morgan Chase).<sup>29</sup> The CLO notes are traded on the Over-the-Counter Market.
- (g) The independent indenture trustee for the CLO notes. As also with any issuance of publicly traded notes, there is an indenture trustee (example given at the Trial: U.S. Bank).<sup>30</sup>

26. Mr. Terry, the Petitioning Creditor, as earlier mentioned, began working for Highland in 2005 until his employment was terminated on June 9, 2016.

27. Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called),<sup>31</sup> which provides “back office” personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called),<sup>32</sup> which provides “front office” personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements. The court notes that

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<sup>29</sup> See Exh. 193.

<sup>30</sup> See Exh. 7.

<sup>31</sup> Exhs. 17, 99, 179 & 5.

<sup>32</sup> Exhs. 18, 178 & 4.

all iterations of the Shared Services Agreements and Sub-Advisory Agreements between Acis LP and Highland were signed by Mr. Dondero both as President of Acis LP and as President of the General Partner of Highland.

28. Because Acis LP essentially subcontracts out all of its functions to Highland pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, Acis LP has very few vendors or creditors. Rather Highland incurs expenses and essentially bills them to Acis LP through these two agreements.<sup>33</sup> In other words, Highland is one of Acis LP's largest and most frequent creditor.

29. The evidence reflected that at all times Mr. Dondero has been the President of both of the Alleged Debtors, and there have been, at all times, very few, if any, other officers. It appears that the only other officer of Acis GP/LLC that ever existed was Frank Waterhouse, Treasurer.<sup>34</sup> It also appears that the only other officer of Acis LP that ever existed was Frank Waterhouse, Treasurer, Mr. Terry as Portfolio Manager, and someone named Patrick Boyce as Secretary at one time.<sup>35</sup>

30. Mr. Dondero testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) and is rarely involved in "nitty gritty negotiations." Sometimes instructions will come to him from the compliance group headed up by Chief Compliance Officer Thomas Surgent. Additionally, he testified that he signs hundreds of documents per

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<sup>33</sup> Exh. 83, pp. 228 (line 8)-230 (line 14).

<sup>34</sup> See, e.g., Exh. 10 & Exh. 173, p.3

<sup>35</sup> Exhs. 14 & 15.

week, and much of what he signs is on advice of counsel and he sometimes even delegates to his assistant the authority to sign his name. As set forth above, Mr. Ellington (who *did not* testify at the Trial)<sup>36</sup> and Mr. Leventon (who *did* testify at the Trial) are not officers, directors, or employees of the Alleged Debtors. Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-Trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington, although Highland partners can ask him to perform legal services for any of Highland’s 2,000 entities.

**C. Transfers and Transactions Involving the Alleged Debtors Since the Litigation with Mr. Terry Commenced—and Especially After the Arbitration Award.**

31. Below is a listing of some (but not necessarily all) of the transfers and transactions that the Alleged Debtors, Highland, and related parties undertook *after* the litigation with Mr. Terry commenced.

- (a) Acis LP’s Sale to Highland of a “Participation Interest” in its CLO Cash Flow Stream. On October 7, 2016 (approximately one month after the litigation arose among Mr. Terry, Highland, and the Alleged Debtors), Acis LP sold to Highland a participation interest in its expected future cash flow from the CLO Collateral Management Agreements—specifically, it sold a portion of the cash flow it expected to earn from November 2016 to August 2019 (not the full life of the CLOs), for \$666,655 cash, plus a \$12,666,446 note payable from Highland to

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<sup>36</sup> Mr. Ellington did testify at a hearing in the bankruptcy court on February 6, 2018—which the parties asked this court to take judicial notice of—and also provided deposition testimony that was submitted into evidence. *See* Exh. 25.

Acis LP (hereinafter, the “Acis LP Note Receivable from Highland”). Mr. Dondero signed the purchase and sale agreement for both purchaser and seller.<sup>37</sup> Mr. Dondero signed the Acis LP Note Receivable from Highland, which accrued interest at 3% per annum. It appears that the \$666,665 cash down payment was actually paid, and a payment required on the Acis LP Note Receivable from Highland of \$3,370,694 on May 31, 2017, was actually made. The Acis LP Note Receivable from Highland was payable in three installments, with a \$5,286,243 payment required on May 31, 2018, and a \$4,677,690 payment required on May 31, 2019. When viewed in complete isolation, this transaction does not necessarily appear problematic. Although there was evidence that Acis LP had been managing the five CLOs for about \$10 million per year of fees, some of the recitals in the purchase and sale agreement suggest that there may have been a sound business reason for the transaction and the arbitration panel,<sup>38</sup> viewing this transaction in isolation, did not think it was necessarily problematic or actionable. In any event, Highland is adamant it was a net neutral transaction.

- (b) Transfer of Acis LP’s interest in ALF. Recall that ALF was the entity that held equity (*i.e.*, the subordinated notes) in the CLO special purpose vehicles, and held voting rights and was a capital provider to the overall risk retention structure supporting the CLOs. And Acis LP, in turn, held a 15% indirect interest in ALF. On October 24, 2017 (*four days after the Arbitration Award*), Acis, LP entered into an agreement with ALF whereby ALF acquired back the shares that Acis LP

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<sup>37</sup> Exhs. 14 & 15.

<sup>38</sup> Exh. 1, p. 18.

indirectly held in ALF (966,679 shares) for the sum of \$991,180.13.<sup>39</sup> No credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was “toxic” in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.<sup>40</sup> The court finds the testimony about Acis LP’s toxicity in the marketplace to not be credible or at all convincing. For one thing, a new CLO (Acis CLO 2017-7, Ltd.) was closed on April 10, 2017 with Acis LP as the portfolio manager. Moreover, Acis LP subcontracts all of its CLO management function to Highland—and there was no evidence to suggest that anyone in the marketplace at this juncture differentiates between Acis LP (whose president is Mr. Dondero) and Highland (whose president is Mr. Dondero). *In any event, the October 24, 2017 transaction had the highly consequential effect of making Acis LP “noncompliant” or unable to continue serving as a CLO manager for regulatory purposes for any new CLOs or reset CLOs (or for a refinancing of any of the Highland CLOs that had been created after December 2014)*<sup>41</sup> *because aspects of the federal Dodd Frank legislation require CLO managers to have “skin in the game” with regard to the CLOs they manage (i.e., they must retain at least 5% of CLOs they manage).* Mr. Akada, who testified that he had been involved with the CLO business from the beginning and that the CLO team

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<sup>39</sup> Exh. 173.

<sup>40</sup> There were also a few hearsay-laden emails offered, that the court did not find probative. Exhs, 19-22.

<sup>41</sup> See n.23 *supra*.

reported to him (including Mr. Terry before his termination), testified that he had no knowledge of this particular transaction. The document effectuating this transaction was signed by Frank Waterhouse, Treasurer for and on behalf of Acis LP, acting by its general partner, Acis GP/LLC.<sup>42</sup>

- (c) ALF Next Decides to Jettison Acis, LP as its Portfolio Manager and Replace it with a new Highland Cayman Island Entity. On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF.<sup>43</sup> This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.<sup>44</sup>
- (d) The Acis LP Note Receivable from Highland is Transferred from Acis LP to Yet Another Highland Cayman Island Entity. On November 3, 2017 (10 days after the Arbitration Award), Acis LP assigned and transferred its interests in the Acis LP Note Receivable from Highland—which at that point had a balance owing of over \$9.5 million—to a Highland Cayman Island entity known as Highland CLO

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<sup>42</sup> Exh. 173, p. 3.

<sup>43</sup> Exh. 43.

<sup>44</sup> Exh. 168.

Management Ltd. which apparently was created sometime recently to be the new collateral manager of the CLOs (in other words, the new Acis LP).<sup>45</sup> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.<sup>46</sup> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, *Highland CLO Management Ltd.* agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.<sup>47</sup>

- (e) Various Additional Transactions that further Transitioned CLO Management and Fees Away from Acis LP to Highland Cayman Island Entity. On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP “risk retention structure” (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO

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<sup>45</sup> Exh. 16.

<sup>46</sup> *Id.* at p.6.

<sup>47</sup> *Id.* at pp. 1 & 2.

Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017<sup>48</sup>).

- (f) In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7.<sup>49</sup> In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.<sup>50</sup>
- (g) Change of Equity Owners of the Alleged Debtors. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the Trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed

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<sup>48</sup> Exh. 157.

<sup>49</sup> See Ex. 45 (the Transfer Document); see also Ex. 4 (the March 17, 2017 Third Amended and Restated Sub-Advisory Agreement between Acis LP and Highland); Ex. 5 (the March 17, 2017 4th Amended & Restated Shared Services Agreement between Acis LP and Highland); Ex. 165 (March 17, 2017 Staff and Services Agreement between Acis CLO Management, LLC and Acis LP); Ex. 166 (March 17, 2017 Master Sub-Advisory Agreement between Acis CLO Management, LLC and Acis LP).

<sup>50</sup> See Exhs. 161 & 162.

(*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, more importantly, on the day after entry of Mr. Terry's Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to a Cayman Island entity called Neutra, Ltd., a Cayman Islands exempted company. Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra, Ltd. Mr. Akada testified that he did this on advice of counsel. He also did not dispute that he had made millions of dollars of equity dividends from his equity investment in Acis LP in recent years<sup>51</sup>—which he conveyed away for no consideration on December 18, 2017.

- (h) The Intended Reset of Acis CLO 2014-3. With all of the above maneuverings having been accomplished, Highland was posed to do a reset on Acis CLO 2014-3 in February 2018 (until Mr. Terry filed the Involuntary Petitions). The investment bank Mizuho Securities USA, LLC was engaged November 15, 2017<sup>52</sup> and a final offering circular was issued in January 2018<sup>53</sup>—contemplating a reset of Acis CLO 20-14-3 with the recently created Highland CLO Management Ltd.

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<sup>51</sup> Exh. 23, p.3.

<sup>52</sup> Exh. 104.

<sup>53</sup> Exh. 31.

Identified as the new portfolio manager, rather than Acis LP. The act of implementing a reset on the CLO was not in itself suspect. However, the reset would, of course, have the effect of depriving Acis LP from a valuable asset—an agreement that could realistically be expected to provide millions of dollars of future collateral management fees—coincidentally (or not) just after Mr. Terry obtained his large judgment.

**D. Findings Regarding Credibility of Witnesses.**

32. The court found the testimony of Mr. Terry to be very credible. He was very familiar with the financial condition of the Alleged Debtors, since he presided over the business of the Alleged Debtors from their inception until June 9, 2016, and has also closely followed publicly available information regarding the companies since his termination. Mr. Terry credibly testified that the Alleged Debtors have never had a significant number of creditors, since most of the Alleged Debtors' vendors are engaged by and send their invoices to Highland, and Highland simply obtains reimbursement from the Alleged Debtors (and other entities in the Highland family), as its in-house lawyers determine is appropriate, through the Shared Services Agreement and Sub-Advisory Agreement. Thus, Highland should at all times be the Alleged Debtors' main creditor. The court finds that Mr. Terry had a good faith belief that the Alleged Debtors had only a handful of creditors (maybe four or so) besides him and Highland. The court also finds that Mr. Terry—at the time he filed the Involuntary Petitions—had a good faith belief that the Alleged Debtors and those controlling them were engaged in an orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value (*i.e.*, transferring assets and rights for

less than reasonably equivalent value), which started with intensity after issuance of the Arbitration Award (if not sooner).<sup>54</sup>

33. The court found the testimony of almost all of the witnesses for the Alleged Debtors to be of questionable reliability and, oftentimes, there seemed to be an effort to convey plausible deniability. For example, sometimes business decisions concerning the Alleged Debtors were said to have been made by a “collective,” and other times the in-house Highland lawyers (who, of course, are not themselves officers or employees of Acis LP and Acis GP/LLC) stressed that Mr. Dondero (the president and manager of the two entities) had ultimate decision making authority for them. Meanwhile, Mr. Dondero testified that, while he has decision making authority at Acis LP, he usually delegates to Highland’s in-house lawyers Scott Ellington and Isaac Leventon. He testified that he signs hundreds of documents per week and often must rely on information of others when signing. Additionally, Mr. Dondero (again, the President of each of the Alleged Debtors) testified that he had never even read the Arbitration Award. While Mr. Dondero is the chief executive of a multi-billion dollar international investment company, and naturally has widespread responsibilities and must delegate to and rely upon others including lawyers, this court simply does not believe that he never read the Arbitration Award. The court perceived the animosity between Mr. Dondero and Mr. Terry to be rather enormous and Mr. Dondero even testified (as did others) that the litigation with Mr. Terry was hurting Acis LP and Highland in the CLO marketplace (*i.e.*, no investors or underwriters wanting to be associated

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<sup>54</sup> The court also found that the deposition testimony of Brian Shaw and Rahkee Patel (counsel for Mr. Terry) was also credible and did not demonstrate any bad faith on their parts in filing the Involuntary Petitions on behalf of Mr. Terry.

with the Acis brand).<sup>55</sup> If that were the case, it strains credulity to suggest Mr. Dondero never even read the Arbitration Award.

34. As mentioned earlier, in December 2017, Acis GP/LLC became 100% owned by a Cayman Island entity known as Neutra, Ltd. (whose beneficial owner is a Dondero family trust) and Acis LP became 99.9% owned by Neutra, Ltd. The directors of Acis GP/LLC and Acis LP are provided to it now by an entity known as “Maples Fiduciary Services”—another Cayman Island entity, but the Highland Assistant General Counsel could not remember the names of those directors provided to Acis GP/LLC and Acis LP, except for perhaps one. Mr. Dondero, when questioned about some of the recent transactions pertaining to Acis LP, testified that there were tax reasons—tax lawyers recommended the recent transactions and transfers. No tax lawyers testified. Mr. Dondero also testified that certain transactions were at the directive of the Thomas Surgent group (the Highland chief compliance officer). Neither Mr. Surgent nor anyone else from the compliance group testified.

35. Meanwhile, Mr. Akada, who, while testifying, seemed like a generally lovely person and seemed as knowledgeable as a human being could possibly be on the topic of CLOs generally, had no idea if he was an officer or director of the Alleged Debtors, nor did he know whom its officers were. He could not testify as to the meaning of certain transactions in which Acis LP had engaged in during recent weeks and said that he signed certain documents on advice of counsel. He also could not even testify as to whether Highland was opposing the Involuntary Petitions.

36. Again, there was a lot of plausible deniability at Trial as to the “whos” and “whys” for the recent maneuverings involving the Alleged Debtors assets and rights in the weeks

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<sup>55</sup> No such investors or underwriters provided testimony.

since the Arbitration Award. The one thing that the court was wholly convinced of was that conflicts of interest among Highland and the Alleged Debtors abound, and no one is looking out for the interests of the Alleged Debtors as a fiduciary should.

**E. Evidence Regarding the Number of Creditors of the Alleged Debtors.<sup>56</sup>**

37. The Alleged Debtors do not dispute Mr. Terry's claim for the purposes of counting creditors under section 303(b) of the Bankruptcy Code. However, Mr. Terry asserts that the Alleged Debtors have fewer than 12 creditors, and the Alleged Debtors dispute this fact. Specifically, the Alleged Debtors initially filed on January 31, 2018, a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Dondero listing 18 creditors (the "Original Notice of Creditors").<sup>57</sup> The Alleged Debtors subsequently filed on February 5, 2018, a First Amended Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Leventon listing 19 creditors (the "First Amended Notice of Creditors").<sup>58</sup> Finally, the Alleged Debtors filed on March 6, 2018, a Second Amended Notice of List of Creditors Pursuant to Fed. R. Bank. P. 1003(b) signed by Mr. Leventon listing 20 creditors (the "Second Amended List of Creditors").<sup>59</sup> The following chart summarizes the name, amount, and nature of the 20 creditors listed by the Alleged Debtors in their Second Amended List of Creditors.

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<sup>56</sup> The court notes that neither Mr. Terry nor the Alleged Debtors attempted to differentiate between the creditors of Acis GP/LLC versus the creditors of Acis LP, but rather presented evidence regarding the collective number of creditors for both of the Alleged Debtors. This seems legally appropriate, since Acis LP is the entity that incurred most of the debt, and ACIS GP/LLC would be liable on such debt as the general partner of Acis LP.

<sup>57</sup> See DE # 7 in Case No. 18-30264 & DE # 7 in Case No. 18-30265.

<sup>58</sup> See DE # 17 in Case No. 18-30264 & DE # 16 in Case No. 18-30265.

<sup>59</sup> See DE # 39 in Case No. 18-30264 & DE # 38 in Case No. 18-30265.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness <sup>60</sup>
1	Andrews Kurth	Legal Fees	\$211,088.13
2	Case Anywhere, LLC	Law Firm Vendor	\$417.20
3	CSI Global Deposition Services	Law Firm Vendor	\$38,452.56
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	Elite Document Technology	Data Hosting/Law Firm Vendor	\$199.72
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	\$1,352.27
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group. Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

38. First, the court believes it necessary to remove certain insider creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code.<sup>61</sup> This would clearly include Highland (the Alleged Debtors do not dispute this).

<sup>60</sup> The dollar amounts listed here are based upon the amounts listed in the Second Amended List of Creditors.

<sup>61</sup> *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000).

39. Additionally, there were certain creditors that filed sworn statements saying they were not creditors of the Alleged Debtors or were subsequently removed from the creditor list by agreement of the Alleged Debtors. These creditors would include Case Anywhere, CSI Global Deposition Services,<sup>62</sup> Elite Document Technology, JAMS, Inc.,<sup>63</sup> Stanton Advisors LLC,<sup>64</sup> and the TASA Group, Inc..<sup>65</sup> Thus, the updated chart now shows 13 creditors of the Alleged Debtors.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	<del>Highland Capital Management, L.P.</del>	<del>Advisory and Participation Fees</del>	<del>\$2,770,731.00</del>
9	<del>JAMS, Inc.</del>	<del>Law Firm Vendor</del>	<del>\$1,352.27</del>
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75

<sup>62</sup> CSI Global Deposition Services was removed as a creditor by the agreement of the Alleged Debtors.

<sup>63</sup> JAMS, Inc. was removed as a creditor by agreement of the Alleged Debtors.

<sup>64</sup> Stanton Advisors LLC was removed as a creditor by agreement of the Alleged Debtors.

<sup>65</sup> See Exh. 40B, Exh. 186, Exh. 92, and Exh. 94.

16	<del>Stanton Advisors LLC</del>	<del>Testifying Expert Fees/Law Firm Vendor</del>	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	<del>The TASA Group, Inc.</del>	<del>Testifying Expert Fees/Law Firm Vendor</del>	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

40. Next, the court finds that there are certain creditors included in the “Law Firm Vendor” category (*e.g.*, experts, data hosting, document managers, court reporters) that are really creditors of the individual law firms and/or Highland, and that these law firm vendor creditors should not be considered creditors of the Alleged Debtors. For these, there was no evidence of a direct contractual obligation on the part of either the Alleged Debtors or Highland—although the court certainly understands that, when the law firms would retain vendors, they would bill these to either the Alleged Debtors or Highland as an expense to be reimbursed. Most of these were already eliminated with agreement of the Alleged Debtors but, from the remaining list of creditors, this would include David Langford (a Dallas County court reporter).<sup>66</sup> To be clear, while the individual law firm creditors may ultimately have a right to reimbursement for these vendor expenses from Highland (who may then potentially have a right to reimbursement from the Alleged Debtors via the Shared Services and Sub-Advisory Agreements), the court does not find this vendor to have a claim *directly* against the Alleged Debtors for purposes of section 303(b) of the Bankruptcy Code.

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<sup>66</sup> See Exh. 40D, Exh. 187, Exh. 400.

41. Next, as to the Stanton Law Firm, the court finds that this creditor should also be removed from the pool of creditors that “count,” for section 303(b) purposes, since this claim appears to be the subject of a “bona fide dispute as to liability or amount,”<sup>67</sup> based on the evidence presented at the Trial. First, there was no engagement letter between either of the Alleged Debtors and the Stanton Law Firm produced.<sup>68</sup> Second, the heavily redacted invoice of the Stanton Law Firm dated October 18, 2016 shows only that it was relating to the “Joshua Terry Matter” and that it was billed to Highland.<sup>69</sup> Third, the Responses and Objections to Mr. Terry’s Notice of Intention to Take Depositions by Written Questions sent to the Stanton Law Firm<sup>70</sup> provides the following responses:

**Question No. 11:** What is the total amount of debt Acis Capital Management L.P. to the Firm. is liable to the Firm.

**Answer:** Acis Capital Management L.P.’s debt to the Firm is unknown at this time.

**Question No. 12:** What is the total amount of debt Acis Capital Management GP, LLC is liable for to the firm?

**Answer:** Acis Capital Management GP, LLC to the Firm is unknown at this time.

**Question No. 13:** Is any other party also liable for the debt of Acis Capital Management L.P. to the Firm? If so, please state the liable party and portion of Acis Capital Management L.P. debt the other party is liable for to the Firm.

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<sup>67</sup> See *Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014) (a claimholder does not have standing to file a petition under section 303(b) if its claim is “the subject of a bona fide dispute as to liability or amount”); *In re Smith*, 415 B.R. 222, 237 (Bankr. N.D. Tex. 2009) (only “a holder of a claim ... that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount” is counted in determining the number of creditors necessary to file an involuntary petition).

<sup>68</sup> Rather, there is only an engagement letter between Lackey Hershman LLP (acting on behalf of its client, Highland) and Stanton Advisors LLC to act as an expert in the Terry litigation. See Exh. 144. As previously noted, the claim of Stanton Advisors LLC was removed from the creditor list by agreement of the Alleged Debtors.

<sup>69</sup> See Exh. 40R.

<sup>70</sup> The court notes that these responses were actually signed by James Michael Stanton, attorney for Stanton LLP. See Exh. 139.

**Answer:** Whether any other party is also liable to the firm for the debt of Acis Capital Management, L.P. is unknown at this time.

**Question No. 14:** Is any other party also liable for the debt of Acis Capital Management GP, LLC to Firm? If so, please state the liable party and portion of Acis Capital Management GP, LLC debt the other party is liable for to the Firm.

**Answer:** Whether any other party is also liable for the debt of Acis Capital Management GP, LLC is unknown at this time. . . .

**Question No. 21:** Does the Firm currently represent Acis Capital Management, L.P.? If so, please state the representation.

**Answer:** Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time.

**Question No. 22:** Does the Firm currently represent Acis Capital Management GP, LLC? If so, please state the representation?

**Answer:** Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time. . . .<sup>71</sup>

The court finds that this evidence demonstrates that the claim of the Stanton Law Firm is the subject of a bona fide dispute as to either liability or amount and should not be counted since there is no real way of even knowing who the Stanton Law Firm was engaged by and, thus, whether the Alleged Debtors are even responsible for these alleged legal fees. The court would also specifically refer to the testimony of Mr. Leventon, the in-house lawyer employed by Highland who was in charge of allocating all of the bills that came into Highland's legal invoicing system, where he described a process in which all legal bills relating to the "Terry Matter" would automatically be assigned to the Alleged Debtors, without any real regard to whether the particular law firm had even been engaged by the Alleged Debtors or if whether the

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<sup>71</sup> See Exhibit 139.

representation was actually relating to one of the other parties in the Terry litigation (*e.g.*, Highland, Mr. Dondero, etc.). Accordingly, the court finds that there is a bona fide dispute as to whether the Alleged Debtors are actually liable for the Stanton Law Firm legal fees and that they should not be counted as a creditor for purposes of section 303(b) of the Bankruptcy Code.<sup>72</sup>

42. Thus, it appears, at most, that there are 11 creditors<sup>73</sup> of the Alleged Debtors as set forth in the chart below:

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	<del>David Langford</del>	<del>Court Reporter/Law Firm Vendor</del>	<del>\$550</del>
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	<del>JAMS, Inc.</del>	<del>Law Firm Vendor</del>	<del>\$1,352.27</del>
10	Jones Day	Legal Fees	\$368.75

<sup>72</sup> See also *In re CorrLine Int'l, LLC*, 516 B.R. 106, 152 (Bankr. S.D. Tex. 2014) (bankruptcy court found that creditors contained in the alleged debtor's list of creditors with uncertain or unknown amounts could not be counted towards the numerosity requirement of section 303(b)).

<sup>73</sup> The court notes that, in all likelihood, the list of creditors that should be tallied for purposes of section 303(b) may actually be less than 11, because certain of the remaining creditors (*i.e.*, Drexel Limited, Highfield Equities, Inc., Lackey Hershman LLP, and David Simek) received payments during the 90 days preceding the Petition Date—and, thus, arguably should not be counted as creditors pursuant to section 303(b) of the Bankruptcy Code (which instructs that transferees of voidable transfers should not be counted). See, *e.g.*, Exh. 124 & Exh. 131. Additionally, certain of the remaining law firm creditors that are owed legal fees are also creditors of Highland and Highland-affiliates, not just the Alleged Debtors. To elaborate, many of these law firm creditors were employed to represent not only the Alleged Debtors, but also Highland and Highland-affiliates, so there may be an actual dispute as to the allocation of these legal fees among Highland and the Alleged Debtors (thus there could be bona fide disputes as to the amounts allocated by Highland's in-house lawyers to the Alleged Debtors). See, *e.g.*, Ex. 123 (McKool Smith, P.C. engagement letter referencing representation of numerous parties) & Exhibit 90 (Reid Collins & Tsai's Answers and Objections to Mr. Terry's Deposition by Written Questions, questions 13 & 14, stating that based upon allocation determinations to be made by Highland, other individuals may be liable for the full amount of the debt including Acis LP, Highland, Mr. Dondero, and Mr. Okada).

11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees <sup>74</sup>	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group, Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

43. Finally, on the topic of creditor numerosity, the court further finds that the evidence strongly suggested hurried manufacturing of creditors on the part of the Alleged Debtors and Highland, in order to bolster an argument that having a sole petitioning creditor was legally inadequate in this case.<sup>75</sup> For example, the Klos Declaration and other information, that was provided to State Court 2 and in discovery, only days before the Involuntary Petitions were filed,

<sup>74</sup> Mr. Terry has also argued that certain of the law firm creditors (McKool Smith, P.C., Lackey Hershman, LLP, and Reid Collins & Tsai) are “insiders” that must be excluded from the creditor list pursuant to section 303(b) of the Bankruptcy Code. While there may be some support in case law for such an argument, Mr. Terry would ultimately need to show by a preponderance of the evidence that the law firms exercised such control or influence over the Alleged Debtors as to render their transactions not at arm’s length. *See In re CorrLine Intern., LLC*, 516 B.R. 106, 157-58 (Bankr. S.D. Tex. 2014) (citing to *Kepler v. Schmalbach (In re Lemanski)*, 56 B.R. 981, 983 (Bankr.W.D.Wis.1986)). *See also In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992) (in evaluating whether insider status existed for purposes of evaluating alleged fraudulent conveyance court considered (1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm’s length). Because there was no evidence suggesting abuse or control by these law firm creditors, nor was there any evidence that would suggest that their dealings with the Alleged Debtors were anything but arm’s length, the court finds that these law firm creditors should not be excluded from the creditor list as “insiders” pursuant to section 303(b) of the Bankruptcy Code.

<sup>75</sup> *See* the Original Notice of Creditors, the First Amended Notice of Creditors, and the Second Amended Notice of Creditors.

seemed to show only a small number of creditors of Acis LP—Mr. Terry credibly testified that he thought there were less than 12 creditors based on his review of such information, as well as his understanding of the Alleged Debtors’ business. Yet, only a few days later, the Alleged Debtors filed their Original Notice of Creditors, which showed 18 creditors, which was amended twice to add another creditor and then yet another. This simply does not jive in the court’s mind and supports this court’s belief that the Alleged Debtors were scurrying to determine which Highland creditors might cogently be painted as Acis LP creditors—so as to preclude Mr. Terry from being able to file the Involuntary Petitions as the single, petitioning creditor.

**F. Evidence Regarding Whether the Alleged Debtors are Generally Not Paying Debts as They Become Due (Unless Such Debts are the Subject of a Bona Fide Dispute as to Liability or Amount).**

44. The evidence submitted reflects that, for the 11 creditors identified above, 9 out of 11 have unpaid invoices that were more than 90 days old. The remaining 2 of the 11 were McKool Smith, P.C. (current counsel for the Alleged Debtors) and the Petitioning Creditor.<sup>76</sup> The court makes findings with regard to each of the 11 creditors below—focusing specifically on whether the Alleged Debtors have been paying these creditors as their debts have become due.

45. First, with regard to Andrews Kurth & Kenyon (“AKK”), the evidence reflected that out of the \$211,088.13 allegedly owed by Acis LP to AKK, the great majority of it—\$173,448.42—was invoiced on November 16, 2016<sup>77</sup> (more than 14 months before the Petition Date). Other, smaller amounts were invoiced on a monthly basis in each of the months August 2017, September 2017, October 2017, November 2017, and December 2017. Although requested in discovery, no engagement letter for AKK was produced and AKK represented in

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<sup>76</sup> Exhs. 40 & 54.

<sup>77</sup> Exh. 40.

written discovery that, to its knowledge, none existed.<sup>78</sup> The court notes anecdotally that AKK's invoices (although allegedly related to Acis LP legal matters) were addressed to Highland.<sup>79</sup> In any event, AKK represented that both the Alleged Debtors and Highland are jointly and severally liable for the fees owed to it.<sup>80</sup> AKK also represented that, to its knowledge, the amounts owing to it by Acis LP and Highland are not disputed.<sup>81</sup> AKK also represented that it has not provided legal work on a contingency basis for the Alleged Debtors or Highland.<sup>82</sup> The court makes a logical inference that AKK expected timely payment of its invoices—the largest of which was dated more than 14 months prior to the Petition Date—and, thus, it has generally not been paid timely.

46. Next, with regard to Drexel Limited, the Petitioning Creditor concedes that its \$6,359.96 indebtedness (which is a fee rebate owing to it) is not past-due.

47. Next, with regard to Highfield Equities, Inc., the Petitioning Creditor concedes that its \$2,510.04 indebtedness (which is also a fee rebate owing to it) is not past-due.

48. Next, with regard to the Jones Day law firm, the \$368.75 indebtedness owed to it is well more than 90 days old. Specifically, there is a six-and-a-half-month old invoice dated July 19, 2017 invoice in the amount of \$118.75, and two five-month old invoices dated August 30, 2017 (both in the amount of \$150).<sup>83</sup> The court makes a logical inference that Jones Day

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<sup>78</sup> Exh. 98, Requests 1-2.

<sup>79</sup> Exh. 98, pp. AKK000061-AKK000060.

<sup>80</sup> Exh. 98, Question 13.

<sup>81</sup> Exh. 98, Questions 52-55.

<sup>82</sup> Exh. 98, Questions 73-75.

<sup>83</sup> Exh. 40K.

expected timely payment of its invoices prior to the Petition Date and, thus, it has generally not been paid timely.

49. Next with regard to the Petitioning Creditor, Mr. Terry, the court notes that his liquidated claim in the amount of \$8,060,827.84 first arose with the final Arbitration Award on October 20, 2017 (although such award was not confirmed by State Court 2 until December 18, 2017). The judgment was unstayed as of the January 30, 2018 Petition Date, although the Alleged Debtors state that they still desire to appeal it—as difficult as that is in the situation of an arbitration award. The court makes a logical inference that the Alleged Debtors had, on the Petition Date, no intention of paying this claim any time soon based on their conduct after the Arbitration Award—although the Arbitration Award had only been in existence for three-and-a-half months as of the Petition Date. The cash in the Alleged Debtors’ bank accounts is wholly insufficient to cover the Arbitration Award and, meanwhile, corporate transactions have been ongoing to ensure that no cash streams will be coming into Acis LP in the future in the same way that they have in the past. Thus, this court finds that this large claim, as of the Petition Date, was not being paid timely.

50. Next with regard to KPMG LLP, the \$34,000 indebtedness owed to it was for the service of auditing Acis LP’s financial statements, pursuant to an engagement letter with it dated March 1, 2017.<sup>84</sup> KPMG’s engagement letter reflected a \$40,000 flat fee was agreed to by Acis LP for the service, of which 40% was due October 2017 (*i.e.*, \$16,000), with another 45% was due in January 2018 (\$18,000), and the remaining 15% would be due at the time that a final bill was sent. Acis LP has only paid \$6,000 of the agreed upon amount—meaning \$28,000 was overdue as of the January 30, 2018 Petition Date (with \$10,000 of that being four months past

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<sup>84</sup> Exh. 40M.

due). The court makes a logical inference that KPMG LLP expected payment of its audit fees in accordance with its engagement letter and, thus, it has generally not been paid timely.

51. Next with regard to Lackey Hershman LLP, the \$236,977.54 indebtedness owed to it was for legal services provided to the Alleged Debtors and Highland in connection with the arbitration and litigation with Mr. Terry. No engagement letter was provided, but the invoices for their services are all directed to Highland.<sup>85</sup> The evidence reflected that three invoices had not been paid as of the Petition Date: an October 31, 2017 invoice in the amount of \$56,909.53; a November 30, 2017 invoice setting forth new fees in the amount of \$84,789.83; and a December 31, 2017 invoice setting forth new fees in the amount of \$95,278.18.<sup>86</sup> The court makes a logical inference that Lackey Hershman LLP expected prompt payment on its invoices (if nothing else, the statement on its invoice indicating “Total now due”)<sup>87</sup> and, thus, it has generally not been paid timely.

52. Next with regard to Reid Collins & Tsai LLP, the \$17,383.75 indebtedness owed to it was billed in an invoice dated August 31, 2017, indicating an August 31, 2017 “Due Date” (five months before the Petition Date).<sup>88</sup> Although requested in discovery, no engagement letter for this firm was produced and Reid Collins & Tsai LLP in fact represented in written discovery that none existed.<sup>89</sup> Moreover, written discovery propounded on the law firm indicated that, while Acis LP was liable on this debt, other parties including Acis GP/LLC, Highland, Mr.

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<sup>85</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>86</sup> Exh. 40, p. 3.

<sup>87</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>88</sup> Exh. 40P; Exh. 130, pp. 7-8.

<sup>89</sup> Exh. 90, Requests 1 & 2; Ex. 130, Requests 1 & 2.

Dondero, the Dugaboy Trust, and Mr. Akada might also be liable for the full amount of the debt—subject to Highland’s allocation determinations.<sup>90</sup> Based on this evidence, the court makes a logical inference that Reid Collins & Tsai LLP generally has not been paid timely.

53. Next with regard to CT Corporation and the \$517.12 indebtedness that the Alleged Debtors represent is owed, CT Corporation asserts that \$4,074.84 is, in fact, owed to it by Acis LP and Acis GP/LLC.<sup>91</sup> CT Corporation also believes Highland has liability for the Alleged Debtors’ indebtedness.<sup>92</sup> CT Corporation also believes the amount owed to it is undisputed.<sup>93</sup> CT Corporation further represents that its invoices are due upon receipt.<sup>94</sup> CT Corporation produced several invoices in discovery, all showing due upon receipt, and one was dated as far back as December 31, 2016 (in the amount of \$932).<sup>95</sup> Based on this evidence, the court makes a logical inference that CT Corporation expected prompt payment on its invoices and, thus, has not been paid timely.

54. Next with regard to David Simek, the Petitioning Creditor concedes that his \$1,233.19 indebtedness (which is apparently an expense reimbursement relating to some consulting) is not past-due.

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<sup>90</sup> Exh. 90, Questions 13 & 14; Exh. 130, Questions 13-14.

<sup>91</sup> Exh. 143, Questions 12 & 13.

<sup>92</sup> *Id.* at Question 14.

<sup>93</sup> *Id.* at Questions 22 & 23.

<sup>94</sup> *Id.* at Question 30.

<sup>95</sup> *Id.* at p. 8; Exh. 40T.

55. In summary, the evidence reflects that the creditors of the Alleged Debtors are generally not being paid timely (except for perhaps four that are relatively insignificant and which may also be able to look to Highland for payment).<sup>96</sup>

56. Further on the topic of timeliness, Mr. Leventon (Highland's in-house Assistant General Counsel) testified that 96% of bills submitted get paid more than 90 days after they are submitted, that approximately 70% of bills are later than 120 days after they are submitted, and some are even later than 150 days. Mr. Leventon testified that this was a result of Acis LP receiving cash on a quarterly basis from the CLOs. He further elaborated and testified that, for example, if Acis LP got cash on say February 1st, and it received a legal bill on that same day, that he would probably not approve it and allocate it until say February 8th. By that time, Acis LP would have already used up all its cash, and that particular creditor would need to wait until the next quarterly payment was received in order to be paid. He further testified that he explained this to law firms before their engagements and that, if they wanted the business, they would need to understand the process. There are several things the court finds problematic about this testimony. First, no testimony was offered showing that this was, in fact, the understanding of the law firms or other creditors, and, moreover, none of the engagement letters or invoices submitted into evidence reflect such payment terms. Without this additional evidence, the court believes that the Alleged Debtors' testimony regarding how it paid invoices was mostly self-serving and did not support a finding that the Alleged Debtors were generally paying their debts

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<sup>96</sup> Courts have also held that a debtor is generally not paying its debts as they become due when a debtor is found to have been transferring assets so as to avoid paying creditors. *See, e.g., In re Moss*, 249 B.R. 411, 423 (Bankr. N.D. Tex. 2000) (bankruptcy court determined that an alleged debtor was not paying its debts as they came due when the alleged debtor "attempted to delay creditors through the transfers of assets she has made," concluding that "[the alleged debtor's] overall conduct of her financial affairs has been poor"). This court has also found that there may have been significant transfers of the Alleged Debtors' assets prior to the filing of the Involuntary Petitions to potentially avoid paying creditors (*i.e.*, Mr. Terry) and this may provide further support for the court's finding that the Alleged Debtors are generally not paying their debts as they become due under section 303(h).

as they became due.<sup>97</sup> Second, to the extent Mr. Leventon's testimony demonstrates that creditors of the Alleged Debtors expected to be paid on a quarterly basis (at the latest), certain of the remaining 11 creditors have debts that are significantly older than four months (*i.e.*, CT Corporation, Jones Day, AKK, and possibly even Reid Collins & Tsai LLP). Third, the Financial Statements of Acis LP submitted into evidence do not support the notion that the cash balances at Acis LP were only sufficient enough to pay vendors once every quarter.<sup>98</sup> For example, the balance sheet for January 31, 2017 shows a cash balance in Acis LP bank accounts of \$1,061,663.19; the balance sheet for February 28, 2017 shows a cash balance in Acis LP bank accounts of \$905,212.36; the balance sheet for March 31, 2017 shows a cash balance in Acis LP bank accounts of \$525,626.59; the balance sheet for April 30, 2017 shows a cash balance in Acis LP bank accounts of \$117,885.96; the balance sheet for May 31, 2017 shows a cash balance in Acis LP bank accounts of \$62,733.31; the balance sheet for June 30, 2017 shows a cash balance in Acis LP bank accounts of \$10,329.15; the balance sheet for July 31, 2017 shows a cash balance in Acis LP bank accounts of \$701,904.39; the balance sheet for August 31, 2017 shows a cash balance in Acis LP bank accounts of \$332,847.05.<sup>99</sup> In summary, while there may be cash fluctuations with Acis LP, there is not a clear pattern of Acis LP being only able to pay vendors once every quarter.

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<sup>97</sup> See *In re Trans-High Corp.*, 3 B.R. 1, 2-3 (Bankr. S.D.N.Y. 1980) (bankruptcy court found that evidence showing that the petitioning creditor gave the debtor generous terms of payment (90 days) which were substantially better than the terms set forth in the actual writings between the parties supported finding that the alleged debtors were generally paying debts as they became due and that the involuntary petition must be dismissed).

<sup>98</sup> Exh. 147.

<sup>99</sup> *Id.*

## **II. Conclusions of Law**

Section 303 of the Bankruptcy Code sets forth the various requirements for initiating an involuntary bankruptcy case. First, pursuant to section 303(b) of the Bankruptcy Code, an involuntary case may be filed against a person by the filing with the bankruptcy court of a petition under Chapter 7—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount ... [that] aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . .<sup>100</sup>

Thus, if there are twelve or more eligible creditors holding qualified claims on the Petition Date, three or more entities must participate in the involuntary filing and must hold unsecured claims aggregating \$15,775.00. If there are less than twelve creditors, a single creditor with an unsecured claim of \$15,775.00 may file the involuntary petition. To the extent a bankruptcy court finds that the requisite number of petitioning creditors have commenced the involuntary case, the court shall order relief against the debtor under the chapter under which the petition was filed only if “the debtor is generally not paying such debtor’s debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount.”<sup>101</sup>

Here, as noted earlier, the Alleged Debtors have made four arguments as to why an order for relief should not be entered against the Alleged Debtors: (1) the Alleged Debtors have 12 or

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<sup>100</sup> 11 U.S.C.A § 303(b) (West 2018).

<sup>101</sup> 11 U.S.C.A § 303(h) (West 2018).

more creditors, and, thus, with Mr. Terry being the sole petitioning creditor, the Involuntary Petitions were not commenced by the requisite number of creditors; (2) the Alleged Debtors are generally paying their debts as they become due; (3) the Involuntary Petitions were filed in bad faith by Mr. Terry; (4) the interests of creditors and the debtors would be better served by dismissal and the court should abstain pursuant to section 305 of the Bankruptcy Code.

**A. *Have the Requisite Number of Creditors Commenced the Involuntary Proceedings?***

Pursuant to section 303(b)(2) of the Bankruptcy Code, a sole petitioning creditor holding at least \$15,775 in claims can initiate an involuntary bankruptcy case so long as the alleged debtors have fewer than 12 creditors. After the Second Amended List of Creditors was filed, Mr. Terry had the burden, by a preponderance of the evidence, of showing that the Alleged Debtors actually had less than 12 qualified creditors.<sup>102</sup> Here, the court has found that the Alleged Debtors have, *at most*, 11 qualified creditors.<sup>103</sup> Accordingly, Mr. Terry has met his burden of showing that the Alleged Debtors have less than 12 creditors for section 303(b) purposes, and that he, as the sole petitioning creditor, was permitted to file the Involuntary Petitions. While Mr. Terry has made additional arguments as to why certain of these 11 creditors should not be counted as creditors for purposes of section 303(b) of the Bankruptcy Code, the court does not believe it necessary to address these arguments at this time.<sup>104</sup>

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<sup>102</sup> See *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222, 229 (Bankr. N.D. Tex. 2009).

<sup>103</sup> To be clear, the court believes that even on these 11, there are likely bona fide disputes as to the liability or amount that *Acis LP* has—as opposed to the liability or amount that Highland or other insiders bear responsibility.

<sup>104</sup> Moreover, as previously stated, since the court has determined there are fewer than 12 creditors, the court need not address whether there is a “special circumstances” exception to the statutory requirements of section 303, in situations where an alleged debtor may have engaged in fraud, schemes, or artifice to thwart a creditor or creditors. See, e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

***B. Are the Alleged Debtors Generally Paying Their Debts as They Become Due?***

Section 303(h) of the Bankruptcy Code requires that a court shall enter order for relief in an involuntary case “if ... (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount . . . .”<sup>105</sup> Again, the burden is on the Petitioning Creditor to prove this element by a preponderance of the evidence.<sup>106</sup> The determination is made as of the filing date of the Involuntary Petitions.<sup>107</sup> In determining whether an alleged debtor is generally paying its debts as they come due, courts typically look to four factors: (i) the number of unpaid claims; (ii) the amount of such claims; (iii) the materiality of the non-payments; and (iv) the nature of the debtor's overall conduct in its financial affairs.<sup>108</sup> No one factor is more meritorious than another; what is most relevant depends on the facts of each case.<sup>109</sup> Courts typically hold that “generally not paying debts” includes regularly missing a significant number of payments *or* regularly missing payments which are significant in amount in relation to the size of the debtor's operation.<sup>110</sup>

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<sup>105</sup> 11 U.S.C.A § 303(h) (West 2018).

<sup>106</sup> See *Norris v. Johnson (In re Norris)*, No. 96-30146, 1997 WL 256808, at \*3-\*4 (5th Cir. Apr. 11, 1997) (unpublished).

<sup>107</sup> *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993).

<sup>108</sup> See, e.g., *In re Moss*, 249 B.R. 411, 422 (Bankr. N.D. Tex. 2000) (citing *In re Norris*, 183 B.R. 437, 456-57 (Bankr. W.D. La. 1995)).

<sup>109</sup> *In re Bates*, 545 B.R. 183, 186 (Bankr. W.D. Tex. 2016) (also noting that petitioning creditors' counsel consistently argued that the final prong—overall conduct in financial affairs—should be afforded more weight than the other factors, and the court found no authority to support this assertion).

<sup>110</sup> See, e.g., *In re All Media Props., Inc.*, 5 B.R. 126, 143 (Bankr. S.D. Tex. 1980). See also *Concrete Pumping Serv., Inc. v. King Constr. Co. (In re Concrete Pumping Serv., Inc.)*, 943 F.2d 627, 630 (6th Cir.1991) (a debtor was not paying his debts as they became due where the debtor was in default on 100% of its debt to only one creditor); *Knighthead Master Fund, L.P. v. Vitro Packaging, LLC (In re Vitro Asset Corp.)*, No. 3:11-CV-2603-D (N.D.Tex. Aug. 28, 2012) (district court found error in bankruptcy court ruling that the debtors were generally paying their debts as they became due, where bankruptcy court had relied on the fact that the alleged debtors had a significant number of third-party creditors/trade vendors, which had been continually paid, even though the unpaid debts to the petitioning creditors far exceeded the paid debts in terms of dollar amount; petitioning creditors were holders of promissory notes that were guaranteed by the alleged debtors, as to which the primary obligor and alleged

Furthermore, any debt which the alleged debtor is not current on as of the petition date should be considered as a debt not being paid as it became due.<sup>111</sup>

Here, the court concludes that the creditors of the Alleged Debtors—what few there are—are generally not being paid as their debts have become due (except for perhaps four<sup>112</sup> that are relatively insignificant and which may also be able to look to Highland for payment). Mr. Terry has met his burden by a preponderance of the evidence as to section 303(h) of the Bankruptcy Code.

***C. With the Section 303 Statutory Requirements Being Met by the Petitioning Creditor, Should the Court, Nonetheless, Dismiss the Involuntary Petitions Because They Were Filed in Bad Faith?***

Despite Mr. Terry meeting the necessary statutory requirements for this court to enter orders for relief as to the Alleged Debtors pursuant to section 303 of the Bankruptcy Code, the Alleged Debtors have argued that the Involuntary Petitions must, nonetheless, be dismissed because they were filed in “bad faith” by Mr. Terry. As support for this argument, the Alleged Debtors rely primarily on the Third Circuit’s decision in *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328 (3d Cir. 2015). While the court certainly acknowledges that authority exists in other circuits that suggests that dismissal of an involuntary bankruptcy case may be appropriate—even when section 303’s statutory requirements have been met—based upon an

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debtors had ceased making interest payments; the unpaid debts represented 99.9% of the total dollar amount of debt of each of the alleged debtors); *Crown Heights Jewish Cmty. Council, Inc. v. Fischer (In re Fischer)*, 202 B.R. 341, 350–51 (E.D.N.Y. 1996) (even though the debtor only had two outstanding debts, the total dollar amount failed to establish that, in terms of dollar amounts, the debtor was paying anywhere close to 50% of his liabilities, so he was not generally paying his debts as they became due); *In re Smith*, 415 B.R. 222, 231 (Bankr. N.D. Tex. 2009) (while the debtor was paying small recurring debts, he was not paying 99 percent of his debts in the aggregate amount and thus was not generally paying his debts as they became due).

<sup>111</sup> *In re Bates*, 545 B.R. 183, 188 (Bankr. W.D. Tex. 2016).

<sup>112</sup> Those four are: Drexel Limited (\$6,359.96); Highfield Equities (\$2,510.04); David Simek (\$1,233.19); and McKool Smith (\$70,082.18).

independent finding of “bad faith,” the court need not ultimately decide the efficacy or applicability of such authority, because the court does not believe that the evidence demonstrated any “bad faith” on the part of Mr. Terry (or his counsel) in filing the Involuntary Petitions. Indeed, the evidence suggested that Mr. Terry and his counsel filed the Involuntary Petitions out of a legitimate concern that Highland was dismantling and denuding Acis LP of all of its assets and value and that a bankruptcy filing was the most effective and efficient way to preserve value for the Acis LP creditors. The court concludes that Mr. Terry was wholly justified in pursuing the Involuntary Petitions.

***D. Should This Court, Nonetheless, Abstain and Dismiss the Involuntary Petitions Pursuant to Section 305 of the Bankruptcy Code?***

Section 305(a)(1) of the Bankruptcy Code provides that:

- (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; . . .<sup>113</sup>

Courts construing section 305(a)(1) of the Bankruptcy Code have found that abstention in a properly filed bankruptcy case is an *extraordinary remedy*.<sup>114</sup> Moreover, granting an abstention motion pursuant to section 305(a)(1) of the Bankruptcy Code requires more than a simple balancing of harm to the debtor and creditors; rather, the interests of *both* the *debtor* and its *creditors* must be served by granting the request to abstain.<sup>115</sup> The moving party bears the

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<sup>113</sup> 11 U.S.C.A. § 305(a)(1) (West 2018).

<sup>114</sup> *In re AMC Investors, LLC*, 406 B.R. 478, 487 (Bankr. D. Del. 2009); *see also In re Compania de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007); *In re 801 S. Wells St. Ltd. P’ship*, 192 B.R. 718, 726 (Bankr. N.D. Ill. 1996).

<sup>115</sup> *In re Smith*, 415 B.R. 222, 238-39 (Bankr. N.D. Tex. 2009) (citing to *AMC Investors, LLC*, 406 B.R. at 488).

burden to demonstrate that dismissal benefits the debtor and its creditors.<sup>116</sup> Courts must look to the individual facts of each case to determine whether abstention is appropriate.<sup>117</sup>

Case law has set forth a litany of factors to be considered by the court to gauge the overall best interests of the creditors and the debtor for section 305(a)(1) purposes:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.<sup>118</sup>

While all factors are considered, not all are given equal weight in every case and the court should not conduct a strict balancing.<sup>119</sup>

*i. Factor 1: The Economy and Efficiency of Administration.*

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<sup>116</sup> *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2008).

<sup>117</sup> *In re Spade*, 258 B.R. 221, 231 (Bankr. D. Colo. 2001).

<sup>118</sup> *Monitor Single Lift I, Ltd.*, 381 B.R. at 464-65 (citing to *In re Paper I Partners, L.P.*, 283 B.R. 661, 679 (Bankr. S.D.N.Y. 2002)); see also *Smith*, 415 B.R. at 239; *AMC Investors, LLC*, 406 B.R. at 488; *In re Euro-American Lodging Corp.*, 357 B.R. 700, 729 (Bankr. S.D.N.Y. 2007); but see *Spade*, 258 B.R. at 231-32 (Bankr. D. Colo. 2001) (applied a four criteria test in evaluating section 305 abstention which included: (1) the motivation of the parties who sought bankruptcy jurisdiction; (2) whether another forum was available to protect the interests of both parties or there was already a pending proceeding in state court; (3) the economy and efficiency of administration; and (4) the prejudice to the parties). The Alleged Debtors cite to the case of *In re Murray*, 543 B.R. 484 (Bankr. S.D.N.Y. 2016), in particular, as support for why this court should abstain under section 305(a) of the Bankruptcy Code and dismiss the Involuntary Petitions. However, in *Murray*, Judge Gerber was analyzing dismissal of an involuntary proceeding pursuant to section 707 of the Bankruptcy Code, more specifically for “cause,” and not based upon abstention under section 305(a) of the Bankruptcy Code. Thus, the court is not convinced *Murray* is relevant to this court’s section 305 abstention analysis.

<sup>119</sup> *In re TPG Troy, LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013) (citing *Monitor Single Lift*, 381 B.R. at 464).

The economy and efficiency of administering a case in the bankruptcy court is routinely evaluated in considering abstention under section 305 of the Bankruptcy Code. Here, the evidence suggests that the most economical and efficient forum for these parties to resolve their disputes is the bankruptcy court. The court heard ample evidence that the Alleged Debtors are already, essentially, in the process of being liquidated by Highland. This is not a situation where an ably-functioning, going-concern business is being foisted in disruptive fashion into a bankruptcy.<sup>120</sup> Because of the fact that the Alleged Debtors are already in the process of being liquidated, the bankruptcy court (and not a state court) is the most efficient and economical forum to complete this liquidation and distribute whatever assets remain to creditors in accordance with the distribution scheme set forth in the Bankruptcy Code and with the oversight of a neutral third-party trustee. Thus, with the bankruptcy court being the more economic and efficient forum for administering this case, this factor goes against abstention.

- ii. *Factors 2, 3, 4, 5, and 6: Whether Another Forum is Available to Protect the Interests of Both Parties or There is Already a Pending Proceeding in State Court; Whether Federal Proceedings are Necessary to Reach a Just and Equitable Solution; Whether There is an Alternative Means of Achieving an Equitable Distribution of Assets; Whether the Debtor and the Creditors are Able to Work Out a Less Expensive Out-of-Court Arrangement Which Better Serves All Interests in the Case; and Whether a Non-Federal Insolvency Has Proceeded so Far in Those Proceedings That it Would Be Costly and Time Consuming to Start Afresh With the Federal Bankruptcy Process.*

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<sup>120</sup> See, e.g., *In re The Ceiling Fan Distrib., Inc.*, 37 B.R. 701 (Bankr. M.D. La. 1983) (noting that while the dissection of a living business may not properly be the business of a bankruptcy court, the division of a “carcass” and the reclamation of pre-petition gouging may well be); *In re Bos*, 561 B.R. 868, 898-99 (Bankr. N.D. Fla. 2016) (citing as one of the reasons to abstain under section 305 of the Bankruptcy Code the fact that entities and subsidiaries under the alleged debtor’s umbrella were still operating successful businesses and had employed more than 500 people); but see *Remex Elecs. Ltd. v. Axl Indus., Inc. (In re Axl Indus., Inc.)*, 127 B.R. 482, 484-86 (S.D. Fla. 1991) (in affirming the bankruptcy court’s decision to dismiss an involuntary bankruptcy case, the district court also found that “the interests of a defunct business enterprise would be little affected by the pendency of a bankruptcy proceeding,” which the district court believed favored abstention).

The court believes that factors 2-6 should be grouped together for purposes of its abstention analysis, since all of these factors specifically touch on the availability of an alternative forum to achieve an *equitable* distribution.<sup>121</sup> By way of example, where bringing a case into the bankruptcy court would simply add an additional layer of expense to the resolution of a two-party dispute and another forum already provides a suitable place to resolve the dispute, some courts have found that abstention is the more appropriate choice since keeping the case would transform the bankruptcy process into a collection device.<sup>122</sup> Here, the Alleged Debtors have repeatedly argued that, because there is already pending state court litigation involving Mr. Terry, Highland, and the Alleged Debtors, these cases should be dismissed and the parties should go back to state court to resolve their issues. The court does not agree for several reasons.

First, it is worth noting that this court has already heard multiple days of evidence in this case (including almost five days just for the Trial) and would certainly not be “starting afresh” by any means if things go forward in the bankruptcy court. Additionally, while the Alleged Debtors have argued that a significant amount of attorney’s fees have already been spent litigating this case in state court (which they believe supports abstention), the court surmises that these fees have not been wasted dollars, as the money expended by the parties developed discovery of facts that could assist a bankruptcy trustee in pursuing avoidance actions that may be viable and might lead to value that could pay creditors’ claims.<sup>123</sup>

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<sup>121</sup> See, e.g., *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 460-70 (Bankr. S.D.N.Y. 2008).

<sup>122</sup> *AMC Investors, LLC*, 406 B.R. at 488; see also *Axl Indus., Inc.*, 127 B.R. at 484-86.

<sup>123</sup> See, e.g., *The Ceiling Fan Distributor, Inc.*, 37 B.R. at 703 (the court noted that, despite there being significant legal expenses in the state court, such expenses were not wasted since the legal work done to date would be quite helpful to a trustee).

Second, this court heard considerable evidence involving potentially voidable transfers that may have occurred involving the Alleged Debtors and Highland/Highland-affiliates and, while the state court certainly provides a forum for eventually bringing fraudulent transfer claims, the court also heard evidence that none of these claims have actually been brought in the state court.<sup>124</sup> Moreover, to the extent fraudulent transfer claims were to be pursued in state court and were successful, the state court would still need the ability to reach the assets of alleged fraudulent transfer recipients (which, in this situation, include certain Highland-affiliates located in the Cayman Islands). The bankruptcy court has concerns whether a state court process could efficiently accomplish this task.<sup>125</sup> Similarly, it is worth noting that, while a request for a receiver was filed in the state court by Mr. Terry, such request had not yet been heard and decided by the state court. Thus, at the present time, it does not appear that there is an alternative forum to address the pertinent issues in this case, without the necessity of significant, additional steps being taken by the parties in the state court.

Third, this court believes that a federal bankruptcy proceeding is necessary in order to achieve an equitable result in this case. Specifically, the court heard evidence from the Alleged Debtors that, if this court chose to abstain and dismiss the Involuntary Petitions, the Alleged Debtors would ultimately pay all of their creditors in full, except for Mr. Terry. This clearly demonstrates how keeping the case in the bankruptcy court is necessary to allow an equitable

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<sup>124</sup> See, e.g., *In re Texas EMC Mgmt., LLC*, Nos. 11-40008 & 11-40017, 2012 WL 627844, at \*3 (Bankr. S.D. Tex. 2012) (noting that one of the reasons abstention was proper under section 305 of the Bankruptcy Code was because the issues to be litigated amongst the parties were already joined in the state court litigation); *Spade*, 258 B.R. at 236 (court held that one of the reasons abstention was warranted under section 305 of the Bankruptcy Code was because the petitioning creditors had already filed and had pending a “collection case” in the state court).

<sup>125</sup> See, e.g., *Smith*, 415 B.R. at 239 (the bankruptcy court held that there “are remedies under the Bankruptcy Code that are not available to Rhodes under state law, due to Mr. Smith's transfer of the majority of his assets to the Cook Island Trust,” and “federal proceedings may be necessary to reach a just and equitable solution”).

distribution to *all creditors*, including Mr. Terry. Additionally, a federal bankruptcy court has certain tools available to it that are not available to a state court such as the ability to invalidate potential *ipso facto* clauses in contracts pursuant to section 365 of the Bankruptcy Code, sell assets free and clear of liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, and impose the automatic stay pursuant to section 362 of the Bankruptcy Code. These are all useful tools available to the Alleged Debtors in a bankruptcy case that would be lost if this court were to ultimately abstain.

Finally, there was more than enough evidence showing the acrimonious and bitter relationship that exists between Mr. Terry and Mr. Dondero. Thus, the availability of an out-of-court arrangement being obtained in this case is, in this court's mind, slim to none.

In summation, the court finds that all of the factors above support this case staying with the bankruptcy court.

*iii. Factor 7: The Purpose for Which Bankruptcy Jurisdiction Has Been Sought.*

The Alleged Debtors have repeatedly argued that Mr. Terry filed this case in bad faith and as a litigation tactic to gain some sort of advantage in the state court proceedings. The court has already found above that these cases were not filed in bad faith and that Mr. Terry has met the necessary statutory requirements of section 303 of the Bankruptcy Code. Moreover, it is worth noting that at least one court has stated that the filing of an involuntary bankruptcy petition is always a "litigation tactic," but whether the filing is inappropriate for abstention purposes is a fact-dependent determination.<sup>126</sup> Here, the facts show that there was no inappropriateness

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<sup>126</sup> *In re Marciano*, 459 B.R. 27, 50 (B.A.P. 9th Cir. 2011) (noting that while the filing of the involuntary bankruptcy was a litigation tactic, the bankruptcy court did not abuse its discretion in denying the alleged debtor's motion to dismiss based upon the bankruptcy court's primary concern that the issue of equality of distribution would not effectively be dealt with in another forum).

behind Mr. Terry's decision to file the Involuntary Petitions. Specifically, Mr. Terry repeatedly and credibly testified that the purpose for filing the Involuntary Petitions was to ensure that creditors (including him) were treated fairly and received an equal distribution from the Alleged Debtors' assets, not to gain some sort of advantage in the state court. This testimony was absolutely consistent with additional evidence showing that, since the entry of the arbitration award, there has been a calculated effort (largely by Highland) to effectively liquidate the Alleged Debtors. Unlike the bankruptcy court in *In re Selectron Mgmt. Corp.*,<sup>127</sup> which had no evidence or "smoking gun" showing that steps were being taken by the alleged debtor to evade payment on the petitioning creditor's judgment, thereby necessitating abstention, this court has heard ample evidence showing that the Alleged Debtors, with the aid of Highland, were transferring assets away from the Alleged Debtors, so that Mr. Terry would have nowhere to look at the end of the day.

In light of the court's analysis of all the seven factors above, the Alleged Debtors have not credibly shown how both the Alleged Debtors and the creditors are better served outside of bankruptcy. If this matter were to remain outside of bankruptcy, there seems to be a legitimate prospect that the Alleged Debtors and Highland will continue dismantling the Alleged Debtors, to the detriment of Acis LP creditors. Abstention would fly in the face of fundamental fairness and the principles underlying the Bankruptcy Code.

Beyond just addressing the factors above, the Alleged Debtors have also argued that, if this court were to not abstain under section 305 of the Bankruptcy Code, there would be

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<sup>127</sup> *In re Selectron Mgmt. Corp.*, No. 10-75320-DTE, 2010 WL 3811863, at \*6-7 (Bankr. E.D.N.Y. Sept. 27, 2010); see also *In re White Nile Software, Inc.*, No. 08-33325-SGJ-11, 2008 WL 5213393, at \*4 (Bankr. N.D. Tex. Sept. 16, 2008) (finding that where the filing of a voluntary chapter 11 did not appear to be about insuring a distribution to creditors or winding down or giving a soft landing to a business or avoiding dismantling and dissipation of valuable assets or preserving avoidance actions, but rather was about changing the forum of ongoing litigation between the parties, abstention under section 305 was proper).

significant harm to the “equity” of the Alleged Debtors. Specifically, the Alleged Debtors have argued that, if this court were to enter orders for relief, the equity would be forced to “call” and ultimately liquidate CLO 2014-3 (and perhaps all of the CLOs Acis LP manages), resulting in substantial losses to the equity on their investments. First, to be clear, the current equity of the Alleged Debtors is being held by a Highland-affiliate called Neutra, Ltd., which actually only became the equity of the Alleged Debtors on December 19, 2017. But this is not the “equity” being referred to by the Alleged Debtors in its argument. Rather, the so-called “equity,” about which the Alleged Debtors seemed so concerned, is actually *certain parties that own the equity of the entity that owns the equity in the CLOs*—which includes (a) an unnamed third-party investor out of Boston (49%),<sup>128</sup> (b) a charitable foundation managed by a Highland-affiliate (49%), and (c) Highland employees (2%). However, abstention under section 305 of the Bankruptcy Code does not require this court to look at what is in the best interests of these third-parties (who are not current creditors or interest holders of the Alleged Debtors), but rather what is in the best interests of the Alleged Debtors and the creditors. Accordingly, the Alleged Debtors’ effort to argue potential harm to these parties is misplaced for purposes of evaluating abstention under section 305 of the Bankruptcy Code, and, if anything, further highlights who the Alleged Debtors are really out to protect—Highland and Highland-affiliates. Moreover, the court would note that, even if there were to be a “call” and liquidation of CLO 2014-3, thereby ending the Alleged Debtors’ right to receive future management fees, there would still be potential assets for a chapter 7 trustee to administer such as chapter 5 causes of action (which include fraudulent transfers) as well as the Alleged Debtors’ contingent claim for approximately

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<sup>128</sup> Notably, this entity never appeared at the Trial or filed papers stating that it would be harmed by entry of orders for relief in these cases.

\$3 million in expense reimbursement owing by Highland CLO Management Ltd., as part of the November 3, 2017 transfer of the Acis LP Note Receivable from Highland. Thus, even if the so-called doomsday scenario of an equity call on CLO 2014-3 (or other CLOs) were to happen, there is still a potential benefit to creditors if this court chooses not to abstain.

### **III. CONCLUSION**

In conclusion, these involuntary proceedings were appropriately filed under section 303, and orders for relief will be issued forthwith. This court declines to exercise its discretion to abstain, because a chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP, as discussed above. A chapter 7 trustee appears necessary to resolve the inherent conflicts of interest between the Alleged Debtors and Highland. A chapter 7 trustee will have tools available to preserve value that a state court receiver will not have. The bankruptcy court is single handedly the most efficient place to administer property of the estate for creditors. This is not just a two party dispute between Mr. Terry and the Alleged Debtors, and even if it were, dismissal or abstention is clearly not warranted.

**###END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW###**



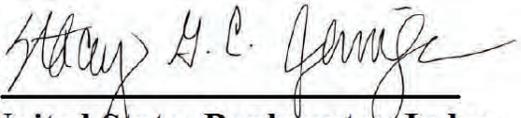
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed January 31, 2019

  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-11  
§ (Chapter 11)  
Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-11  
L.L.C., § (Chapter 11)  
§  
Debtor. §

**BENCH RULING AND MEMORANDUM OF LAW IN SUPPORT OF:  
(A) FINAL APPROVAL OF DISCLOSURE STATEMENT; AND (B)  
CONFIRMATION OF CHAPTER 11 TRUSTEE'S THIRD AMENDED JOINT PLAN**

Before this court is a request by the Chapter 11 Trustee (herein so called) for final approval of the adequacy of a disclosure statement and for confirmation of his Third Amended

Joint Plan of Reorganization,<sup>1</sup> as amended, modified or supplemented (the “Plan”), for the two above-referenced debtors: (1) Acis Capital Management, L.P. (the “Debtor-Acis”), a Delaware limited partnership, and (2) Acis Capital Management GP, LLC, a Delaware limited liability company (the general partner of the Debtor-Acis; collectively, the “Debtors”). The two chapter 11 cases have been administratively consolidated.<sup>2</sup>

The hearing on these matters transpired over multiple days in December 2018, and the court considered the testimony of more than a dozen witnesses, more than 700 exhibits, and hundreds of pages of legal briefing. Based on the foregoing, the court *overrules all objections* and will confirm the Plan, including all proposed modifications to it. The Chapter 11 Trustee has demonstrated, by a preponderance of the evidence, that the Plan, as modified, satisfies the applicable provisions of the Bankruptcy Code including but not limited to Sections 1122, 1123, 1127, and 1129 of the Bankruptcy Code.<sup>3</sup> The court also approves on a final basis the adequacy of the accompanying disclosure statement to the Plan, determining that it meets the requirements set forth in Section 1125 of the Bankruptcy Code. Notice and solicitation with respect to the

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<sup>1</sup> Exhs. 508 & 509; *see also* DE ## 660, 661, 693, 702, & 769. References to “DE # \_\_” from time to time in this ruling relate to the docket number at which a pleading or other item appears in the docket maintained in these administratively consolidated Bankruptcy Cases, in Case # 18-30264.

<sup>2</sup> Note that the Debtor-Acis is, essentially, the debtor that is the operating company. As a general partner, Acis Capital Management GP, LLC is legally obligated on all of the operating company’s debt. *See* 6 Del. C. § 17-403(b) (“Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners.”); *see also* 6 Del. C. § 15-306(a) (“(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law”). The Plan jointly addresses both of the Debtors’ debts.

<sup>3</sup> *Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sears Methodist Ret. Sys.*, No. 14-32821-11, 2015 Bankr. LEXIS 709, at \*8 (Bankr. N.D. Tex. Mar. 5, 2015); *In re Couture Hotel Corp.*, 536 B.R. 712, 732 (Bankr. N.D. Tex. 2015); *In re Mirant Corp.*, No. 03-46590, 2007 Bankr. LEXIS 4951, at \*19-20 (Bankr. N.D. Tex. Apr. 27, 2007).

Plan is determined to have complied with the applicable Bankruptcy Rules and due process. The court provides reasoning for its ruling below. The court directs the Chapter 11 Trustee to submit to the court for signing the proposed Findings of Fact and Conclusions of Law and Order that were filed at DE # 814. This Bench Ruling supplements those Findings of Fact and Conclusions of Law and Order and, where appropriate, should be considered additional findings and conclusions as contemplated by Fed. R. Bankr. Proc. 7052.

**I. Background.**<sup>4</sup>

The above-referenced bankruptcy cases (the “Bankruptcy Cases”) have been pending since January 30, 2018 and have been astonishingly contentious. The Chapter 11 Trustee has been in place since on or about May 14, 2018. The Plan (which is the fourth one proposed by the Chapter 11 Trustee) has been objected to by three related entities: (a) Highland Capital Management, L.P. (“Highland”), (b) Highland CLO Funding Ltd. (“HCLOF Guernsey”), and (c) Neutra, Ltd. (“Neutra Cayman”). The Chapter 11 Trustee loosely refers to these three objectors (the “Objectors”) as “the Highlands” because they are not only related to each other (*i.e.*, they are all, directly or indirectly, part of the Highland 2,000-member corporate organizational structure), but they also have been in “lockstep” with one another in objecting to virtually every position taken by the Chapter 11 Trustee during the Bankruptcy Cases.<sup>5</sup> These Objectors’ parties-in-interest status will be explained below.

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<sup>4</sup> For a complete set of background facts, the court incorporates herein by reference its Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Petitions, entered April 13, 2018. DE # 118. Exh. 243.

<sup>5</sup> It is also undisputed that, prior to the appointment of the Chapter 11 Trustee, *the Debtors* and Highland were affiliated and had a close relationship. Exhs. 17, 18, 22-27, 251, 619 & 649.

In simplest terms, the Debtor-Acis, which was formed in the year 2011, is primarily a CLO portfolio manager.<sup>6</sup> It manages hundreds of millions of dollars' worth of CLOs (which is an acronym for "collateralized loan obligations"). Specifically, it provides fund management services to various special purpose entities that hold CLOs. The Debtor-Acis was providing management services for five such special purpose entities (the "Acis CLOs") as of the time that it and its general partner were put into the involuntary Bankruptcy Cases. The parties have informally referred to the special purpose entities themselves as the "CLO Issuers" or "CLO Co-Issuers" but, to be clear, these special purpose entities (hereinafter, the "CLO SPEs") are structured as follows: (a) on the asset side of their balance sheets, the entities own pieces of senior debt owed by large corporations and, therefore, earn revenue from the variable interest payments made by those corporations on such senior debt; and (b) on the liability side of their balance sheets, the entities have obligations in the form of notes (*i.e.*, tranches of fixed interest rate notes) on which the CLO SPEs themselves are obligated—the holders of which notes are mostly institutions and pension funds (these tranches of notes are usually rated anywhere from Triple A to Single B, depending upon things such as their interest rate and perceived risk). The CLO SPEs make a profit, based on the spread or "delta" between: (a) the variable rates of interest paid on the assets that the CLO SPEs own (*i.e.*, the basket of senior notes); and (b) the fixed rates of interest that the CLO SPEs must pay on their own tranches of debt. At the bottom of the CLO SPEs' capital structure is their equity (sometimes referred to as "subordinated notes," but these "notes" are genuinely equity). As portfolio manager, the Debtor-Acis manages the CLO SPEs' pools of assets (by buying and selling senior loans to hold in the CLO SPEs'

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<sup>6</sup> The Debtor-Acis has managed other funds, from time to time, besides CLOs.

portfolios) and communicates with investors in the CLO SPEs. The CLO SPEs' tranches of notes are traded on the Over-the-Counter market.

To be perfectly clear, none of the CLO SPEs themselves are in bankruptcy. This has never been threatened or a concern. Only the Debtor-Acis which *manages* the CLO business is in bankruptcy. For the most part, the CLO SPEs have continued somewhat "business as usual" during the Chapter 11 Bankruptcy Cases (*i.e.*, they have continued to receive interest payments on their baskets of loans; the usual interest payments on their tranches of debt have been paid;<sup>7</sup> and baskets of loans have been bought and sold from time to time). The CLO SPEs have retained their own separate counsel during the Chapter 11 cases, have appeared from time-to-time on matters, and are not currently objecting to the Plan. There is also an indenture trustee (U.S. Bank National Association) for the CLO SPEs' debt, that has seemingly faithfully carried on its role during the Chapter 11 Bankruptcy Cases without many objections to the bankruptcy process—only making occasional statements aimed at ensuring that the indentures for the CLOs are not interfered with or disrespected. The indenture trustee has retained and appeared through its own separate counsel during the Chapter 11 Bankruptcy Cases and is not currently objecting to the Plan.

Historically, the Debtor-Acis has had four main sets of contracts that were at the heart of its business and allowed it to function. The Chapter 11 Trustee has from time-to-time credibly

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<sup>7</sup> The evidence reflected that there have been a couple of occasions recently when there were insufficient funds to make distributions to the equity. *E.g.*, Transcript 12/11/18 (PM) [DE # 790], at p. 15 (line 2) through p. 16 (line 18). But it appears to this court that these missed distributions were due to actions of Highland—as later explained herein—in improperly, surreptitiously attempting to liquidate the Acis CLOs, from the time period after the Chapter 11 Trustee was appointed, until the bankruptcy court issued an injunction to temporarily halt Highland's actions. *E.g.*, Transcript 12/11/18 (AM) [DE # 789], p. 67 (line 14) through p. 68 (line 6).

testified that these agreements essentially created an “eco-system” that allowed the Acis CLOs to be effectively and efficiently managed by the Debtor-Acis.

1. The PMAs with the CLO SPEs.<sup>8</sup>

First, the Debtor-Acis has various portfolio management agreements (the “PMAs”) *with the CLO SPEs*, pursuant to which the Debtor-Acis earns management fees. The PMAs have been the primary “assets” (loosely speaking) of the Debtor-Acis (to be more precise, the PMAs are executory contracts pursuant to section 365 of the Bankruptcy Code). They are what generate revenue for the Debtor-Acis.

2. The Sub-Advisory Agreement with Highland.<sup>9</sup>

Second, the Debtor-Acis had a Sub-Advisory Agreement (herein so called) with an insider, *Highland* (*i.e.*, one of the Objectors). Highland’s “insider” status will be further explained below. Pursuant to this agreement, the Debtor-Acis essentially sub-contracted for the use of Highland front-office personnel/advisors to perform management services for the Debtor-Acis (*i.e.*, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). The Debtor-Acis paid handsome fees to Highland pursuant to this agreement. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was rejected (with bankruptcy court approval)<sup>10</sup> by the Chapter 11 Trustee during the Bankruptcy Cases, when the Chapter 11 Trustee credibly represented that he had not only found resources to provide these services at a much lower cost to the estate, but he also had begun to

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<sup>8</sup> Exhs. 6-10.

<sup>9</sup> Exh. 17.

<sup>10</sup> *See* 11 U.S.C. § 365(a).

believe that Highland was engaging in stealth efforts to liquidate the Acis CLOs, to the detriment of the Debtor-Acis's creditors.<sup>11</sup>

3. The Shared Services Agreement with Highland.<sup>12</sup>

Third, the Debtor-Acis also had a Shared Services Agreement (herein so called) with Highland, pursuant to which the Debtor-Acis essentially sub-contracted for the use of Highland's back-office services (again, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). To be clear, the Debtor-Acis had no employees of its own—only a couple of officers and members. The Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was also rejected by the Chapter 11 Trustee during the Bankruptcy Cases (with bankruptcy court approval) for the same reasons that the Sub-Advisory Agreement with Highland was rejected.

4. The Equity PMA.<sup>13</sup>

Fourth, until a few weeks before the Bankruptcy Cases were filed, the Debtor-Acis also had yet another portfolio management agreement (distinct from its PMAs with the CLO SPEs) whereby the Debtor-Acis provided services not just to the CLO SPEs themselves, but separately to the equity holder in the CLO SPEs. This portfolio management agreement with the equity holder in the CLO SPEs is sometimes referred to by the parties as the "ALF PMA," but it would probably be easier to refer to it as the "Equity PMA" (for ease of reference, the court will refer to

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<sup>11</sup> See Transcript 12/11/18 (AM) [DE # 789], at p. 48 (line 15) through p. 49 (line 16); p. 50 (line 12) through p. 52 (line 7).

<sup>12</sup> Exh. 18.

<sup>13</sup> Exh. 11.

it as the “Equity/ALF PMA”).<sup>14</sup> The Debtor-Acis did not earn a specific fee pursuant to the Equity/ALF PMA, but the Chapter 11 Trustee and certain of his witnesses credibly testified that the Debtor-Acis considered the agreement valuable and very important, because it essentially gave the Debtor-Acis the ability to control the whole Acis CLO eco-system—in other words, gave the Debtor-Acis the ability to make substantial decisions on behalf of the CLO SPEs’ *equity*—distinct from making decisions for the CLO SPEs themselves pursuant to the PMAs. The more credible evidence before the court suggests that the Equity/ALF PMA delegated to the portfolio manager (*i.e.*, the Debtor-Acis) the right to control the terms of any liquidation of collateral in an optional redemption under the terms of the CLO indentures.<sup>15</sup> In any event, shortly before the Bankruptcy Cases were filed, agents of Highland and/or others controlling the Debtor-Acis (including but not limited to Mr. James Dondero—the chief executive officer of both the Debtor-Acis and of Highland): (a) caused the Debtor-Acis to terminate this Equity/ALF PMA (notably, the counter-party to this agreement, the equity owner, would have only been able to terminate it “for cause”<sup>16</sup>); and (b) then caused the equity owner to enter into a new Equity PMA with a newly formed offshore entity called Highland HCF Advisor, Ltd. (“Highland HCF”).<sup>17</sup> Mr. Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland HCF.<sup>18</sup> The Equity/ALF PMA

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<sup>14</sup> There were actually different iterations of the Equity/ALF PMA including one dated August 10, 2015, and another dated December 22, 2016.

<sup>15</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 11 at §§ 5 and 6.

<sup>16</sup> The Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager “for cause” at § 14(a)-(e). Exh. 11. On the contrary, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11.

<sup>17</sup> Exh. 23 (testimony of Scott Ellington), p. 175 (lines 6-25); *see also* Transcript 12/11/18 (AM) [DE # 789], at p. 54 (line 11) through p. 55 (line 5).

<sup>18</sup> *Id.* at p. 266 (lines 1-4).

would have been an executory contract of the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if it had not been terminated shortly before the Bankruptcy Cases. The court has heard credible testimony that leads it to conclude that the Equity/ALF PMA would have been assumed by the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if not terminated by agents of Highland on the eve of bankruptcy. The court has heard credible testimony that it is important for a portfolio manager to have not only the PMAs with the CLO SPEs themselves, but also with the equity owners of the CLO SPEs.

## **II. A Few More Basics About CLOs.**

In the world of CLOs (like other public debt instruments) there are occasionally redemptions, refinancings, and resets. A redemption is essentially when the equity in the CLO, before maturity, calls for the liquidation of the collateral in the CLO and the repayment of the tranches of notes, so that the CLO comes to an end. A refinancing is when a lower interest rate can be accomplished in the market place on the tranches of debt of the CLO, but the maturity date and other terms remain in place (similar to a refinancing on a home mortgage). This can happen typically after a two-year non-call period. A reset is when the maturity date, the reinvestment period, or other changes in the terms of a CLO (beyond simply interest rate) are accomplished.<sup>19</sup>

It should be noted that the top tranche of notes in the CLO SPEs (AAA-rated) is considered the “controlling” class, and a majority of holders in this class can terminate the CLO manager (*i.e.*, the Debtor-Acis LP) for cause on 45 days’ notice, but these folks have apparently been content to ignore the Bankruptcy Cases and the fighting between the Debtor-Acis and

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<sup>19</sup> See generally Transcript 2/9/2018 [DE # 26], at p. 74-75.

Highland (as further described below)—no doubt because they are earning their fixed income stream without a hitch. And the bottom tranche of “notes” in the CLO SPEs (the equity) has voting rights and is a capital provider and, in certain ways, controls the CLO SPEs, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s. But, by virtue of the Equity/ALF PMA, the Debtor-Acis was really acting for the equity. It seems substantially likely to the court that this is why Highland and its agents caused the Debtor-Acis to terminate the Equity/ALF PMA (which, as mentioned above, was an agreement that the equity could have only terminated “for cause”—and it appears there would have been no “cause”).

### **III. The Non-Insider Creditors.**

The Debtor-Acis does not have many creditors. The non-insider creditors are, for the most part, Joshua Terry (“Mr. Terry”) and a few vendors (most of which are law firms).

Mr. Terry commenced the Bankruptcy Cases with the filing of involuntary bankruptcy petitions. Mr. Terry was the human being who formerly, quite successfully served as the portfolio manager for the Debtor-Acis for many years. Mr. Terry was terminated under contentious circumstances on June 9, 2016, after getting into disagreements with Mr. Dondero. Mr. Terry was technically an employee of Highland itself (like all employees are, in the Highland family of companies—no matter which subsidiary or affiliate they work for). After his employment termination, Highland sued Mr. Terry in September 2016. Mr. Terry asserted claims back against Highland and both of the above-referenced Debtors. The litigation was referred to arbitration, and, after a ten-day arbitration trial in September 2017 before “JAMS,” Mr. Terry obtained an Arbitration Award (herein so called), on October 20, 2017, jointly and

severally, against both of the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. A Final Judgment (the “Terry Judgment”) confirming the Arbitration Award was entered on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.

Mr. Terry commenced the Bankruptcy Cases when he became concerned that the Debtor-Acis was being rendered insolvent and unable to pay creditors including himself, due to actions undertaken by Highland and its agents immediately after entry of the Arbitration Award (*e.g.*, transfers of assets, contracts, and business away from the Debtor-Acis).

The Debtor-Acis also is obligated on large administrative expense claims, since: (a) a Chapter 11 Trustee was appointed very early—due to what the bankruptcy court perceived to be massive conflicts of interest with regard to the Debtors’ management; and (b) the Objectors have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.

#### **IV. The Objectors (all of which are “Insiders”).**

*There are no non-insider creditors objecting to the Plan.* Mr. Terry supports the Plan. The CLO SPEs and Indenture Trustee do not oppose the Plan. None of the vendors oppose the Plan. The U.S. Trustee is not opposing the Plan. As a technical matter, two impaired classes of creditors voted to accept the Plan.<sup>20</sup> *So who are the Objectors to the Plan (which Plan will be further described below) and what is their party-in-interest status here?*

As earlier mentioned, the Objectors are: (a) Highland, (b) HCLOF Guernsey, and (c) Neutra Cayman. As noted earlier, the Chapter 11 Trustee frequently refers to them collectively as “The Highlands”—but the Objectors do not like this conflation. At one time Highland and

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<sup>20</sup> Classes 2 and 3. *See* Exh. 613.

HCLOF Guernsey had the same lawyers. They do not anymore. However, they frequently file joint pleadings and take the same positions. Highland and Neutra Cayman do still have the same lawyers.

1. Highland.

Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 by Mr. Dondero, originally with a 75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest. As mentioned earlier, Mr. Dondero is the chief executive of Highland. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles including CLOs, private equity funds, and mutual funds. Highland provides employees to entities in the organizational structure, such as it did with the Debtor-Acis, through the mechanism of shared services agreements and sub-advisory agreements (as mentioned above). *Notably, Highland’s chief executive, Mr. Dondero, served as the President of the Debtor-Acis at all relevant times prepetition.*<sup>21</sup> Highland claims to be a large creditor of the Debtor-Acis for services provided to the Debtor-Acis under the Shared Services Agreement and the Sub-Advisory Agreement. The Chapter 11 Trustee disputes these claims and has asserted numerous claims back against Highland in an adversary proceeding (the “Highland Entities Adversary Proceeding”).

In any event, Highland is a *disputed insider creditor*. It is an “insider,” as contemplated by Bankruptcy Code section 101(31)(C), because it, beyond any shadow of a doubt, controlled the Debtor-Acis until these Bankruptcy Cases developed to the point of having a Chapter 11

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<sup>21</sup> One witness, Hunter Covitz, referred to the Debtor-Acis as the “structured credit arm of Highland.” Transcript 12/13/18 (AM) [DE # 793], at p. 57.

Trustee take charge of the Debtor-Acis. Highland does not seem to dispute that it is an insider.<sup>22</sup> But, for the avoidance of doubt, Highland should be considered an insider of the Debtor-Acis for at least the following reasons: (a) the same human being (Mr. Dondero) was president of the Debtor-Acis and was the chief executive of Highland; (b) Highland's General Counsel, Scott Ellington, testified that Mr. Dondero controlled them both;<sup>23</sup> and (c) Highland provided the Debtor-Acis with employees and management services pursuant to the Sub-Advisory Agreement and Shared Services Agreement.<sup>24</sup>

Additionally, the court believes that the Chapter 11 Trustee made a convincing argument in connection with Plan confirmation (and his justification for the separate classification of Highland's claim in the Plan from other general unsecured creditors) that Highland should also be regarded as a "competitor" of the Debtor-Acis at this juncture, since they are both in the fund management business and Highland's control over the Debtor-Acis has now been divested. Highland's competitor status, in addition to its insider status, warrants additional scrutiny of its

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<sup>22</sup> Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, *etc.* Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See Wilson v. Huffman (In re Missionary Baptist Foundation of Am., Inc.)*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018). The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008, 1011 (5th Cir. 1992).

<sup>23</sup> *E.g.*, Exh. 23, at pp. 160 (line 15) through 161 (line 4); p. 196 (lines 14-19); p. 219 (lines 1-21).

<sup>24</sup> *See* 11 U.S.C. §§ 101(2)(D); (31)(C)(5). The court notes that, although Highland has, from time to time, alleged that Mr. Terry is a "non-statutory insider" of the Trustee, it has never put on any credible evidence to support this contention.

motivations in objecting to the Plan. More importantly, it provides a sound legal and business justification for separately classifying its claim in the Plan.

2. HCLOF Guernsey.

The second Objector, HCLOF Guernsey, is an entity formed in the island nation of Guernsey. It has two allegedly independent Directors from Guernsey who have provided testimony in connection with confirmation of the Plan. It was enormously clear to the court (as will be elaborated upon below) that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere “figureheads” for HCLOF Guernsey and they defer to Highland *entirely* to tell them what to do, what to say, and when. In any event, HCLOF Guernsey is the owner of the equity in the CLO SPEs (as earlier mentioned, this equity is sometimes referred to as the “subordinated notes” in the CLO SPEs). According to HCLOF Guernsey's 2017 Annual Report and Audited Financials, all of its subordinated notes issued by the Acis CLOs are physically held at and are pledged to HCLOF Guernsey's lender, NexBank, which happens to be a Dallas bank that is an affiliate of Highland.<sup>25</sup> HCLOF Guernsey was created in the year 2015 and was formerly known as “ALF.”<sup>26</sup> Its name was changed on October 30, 2017 (ten days after Mr. Terry's Arbitration Award was entered), to allegedly distance itself from the Debtor-Acis. The equity owner HCLOF Guernsey, in turn, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from *Highland*, is managed/advised by *Highland*, and whose *independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero*; (ii) 2% is owned by *Highland employees*; and (iii) a 49% equity owner that is a third-party institutional investor based in

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<sup>25</sup> Exh. 647.

<sup>26</sup> “ALF” is short-hand for Acis Loan Funding, Ltd.

Boston, Massachusetts that only recently invested in HCLOF Guernsey (*i.e.*, in November 2017, just after the Terry Arbitration Award was issued), and desires to remain passive and anonymous (hereinafter, the “Passive Investor”).<sup>27</sup> Notably, the Debtor-Acis itself owned a small percentage of HCLOF Guernsey, in addition to providing management services to it, until October 24, 2017 (four days after the Terry Arbitration Award was issued).

The court has allowed HCLOF Guernsey to vigorously participate in the confirmation hearing (and other hearings during the Bankruptcy Cases), although its party-in-interest status has been questionable. So how is HCLOF Guernsey a party-in-interest? The answer is a bit of a stretch—but the court has decided it is impacted by the Plan, so it should have the right to object. Its party-in-interest status has evolved during the Bankruptcy Cases.

First, early on in these Bankruptcy Cases, HCLOF Guernsey (together with Highland) sued the Chapter 11 Trustee in the above-mentioned “Highland Entities Adversary Proceeding”—mostly, if not entirely, seeking injunctive relief. At that point, the Chapter 11 Trustee treated HCLOF Guernsey as a disputed creditor,<sup>28</sup> since it was seeking equitable relief that could arguably be monetized.<sup>29</sup> However, HCLOF Guernsey subsequently withdrew its requests for relief in that Highland Entities Adversary Proceeding. But then, the Chapter 11 Trustee subsequently filed claims *against* HCLOF Guernsey in the Highland Entities Adversary Proceeding (along with his claims against Highland and a couple of other Highland entities) asserting avoidance actions and other causes of action against HCLOF Guernsey (among other

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<sup>27</sup> The testimony was that the Passive Investor committed to a \$150 million investment (\$75 million immediately and \$75 million callable over the next several years).

<sup>28</sup> In fact, on August 15, 2018, the Chapter 11 Trustee filed a proof of claim on behalf of HCLOF Guernsey. HCLOF Guernsey has since objected to the proof of claim.

<sup>29</sup> *See* 11 U.S.C. §§ 101(5)(B) & 101(10).

things, the Chapter 11 Trustee alleged that HCLOF Guernsey schemed with Highland to terminate the Equity/ALF PMA, in a step toward systematically dismantling the Debtor-Acis of its value). Thus, HCLOF Guernsey may ultimately owe money to this estate. But most importantly, HCLOF Guernsey should be deemed a party-in-interest because of a proposed temporary injunction in the Plan that essentially would enjoin (for a finite, defined period) HCLOF Guernsey from exercising certain of its rights with regard to its equity in the CLO SPEs, pending resolution of the Highland Entities Adversary Proceeding. This temporary injunction in the Plan, directed towards HCLOF Guernsey and affiliates, will be further described below.

### 3. Neutra Cayman.

Neutra Cayman is a Cayman island exempted company that is the equity owner *of the Debtor-Acis itself* (in contrast to HCLOF Guernsey, which only owns equity in the CLO SPEs). Neutra Cayman only acquired its equity interest in the Debtor-Acis the day after the Terry Judgment was entered (on December 18, 2017), and for no consideration, from the Dugaboy Investment Trust (a family trust on which Mr. Dondero’s sister is named trustee, that previously owned 74.9% of the Debtor-Acis) and from Mr. Akada (who previously owned 25% of the Debtor-Acis).<sup>30</sup> The court concludes that Neutra Cayman has standing to object to the Plan,

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<sup>30</sup> The court is repeatedly referring to the Debtor-Acis but, to be clear, there are two consolidated Debtors: Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP/LLC”). See note 2, *supra*. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) the Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed (*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and the Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, most importantly, on the day after entry of Mr. Terry’s Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and the Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to Neutra Cayman. The Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra Cayman.

since it is an equity owner of the Debtors (albeit only having acquired its equity about a month before the bankruptcy). As with HCLOF Guernsey, the court also concludes that Neutra-Cayman is absolutely, beyond any reasonable doubt, controlled by Highland, as explained further below.

**V. The Plan.**

The Plan is fairly simple, considering the complexity of the business and the relationships, and the contentiousness of the Bankruptcy Cases. Again, there aren't many creditors.

The Plan proposes<sup>31</sup> that the Debtor-Acis, as a "Reorganized Debtor," will continue with the business operations of the Debtors after the Effective Date<sup>32</sup> of the Plan. Specifically, the Debtor-Acis will assume, pursuant to section 365 of the Bankruptcy Code, its CLO PMAs and continue to serve as the portfolio manager to the CLO SPEs (and as to any resets of the CLOs therein). The Reorganized Debtor will continue to earn fees and will pay claims from post-Effective Date income as provided in the Plan. The Reorganized Acis will actively pursue additional fund management contracts. Again, there is no objection by the CLO SPEs to the Plan, and the indenture trustee on the tranches of CLO notes has no objection.

Mr. Terry (again, the former human manager of the Debtor-Acis and also the largest creditor) shall receive 100% of the equity interests in the Reorganized Debtor, in exchange for a negotiated \$1 million reduction in his partially secured claim.<sup>33</sup> The remainder of his claim will

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<sup>31</sup> This is merely a high-level summary of the Plan. The Plan terms, as modified, shall in all ways govern, not this summary.

<sup>32</sup> The "Effective Date" is defined, essentially, as the first business day which is fourteen (14) days after entry of an order confirming the Plan, if the confirmation order is not stayed.

<sup>33</sup> Mr. Terry has asserted partial secured status as to his claim in the proofs of claim he has filed in these cases. The Chapter 11 Trustee credibly testified that there was no other logical party to take the equity of

be treated as an unsecured claim. Each unsecured creditor will receive on the Plan Effective Date an unsecured cash flow note in the full amount of its claim, which notes will mature three years after the Effective Date of the Plan, with equal quarterly payments of principal and interest, at 5% interest per annum. These cash flow notes are expected to yield payment in full (actually 102%) to the unsecured creditors.<sup>34</sup>

As for the sub-advisory and shared services agreements with Highland, as noted earlier, the Chapter 11 Trustee, with bankruptcy court approval, has already (as of August 2018) rejected these during the Bankruptcy Cases, pursuant to section 365 of the Bankruptcy Code. The Chapter 11 Trustee caused the Debtor-Acis to subsequently contract, with bankruptcy court approval, with a different entity, Brigade Capital Management, L.P. (“Brigade”), to provide the sub-advisory and shared services going forward, for a minimum two-year term (unless the Reorganized Debtor and Brigade otherwise agree), at a much cheaper cost than Highland.<sup>35</sup> Thus, Brigade will provide sub-servicing and sub-advisory services to the Reorganized Debtor.

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the Reorganized Debtor, at this juncture, and that he had negotiated this reduction to Mr. Terry’s secured claim, and he thought it was justified by the circumstances of this case. While the Objectors have argued that the secured status of Mr. Terry’s claim may be subject to challenge under section 547(b) of the Bankruptcy Code, section 547(b) is discretionary (*e.g.*, a “trustee may avoid any transfer” that might be avoidable as a preference). The Chapter 11 Trustee credibly emphasized that this was negotiated treatment of an asserted secured claim, and he had no “exclusivity” on proposing a plan if someone else had wanted to propose something different. Transcript 12/11/18 (AM) [DE # 789], at p. 70 (line 3) through p. 71 (line 2).

<sup>34</sup> Insider claims—namely Highland—are separately classified from general unsecured claims under the Plan. To the extent such claims are ultimately allowed (after any allowed defenses and offsets), and to the extent such claims are not equitably subordinated by Bankruptcy Court adjudication, these claims will receive the same treatment as other general unsecured claims (cash flow notes). To the extent any of these claims are ultimately allowed but equitably subordinated, they will receive subordinated promissory notes, accruing interest at 5% per annum, that will not be payable until all non-subordinated claims have been paid in full (they will have maturity dates to occur on the earlier of: (i) the date that is two years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five years after the Effective Date). The expected recovery under the Plan for the insider claims is from 65% to 100%.

<sup>35</sup> An entity named Cortland Capital Markets Services LLC (“Cortland”) is actually providing some of the back-office shared services agreement type functions.

As for the Equity/ALF PMA, it is not an agreement with the Debtor-Acis anymore to either be assumed or rejected, pursuant to section 365. However, in the Highland Entities Adversary Proceeding, the Chapter 11 Trustee seeks to avoid the termination of the Equity/ALF PMA. Pursuant to the Plan, the Reorganized Debtor will be vested with certain Assets of the Debtors, including Estate Claims and Estate Defenses, to be administered and liquidated by the Reorganized Debtor.

1. The Highland Entities Adversary Proceeding (Adv. Proc. No. 18-03212).

Suffice it to say that the Highland Entities Adversary Proceeding is a somewhat significant part of the Plan; it is what justifies the temporary injunction that is a critical part of the Plan. With regard to the Highland Entities Adversary Proceeding, the Defendants in it (there are five of them) are: (i) Highland; (ii) HCLOF Guernsey; (iii) Highland HCF (*i.e.*, the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA); (iv) Highland CLO Management, Ltd. (“Highland Management”) (an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry’s Arbitration Award); and (v) Highland CLO Holdings, Ltd. (yet another entity incorporated in the Cayman Island on October 27, 2017). The Highland Entities Adversary Proceeding is essentially a multi-faceted fraudulent transfer action. The statutory predicates for the relief sought are sections 502, 542, 544, 547, 548, and 550 of the Bankruptcy Code and Texas Business & Commerce Code § 24.001 et seq. (“TUFTA”).

Distilled to its essence, the Highland Entities Adversary Proceeding argues that Highland, along with its related Co-Defendants, *orchestrated a systematic transfer of value away from the Debtor-Acis to other Highland entities* (all of those transferee-entities are offshore entities—whereas the Debtor-Acis is a Delaware entity), beginning almost immediately after Mr. Terry

was terminated in June 2016, and continuing on during Mr. Terry's litigation/arbitration with the Debtor-Acis, and then rapidly unfolding after the Arbitration Award. This was allegedly done to denude the Debtor-Acis of value and make the Debtors "judgment proof." This was allegedly also done to ensure that the Debtor-Acis's very valuable business as portfolio manager would be taken over by other Highland entities and remain under Highland's and Mr. Dondero's control.<sup>36</sup>

The evidence is rather startling on this point. Among other things, pursuant to amendments made to the Debtor-Acis's Sub-Advisory Agreement and Shared Services Agreements with Highland, starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level. Then, in April 2017, a new CLO was issued (or actually a former Acis CLO was reset) and a new Highland-affiliated Cayman Island entity was ultimately put in place to manage it instead of the Debtor-Acis (even though the Debtor-Acis managed all other CLOs in the Highland corporate empire). Numerous other transactions were undertaken through the Fall of 2017, removing assets and agreements away from the Debtor-Acis. For example, a multi-million dollar note receivable owed to the Debtor-Acis by Highland was transferred out of the Debtor-Acis,<sup>37</sup> and

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<sup>36</sup> Exh. 627.

<sup>37</sup> On November 3, 2017, the Debtor-Acis, Highland, and Highland Management (a newly created, offshore Highland affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). Exh. 225. The Note Assignment and Transfer Agreement, among other things, transferred a \$9.5 million principal amount promissory note executed by Highland and payable to the Debtor-Acis (the "Note"), Exh. 218, from the Debtor-Acis to Highland Management (the "Note Transfer"). The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for the Debtor-Acis. The document recites that (i) Highland is no longer willing to continue providing support services to the Debtor-Acis, (ii) the Debtor-Acis, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland Management agrees to step into the collateral manager role if the Debtor-Acis will assign the Note to it. Notably, Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer. Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach. The Debtor-

shares in HCLOF Guernsey held by the Debtor-Acis were sold back to HCLOF Guernsey (four days after the Arbitration Award). And then the Equity/ALF PMA was terminated so that the Debtor-Acis would no longer have management-control over HCLOF Guernsey as its portfolio manager—arguably putting Highland in a position to liquidate the Acis CLOs and put the Debtor-Acis out of business. Specifically, on October 27, 2017, just seven days after Mr. Terry's Arbitration Award, the Debtor-Acis ostensibly terminated its own portfolio management rights under the Equity/ALF PMA<sup>38</sup> and transferred its authority and its valuable portfolio management rights—for no value—to Highland HCF, an affiliate of Highland. It appears that the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highland entities or their representatives.

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Acis appears to have received no or insufficient consideration for the Note Transfer. The primary consideration for the Note Transfer was an alleged payable due from the Debtor-Acis to Highland in the approximate amount of \$7.5 million for participation fees, which was transferred to Highland Management shortly before the Note Assignment and Transfer Agreement was entered. The validity of the alleged “participation fees” is unknown. The remainder of the consideration for the Note Transfer is a promise to pay certain expenses of the Debtor-Acis, which has apparently never occurred. In any event, it appears highly likely that the Note Transfer took away the Note as an asset from which Mr. Terry could collect his judgment.

<sup>38</sup> As mentioned earlier, the Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager by the equity owner (now known as HCLOF Guernsey) “*for cause*” at § 14(a)-(e). Exh. 11. Meanwhile, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11. It would appear that these terms were wholly ignored by the persons orchestrating the Equity/ALF PMA termination. It appears that the Debtor-Acis was simply manipulated to consent and agree to its removal and replacement as portfolio manager of HCLOF Guernsey. This transfer of the Debtor-Acis's portfolio management rights to the offshore entity Highland HCF was accomplished by way of a new portfolio management agreement entered into by the equity owner (now known as HCLOF Guernsey) and Highland HCF on October 27, 2017, which empowered Highland HCF with the same broad authority to direct the management of HCLOF Guernsey as was previously held by the Debtor-Acis LP under the Equity/ALF PMA. See Exh. 19, October 27, 2017 PMA §§ 1 & 5(a)-(q). This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017. Exh. 215. The Debtor-Acis received no consideration for this transfer.

The Highland Defendants argue that the Equity/ALF PMA (its termination being arguably the most significant transfer referenced in the Highland Entities Adversary Proceeding) did not have value. But the evidence convinces the court that it absolutely did. A witness, Mr. Zachary Alpern, credibly testified that the portfolio manager (under the Equity/ALF PMA) made decisions regarding the underlying financial instruments including seeking an optional redemption and negotiating a reset. Mr. Alpern also credibly testified about the importance, in the CLO industry, of the portfolio manager having control of a CLO's equity to ensure an "evergreen fee stream."<sup>39</sup> Additionally, Mr. Terry also credibly testified that the portfolio manager (not the CLO equity interest holder) has the right to control the terms of the liquidation of collateral in an optional redemption under the terms of the indentures.<sup>40</sup> The Chapter 11 Trustee also credibly testified that the Equity/ALF PMA allowed the Debtor-Acis to have control of an optional redemption.<sup>41</sup> Finally, a witness, Mr. Klein, credibly testified about the value of the Equity/ALF PMA and the negative impact of its transfer on the Debtor-Acis LP.<sup>42</sup>

To be clear, Highland and HCLOF Guernsey have argued in opposition to the Chapter 11 Trustee's position that it is HCLOF Guernsey—the actual equity holder of the CLO SPEs—that had/has the absolute power and authority to control the CLO SPEs' destinies and it is ludicrous to suggest otherwise. However, not only does the Equity/ALF PMA appear to this court to have delegated the relevant power and authority *to the Debtor-Acis*, but Highland's own expert on this

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<sup>39</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 65-67, 81-93 and Transcript 8/23/18 (PM) at pp. 34-35, 38-40, 46, and 49.

<sup>40</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 405, Transcript 8/27/18 (AM) at pp. 63-75.

<sup>41</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 53.

<sup>42</sup> Exh. 405, Transcript 8/27/18 (PM) at pp. 143-144, 147-159 and 205-207.

topic, Mr. Castro, testified that the “actual humans” who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF).<sup>43</sup> Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.<sup>44</sup>

The court concludes that the Chapter 11 Trustee has demonstrated a likelihood of success on the merits with regard to his claims set forth in the Highland Entities Adversary Proceeding. Therefore, the Temporary Injunction that is part of the Plan is supportable (as further explained below). Of course, the nature and extent of the rights ultimately recovered by the Debtor-Acis will either be determined in the Highland Entities Adversary Proceeding or, as HCLOF Guernsey’s own Guernsey expert conceded, in a binding arbitration in Dallas, Texas under the terms of the Equity/ALF PMA.<sup>45</sup>

## 2. The Plan Injunction.

The most controversial aspect of the Plan—the aspect of it that seems to be the primary focus of the Objectors—is a *portion* of an injunction in the Plan (the “Temporary Injunction”). The Temporary Injunction would *temporarily* enjoin the following parties *from effectuating an optional redemption or liquidating the Acis CLOs* and related actions: (i) Highland; (ii) HCLOF

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<sup>43</sup> Exh. 406, Transcript 8/28/18 (PM) at pp. 61-63.

<sup>44</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 85-89 and Exhs. 323-325 (Notices of Optional Redemption signed by the Debtor-Acis as portfolio manager of HCLOF).

<sup>45</sup> Transcript 12/13/18 (PM) [DE #794], at pp. 116, 118-19, 122, 124 (Corfield); *see also*, p. 140 (McGuffin).

Guernsey; (iii) CLO Holdco, Ltd. (the donor advised fund, seeded with Highland contributions and managed by Highland that owns 49% of HCLOF Guernsey); (iv) Neutra Cayman; (v) Highland HCF (the Cayman Island entity created shortly before the Bankruptcy Cases to replace the Debtor-Acis under the Equity/ALF PMA); (vi) Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017); and (vii) any affiliates of Highland and their respective employees, agents, representatives, transferees, assigns, and successors.<sup>46</sup> This Temporary Injunction is proposed to only last until the earlier of when: (a) the creditors of the Debtors are paid in full; (b) resolution of the Highland Entities Adversary Proceeding; (c) a material breach in the Plan; or (d) the bankruptcy court terminates the Temporary Injunction upon request of a party-in-interest. ***Fully consensual resets of the Acis CLOs are permissible if HCLOF Guernsey, as the equity owner in the CLO SPEs, chooses to agree to resets.*** The basis for the Temporary Injunction is as follows: The Chapter 11 Trustee has asserted numerous claims in the Highland Entities Adversary Proceeding against Highland, HCLOF Guernsey, and affiliates, including claims to recover the Debtor-Acis's rights under the Equity/ALF PMA.<sup>47</sup> The Temporary Plan Injunction essentially provides for the continuation, after the Effective Date, of injunctive relief that the bankruptcy court previously granted in its Preliminary Injunction Order (the "Preliminary Injunction") [DE # 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Highland Entities Adversary Proceeding. The Preliminary Injunction was originally set to expire by its

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<sup>46</sup> There is another portion of this Plan injunction that is more of a general plan injunction (*i.e.*, very typical) that would prohibit actions against the Debtors, Reorganized Debtor and the Estate Assets, based on acts occurring before the Effective Date, which would be permanent and would not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

<sup>47</sup> See Exh. 627, Trustee's Counterclaims and Claim Objection.

own terms upon confirmation of the Plan but would be extended pursuant to an order confirming the Plan, through the Effective Date of the Plan.

As the Fifth Circuit has stated, the four elements to justify a preliminary injunction are (a) substantial likelihood of success on the merits; (b) substantial threat that the plaintiff will suffer irreparable injury; (c) the threatened injury outweighs any harm the injunction might cause the defendant; and (d) the injunction is in the public interest.<sup>48</sup> Each element is present in these cases.

*Immediate and Irreparable Harm.* The court finds and concludes that the Temporary Injunction is legally permissible, necessary, and appropriate to avoid immediate and irreparable harm to the Reorganized Debtor (*i.e.*, evisceration of the Acis CLOs, by parties with unclean hands, that would have no authority to effectuate a liquidation of the CLOs, absent the prepetition wrongful termination of the Equity/ALF PMA). Mr. Scott, a director of HCLOF Guernsey, testified that, absent the Temporary Plan Injunction, HCLOF Guernsey would call for an optional redemption of the Acis CLOs.<sup>49</sup> The testimony of Ms. Bestwick, the other director of HCLOF Guernsey, also implied that, when the injunction expires, HCLOF Guernsey would redeem the Acis CLOs so that they could once again be managed by Highland.<sup>50</sup> The Chapter 11 Trustee credibly testified that if the Acis CLOs are liquidated, there is nothing for the Debtor-Acis to manage.<sup>51</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction

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<sup>48</sup> *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998).

<sup>49</sup> Exh. 721, Mr. Scott Depo. at pp. 204.

<sup>50</sup> Exh. 719, Bestwick Depo. at p. 112.

<sup>51</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 40.

is very important because it protects the revenues under the Acis PMAs, which is a source of potential recovery to creditors under the Plan.<sup>52</sup> Mr. Terry credibly testified that the Temporary Plan Injunction is a critical component of the Plan and that the Debtor-Acis would have no going concern value without it. In fact, without the Plan Injunction, Mr. Terry will be precluded from reorganizing the business and paying creditors.<sup>53</sup>

The Objectors have argued that the Chapter 11 Trustee cannot suffer irreparable harm because he has an adequate remedy at law. This argument misses the mark. The destruction of the Debtors' ongoing business, which has the potential to repay creditors under the Plan in two years, constitutes irreparable harm. The fact that the estate possesses a number of avoidance claims for damages against Highland and its affiliates, and could potentially obtain damages on such claims, does not render the destruction of the Debtor-Acis's ongoing business any less harmful. Indeed, according to the Fifth Circuit:

[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.' For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.<sup>54</sup>

*Likelihood of Success on the Merits.* The Chapter 11 Trustee has also demonstrated a likelihood of succeeding on the merits in the Highland Entities Adversary Proceeding.

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<sup>52</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>53</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>54</sup> *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Lee v. Bickell*, 292 U.S. 415, 421 (1934) ("we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction.")).

The record contains substantial evidence of both intentional and constructive fraudulent transfers with regard to the Equity/ALF PMA and other assets.<sup>55</sup> The numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors' creditors. Highland's only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis's brand was toxic in the market place.<sup>56</sup> However, these business justifications were not supported (and, in fact, were contradicted) by the evidence.

Indeed, while representatives of Highland and its affiliates said that the Passive Investor's demands were the reason for the termination (*i.e.*, essentially a "transfer") of the Equity/ALF PMA, the Passive Investor's representative testified that this was untrue and that these alleged demands were never made by the Passive Investor.<sup>57</sup> In fact, the Passive Investor was just that—a passive, minority investor in HCLOF Guernsey with no ability to influence or control any of

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<sup>55</sup> *E.g.*, Exh. 22, Transcript 2/6/18 at pp. 82-109, 130, 202-244, and the exhibits discussed therein; Exh. 201, Transcript 3/21/18 at pp. 110-133 & 186-191; Exh. 24, Transcript 3/22/18 at pp. 71-75 & pp. 204-205; Transcript 12/11/18 [DE # 789], at pp. 52-56; *see also* Transcript 8/27/18 (AM) [DE # 552], at p. 52; Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98;

<sup>56</sup> Highland General Counsel Scott Ellington testified that the Passive Investor said it had no interest in doing business with the Debtor-Acis because the Debtor-Acis brand was purportedly toxic and, consequently, nothing associated with the Debtor-Acis could be managed or marketed as a CLO. Exh. 23, Transcript 2/7/18 at pp. 55-58. Mr. Ellington further testified that the Passive Investor demanded that the Equity/ALF PMA be transferred. Exh. 23, Transcript 2/7/18 at pp. 203-204. Mr. Ellington also testified that, because the Passive Investor would be putting in additional capital in connection with any reset CLOs, it had the ability to "start calling the shots" and dictate the terms of any reset transactions. Exh. 23, Transcript 2/7/18 at p. 226. Additionally, Highland executive Mark Okada testified that a reset transaction could not be performed by the Debtor-Acis because the market would not accept the Debtor-Acis as a portfolio manager and the Debtor-Acis was no longer risk-retention compliant. Exh. 25, Transcript 3/23/18 at p. 53. Additionally, Mr. Dondero testified that the "Boston investor" deal was contingent on getting away from the Debtor-Acis and getting a new collateral manager. Exh. 25, Transcript 3/23/18 at pp. 143-144.

<sup>57</sup> *See* Exh. 720 and excerpts read in to the trial record on 12/11/18 (PM) at pp. 149-157.

the actual investment decisions.<sup>58</sup> The only other business justification Highland and HCLOF Guernsey have suggested for the prepetition transfers was that the Debtor-Acis “was a shell” and not capable of being risk retention compliant.<sup>59</sup> However, Highland portfolio manager Hunter Covitz testified that in October 2017, prior to the Terry Arbitration Award, there was a structure in place that would comply with risk retention.<sup>60</sup> Mr. Covitz could not convincingly distinguish why the “shell” status of the Debtor-Acis was distinguishable from the “shell” status of other Highland-related entities that were the recipients of various fraudulent transfers.<sup>61</sup> Mr. Covitz also subsequently admitted that the Passive Investor did not request that the Debtor-Acis end its involvement with HCLOF Guernsey through the Equity/ALF PMA fraudulent transfer or request that ALF change its name to HCLOF [Guernsey].<sup>62</sup> Mr. Covitz’s testimony contradicted the testimony provided by Scott Ellington, General Counsel<sup>63</sup> and Mr. Dondero.<sup>64</sup> And, at bottom, if the Debtor-Acis was a thinly capitalized “shell,” it appears to be only because Highland systematically made it that way after the Terry Arbitration Award.

The evidence established overwhelmingly that there is a substantial likelihood that the transfers were part of an intentional scheme to keep assets away from Mr. Terry as a creditor. Highland put on an expert, Mr. Greenspan, who testified that he did not consider whether the

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<sup>58</sup> Exh. 720, Depo. of Passive Investor representative at pp. 32-33.

<sup>59</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 55-58.

<sup>60</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 77-78.

<sup>61</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 78; Transcript 12/18/18 [DE # 804], at pp. 59-63.

<sup>62</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 103.

<sup>63</sup> See Exh. 23, Transcript 2/7/18 at pp. 177-178.

<sup>64</sup> See Ex. 25, Transcript 3/23/28 at pp. 143-44.

Equity/ALF PMA transfer was an “actual” fraudulent transfer, but only considered whether the transfer was “constructively” fraudulent.<sup>65</sup> While Highland has taken the position that termination of the Equity/ALF PMA was not a transfer, Mr. Greenspan testified that the termination of a contract can constitute a transfer and acknowledged that the definition of a transfer in the Bankruptcy Code does not include a value component.<sup>66</sup>

*Balance of Harms.* The Chapter 11 Trustee has also shown the balance of harms weighs in his and the estates’ favor in granting the Plan’s Temporary Injunction. The Chapter 11 Trustee is entitled to the Temporary Injunction pending resolution of the claims asserted in the Highland Entities Adversary Proceeding. The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction is important to the Plan, because it allows the cash flow from the CLO management to be collected by the Reorganized Debtor, and that is the source of revenue available at this time to pay creditors.<sup>67</sup> Mr. Terry also credibly testified that the Temporary Plan Injunction is a critical component of the Plan necessary to preserve the Debtors’ going concern value and allow the Reorganized Debtor to generate new business and repay creditors.<sup>68</sup> Conversely, in this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan.<sup>69</sup> Mr. Scott, a director of HCLOF Guernsey, testified that

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<sup>65</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 116-117 and 161.

<sup>66</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98. Section 548(a)(1)(A) of the Bankruptcy Code only requires that a transfer be made with actual intent to hinder, delay or defraud creditors. In the context of an intentionally fraudulent transfer claim, questions of value are immaterial. 11 U.S.C. § 548(a)(1)(A). The definition of “transfer” under the Texas Uniform Fraudulent Transfer Act (“TUFTA”) also does not include a value component. Tex. Bus. & Comm. Code Ann. § 24.002(12) (West, Westlaw through 2017).

<sup>67</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>68</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>69</sup> Transcript 12/11/18 (AM) [DE # 792], at p. 92.

HCLOF Guernsey can sell its interest in the subordinated notes in the market.<sup>70</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction would not impair the value of the subordinated notes because a rational investor would not want to liquidate the Acis CLOs, but rather would acquire them to do a reset under the Plan.<sup>71</sup> Mr. Terry credibly testified that even if the Acis CLOs are not reset, it still does not make sense to redeem the Acis CLOs.<sup>72</sup>

*Public Interest.* Finally, issuance of the Plan Injunction is consistent with public policy. Public policy favors the equitable collecting of a debtor's assets, maximizing the value of those assets, and distributing the proceeds in an orderly fashion in accordance with the priorities and safeguards set forth in the Bankruptcy Code, rather than in an uncontrolled, piecemeal, and potentially wasteful way. Public policy also supports successful reorganizations.<sup>73</sup> The public interest is furthered by confirming a plan that saves the Debtor-Acis's business operations and allows it to pay its creditors under a successful plan of reorganization. The public interest is also furthered by maintaining the status quo through the Temporary Plan Injunction so that the avoidance action relating to the Equity ALF PMA can be determined on its merits. The public interest is not furthered by allowing potential wrongdoers to complete the last step in what appears likely to have been a scheme to strip the Debtor-Acis of its assets, steal its business, and leave it unable to pay creditors. The public interest is not furthered by leaving the Debtors

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<sup>70</sup> Exh. 721, Mr. Scott Depo. at p. 28.

<sup>71</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 23-24.

<sup>72</sup> Transcript 12/12/18 (AM) [DE #791], at p. 82.

<sup>73</sup> *Tex. Comptroller of Pub. Accounts v. Transtexas Gas Corp. (In re Transtexas Gas Corp.)*, 303 F.3d 571, 580 (5th Cir. 2002).

without sufficient resources to pursue and effectively litigate potentially valuable causes of action.

In sum, the court finds and concludes that the proposed Plan injunction (including the Temporary Injunction) is legally permissible and justified under all the circumstances. It is narrowly tailored to address the specific harm to which it is directed and comports with governing case and statutory authority and applicable rules of bankruptcy and civil procedure. The Plan Injunction is consistent with Fifth Circuit precedent.<sup>74</sup> Such an injunction would not violate section 524(e) of the Bankruptcy Code. That subsection provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”<sup>75</sup> The Plan Injunction would not affect the liability of any entity, or the liability of any property. The injunction would only temporarily prohibit Highland and its Co-Defendants from exercising one form of economic recourse, thereby preserving the status quo while the Chapter 11 Trustee and/or Reorganized Debtor has a fair opportunity to prosecute the

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<sup>74</sup> The Fifth Circuit, in an unpublished opinion, has recognized the propriety of an injunction to preserve the status quo in cases where equitable relief is sought. *See Animale Group v. Sunny’s Perfume, Inc.*, 256 F. App’x 707, 709 (5th Cir. 2007) (“Because Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze.”). The Chapter 11 Trustee’s claims in the Highland Entities Adversary Proceeding to avoid fraudulent transfers seek equitable relief. *See United States ex rel. Rahmen v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999) (“The complaint’s request to void transfers as fraudulent—a form of rescission—is also an equitable remedy.”); *Dong v. Miller*, No. 16-CV-5836 (NGG) (JO), 2018 U.S. Dist. LEXIS 48506, at \*30-31 (E.D.N.Y. Mar. 23, 2018) (“The setting-aside of a fraudulent conveyance is a form of equitable relief.”). *See also Iantosca v. Step Plan Servs.*, 604 F.3d 24, 33 (1st Cir. 2010) (affirming preliminary injunction where creditors had a “colorable claim that appellants’ own supposed interest under the settlement rests upon a fraudulent conveyance”); *Seidel v. Warner (In re Atlas Fin. Mortg., Inc.)*, Adv. No. 13-03222, 2014 Bankr. LEXIS 140 at \*10 (Bankr. N.D. Tex. Jan. 14, 2014) (granting preliminary injunction where complaint sought avoidance of fraudulent transfers under the Bankruptcy Code and the Texas Uniform Fraudulent Conveyance Act); *Paradigm Biodevices, Inc. v. Centinel Spine, Inc.*, No. 11 Civ. 3489 (JMF), 2013 U.S. Dist. LEXIS 66858, at \*7 (S.D.N.Y. May 9, 2013) (authority to grant preliminary injunction existed because plaintiff alleged not only a legal claim for money damages, but also an equitable claim to avoid fraudulently transferred assets).

<sup>75</sup> 11 U.S.C. § 524(e).

Highland Entities Adversary Proceeding.<sup>76</sup> Likewise, the proposed injunction does not contravene any other provision of the Bankruptcy Code or the Bankruptcy Rules.<sup>77</sup> Finally, the Chapter 11 Trustee's avoidance claim relating to the Equity/ALF PMA transfer under TUFTA also provides a statutory basis for injunctive relief.<sup>78</sup>

3. Feasibility of the Plan—Specific Findings and Conclusions Regarding Mr. Terry and Brigade.

The Objectors have challenged the feasibility of the Plan.<sup>79</sup> The court finds and concludes that the preponderance of the evidence supported the feasibility of the Plan. Among other things, the Chapter 11 Trustee credibly testified that Mr. Terry has an excellent track record as a portfolio manager, and that there is no reason why Mr. Terry will not be able to obtain new business—that is, new portfolios to manage which will provide additional revenue streams for the Reorganized Debtor.<sup>80</sup> The evidence was credible and compelling that Mr. Terry

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<sup>76</sup> See *In re Seatco, Inc.*, 259 B.R. 279, 283-84 (Bankr. N.D. Tex. 2001) (approving temporary injunction of suit against nondebtor on guaranty of debt treated in plan).

<sup>77</sup> Compare *Omni Mfg. v. Smith (In re Smith)*, 21 F.3d 660, 666-67 (5th Cir. 1994) (disapproving injunction extending time to file proof of claim beyond limits set in Bankruptcy Rules 3003(c)(3) and 9006(b)(1)); *Chiasson v. Bingler (In re Oxford Mgmt.)*, 4 F.3d 1329, 1334 (5th Cir. 1993) (disapproving injunction ordering payment that altered distribution scheme set forth in § 726(b)); *Unites States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (disapproving injunction ordering spousal support payments contrary to § 523(a)(5)).

<sup>78</sup> Tex. Bus. & Comm. Code Ann. § 24.008 (West, Westlaw through 2017) (providing a creditor may obtain “an injunction against further disposition by the debtor or the transferee, or both, of the asset transferred or of other property . . . [or] any other relief the circumstances may require.”). TUFTA’s injunction provision is construed broadly and courts have found that “[a] claim for fraudulent transfer under Texas law contemplates the issuance of a preliminary injunction.” *Sargeant v. Al Saleh*, 512 S.W.3d 399, 413 (Tex. App.—Corpus Christi 2016, no pet.); accord, *Janvey v Alguire*, 647 F.3d 585, 602-03 (5th Cir. 2011).

<sup>79</sup> 11 U.S.C. § 1129(a)(11).

<sup>80</sup> Transcript 12/11/18 (AM) [DE # 789], at p. 90 (lines 5-12). Moreover, to the extent there are any gaps, recoveries from the Highland Entities Adversary Proceeding might eventually be available for ongoing operations and payment of creditors.

will be capable of fulfilling the equity owner position in the Reorganized Debtor (stepping in to essentially run the Reorganized Debtor) and will be able to ensure the feasibility of the Plan. He is well qualified to reorganize the Debtor-Acis. Mr. Terry testified that his role with the Reorganized Debtor will be similar to the role he very successfully performed for the Debtor-Acis.<sup>81</sup> The Debtor-Acis received numerous awards during Mr. Terry's service as the portfolio manager of the Acis CLOs.<sup>82</sup> The arbitration panel that issued the Arbitration Award found that Mr. Terry was terminated for essentially doing the right thing for investors.<sup>83</sup> Mr. Terry credibly testified that numerous market participants have expressed an interest in working with the Reorganized Debtor if the Plan is confirmed.<sup>84</sup>

Moreover, the court finds and concludes that Brigade (who stepped in as sub-advisor in place of Highland during the Bankruptcy Cases and is a registered investment advisor) is qualified to serve as a sub-advisor to the Reorganized Acis. Mr. Jared Worman, a portfolio manager for Brigade,<sup>85</sup> credibly testified that Brigade, founded in the year 2007, currently has \$20 billion of total assets under management, \$5 billion of which consists of six U.S. CLOs, two U.S. CDOs, and three European CLOs.<sup>86</sup> Mr. Worman credibly testified that Brigade has issued 17 CLOs and has reset or refinanced several of them.<sup>87</sup> Mr. Worman and Mr. Terry credibly

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<sup>81</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 172-73.

<sup>82</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 162-163 and Exh. 752.

<sup>83</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 161-62.

<sup>84</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 16-18.

<sup>85</sup> Mr. Worman has an undergraduate degree from Emory University and an MBA from Wharton.

<sup>86</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 84.

<sup>87</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 86.

testified that Brigade is willing to serve as sub-advisor to the Reorganized Acis for fifteen basis points.<sup>88</sup> Highland attempted to show with evidence and argument that Brigade had made some failed trades since stepping in as sub-advisor to the Acis CLOs and that this perhaps made them unfit to serve in this role. But Mr. Terry credibly testified that the fact that a few failed trades were made by Brigade does not make them unfit to serve as sub-advisor to Reorganized Acis, and that trades out of compliance with the applicable CLO tests occasionally happen, and Brigade has handled them appropriately.<sup>89</sup> In fact, the evidence suggested that at least ten failed trades occurred while Highland was acting as sub-advisor to the Debtor-Acis.<sup>90</sup>

Highland's suggestions that Brigade is not up to the task to manage the Reorganized Debtor are specious. Likewise, HCLOF Guernsey's insistence that it will not be getting the benefit of its bargain if the Acis CLOs are not managed by Highland personnel going forward appears to be a manufactured position aimed at thwarting Mr. Terry at all costs. Not only is there no credible evidence of Brigade mismanagement but, to the contrary, it appears that Highland (prior to the Debtor-Acis's rejection of the Sub-Advisory Agreement and Shared Services Agreement), intentionally liquidated assets of the CLO SPEs and built up cash without reasonable justification. Specifically, Mr. Terry credibly testified that there were \$85 million in purchases in the Acis CLOs in the hours leading up to the entry of the orders for relief, but virtually no purchases of loans in the CLOs afterwards—only sales.<sup>91</sup> And Mr. Worman further

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<sup>88</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 89; Transcript 12/12/18 (AM) [DE # 791], at p. 62.

<sup>89</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 182-83; Transcript 12/18/18 [DE # 804], at pp. 72-73.

<sup>90</sup> See Exhs. 727, 728; Transcript 12/11/18 (PM) [DE # 790], at pp. 71-74, 182-83.

<sup>91</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 18-19, 28-31; Transcript 12/18/18 [DE # 804], at pp. 87-89; *see also*, Terry Demonstrative.

credibly testified that Highland, while acting as sub-advisor, allowed approximately \$380 million in cash to build up in the Acis CLOs. Meanwhile, Brigade has subsequently reduced that cash balance by \$280 million to approximately \$100 million.<sup>92</sup> Mr. Worman also credibly testified that Brigade has purchased approximately \$300 million in loans for the Acis CLOs.<sup>93</sup> The Chapter 11 Trustee and Mr. Terry both credibly testified that the build-up of cash in the Acis CLOs while Highland was sub-advisor, rather than the loans acquired by Brigade, left the Acis CLOs without sufficient interest income to make a distribution to the equity holders.<sup>94</sup> Certain contradictory testimony of Hunter Covitz was not convincing that: (a) there were very few conforming loans available to be purchased for the Acis CLOs in the approximately four months that elapsed between the entry of the Order for Relief and the time when Highland was terminated as sub-advisor;<sup>95</sup> and (b) it made more sense to accumulate cash to pay down the AAA notes rather than invest in new loans.<sup>96</sup> The court found more convincing the testimony of Mr. Terry: (a) that there was \$310 billion of performing loans rated above CCC in the S&P loan index in May of 2018 available for purchase in CLO-6 that would have satisfied the weighted average life test;<sup>97</sup> (b) that Highland purchased loans for CLO-7 that would have satisfied the weighted average life constraints in the Debtor-Acis's CLO-4, CLO-5, and CLO-6;<sup>98</sup> and (c)

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<sup>92</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 100.

<sup>93</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 70, 94.

<sup>94</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 67-69; Transcript 12/11/18 (PM) [DE # 790], at pp. 70-71; Transcript 12/12/18 (AM) [DE # 791] at pp. 34-37.

<sup>95</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 12-13.

<sup>96</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 13-16.

<sup>97</sup> Transcript 12/18/18 [DE # 804], at p. 87.

<sup>98</sup> Transcript 12/18/18 [DE # 804], at pp. 87-88.

that, although there was no change in market conditions, Highland essentially stopped buying collateral for the Acis CLOs<sup>99</sup> after the entry of the Orders for Relief.<sup>100</sup>

4. Resets—Non-impairment of Anyone’s Rights.

The Plan only contemplates *consensual* resets of the Acis CLOs—in other words, only if HCLOF Guernsey requests resets.<sup>101</sup> Messrs. Worman and Terry both credibly testified that they believed the Reorganized Acis and Brigade could perform a consensual reset of the Acis CLOs.<sup>102</sup> Mr. Terry credibly testified that other asset managers have been able to issue or reset CLOs after a bankruptcy proceeding.<sup>103</sup> Mr. Terry also credibly testified that he wants to come to a resolution with HCLOF Guernsey and consensually reset the Acis CLOs.<sup>104</sup>

HCLOF Guernsey has taken the position that it and its new Passive Investor (new as of mid-November 2017—just before the Bankruptcy Cases) only want to be involved with CLOs that are managed by Highland or Highland affiliates. Is the Plan impairing their rights—to the extent the Plan (and any subsequent re-sets) brings in Brigade as the sub-advisor to the Reorganized Debtor (whereas Highland was in that sub-advisor role before)? It appears no. The

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<sup>99</sup> Transcript 12/18/18 [DE # 804], at pp. 88-89.

<sup>100</sup> Highland has also argued that the Plan is not feasible because the administrative expense claims are extremely high (to which the Chapter 11 Trustee responds, it is of Highland’s making, since Highland has objected to literally every action proposed by the Chapter 11 Trustee). The court does not believe there is a legitimate feasibility problem here. Not only has the court not ruled yet on final professional fee applications, but the Chapter 11 Trustee represented that certain professionals have agreed to defer their fees (beyond payment in full on the Effective Date) as necessary.

<sup>101</sup> See Plan § 6.08.

<sup>102</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 86-90, 176-178; Transcript 12/12/18 (AM) [DE # 793], at pp. 16-18.

<sup>103</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 179-180.

<sup>104</sup> Transcript 12/18/18 [DE # 804], at p. 74.

Offering Memorandum between HCLOF Guernsey and the Passive Investor, dated November 15, 2017, pursuant to which the Passive Investor agreed to invest in HCLOF Guernsey, provided that there may be a change in circumstances following the date of the Offering Memorandum and that any forward-looking statements in the Offering Memorandum involved risks and uncertainties “because they relate to events and depend on circumstances that may or may not occur in the future.”<sup>105</sup> Heather Bestwick, one of the HCLOF Guernsey directors, testified that the Offering Memorandum does not require HCLOF Guernsey to invest only in Highland-managed funds<sup>106</sup> and instead expressly provides that HCLOF Guernsey will invest in “CLOs managed by other asset managers.”<sup>107</sup> Another witness, Mr. McGuffin, testified that the HCLOF Guernsey directors’ fiduciary duties require them to act independently and objectively in the best interests of HCLOF Guernsey, and also require them to consider a change in circumstances.<sup>108</sup> HCLOF Guernsey’s counsel, HCLOF Guernsey’s director, and the Passive Investor have all testified that they would consider doing a reset with the Reorganized Acis in the event the Plan is confirmed.<sup>109</sup>

Mr. Terry credibly testified that a reset of the Acis CLOs can occur after the expiration of the reinvestment periods of the Acis CLOs.<sup>110</sup> The Plan is feasible regardless of whether a reset of the Acis CLOs is requested by HCLOF Guernsey. Messrs. Phelan and Terry both credibly

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<sup>105</sup> See Exh. 90, HCLOF Guernsey Offering Memorandum, at pp. 4-5.

<sup>106</sup> See Exh. 719, Bestwick Depo., at pp. 109, 118-121.

<sup>107</sup> See Exh. 90, HCLOF Offering Memorandum, at p. 12.

<sup>108</sup> Transcript 12/13/18 (PM) [DE # 794], at pp. 142-145.

<sup>109</sup> See Exh. 602, p. 12 of 70 (statement by HCLOF Guernsey’s Counsel); Exh. 719 at pp. 166-167 (Heather Bestwick); Exh. 720, p. 72.

<sup>110</sup> Transcript 12/18/18 [DE # 804], at pp. 82-83.

testified that the Reorganized Debtor will have cash flow from multiple potential sources—including the revenues from the CLO PMAs with the Acis CLOs, potential new business developed by the Reorganized Acis, and the outcome of any potential litigation claims.<sup>111</sup>

## **VI. General Credibility Assessments.**

In ruling in a contested matter such as confirmation, and weighing the preponderance of the evidence, the credibility of witnesses and contradictions in their testimony naturally can be significant. Here, there were some noteworthy problems and contradictions with some of the testimony provided by the Objectors' witnesses. They are summarized below.

### **1. Scott Ellington: A Seemingly Manufactured Narrative to Justify Prior Actions.**

Scott Ellington testified on February 7, 2018 at the trial on the involuntary petitions, and the court was asked to consider his testimony again in connection with confirmation (he did not attend the confirmation hearing). He is the General Counsel, Chief Legal Officer, and a Partner at Highland. Mr. Ellington testified that the Debtor-Acis's name is "toxic" in the market place and that, due to the litigation with Mr. Terry and allegations in that litigation, "nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO."<sup>112</sup> Mr. Ellington elaborated that it had been determined in late 2016 or 2017 that re-sets or re-financings of the Acis CLOs were a prudent thing to pursue (in fact, there was indeed a trend of refinancings and resets for this vintage of CLOs in the market place) and, in connection with that, the Debtor-Acis's contracts and assets needed to be diverted to different, newly created entities because: (a) the "Acis" name was toxic and underwriters and investors were not going to

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<sup>111</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 72, 88-90; Transcript 12/12/18 (AM) [DE # 791], at p. 53.

<sup>112</sup> Exh. 23, p. 55 (line 17) through p. 56 (line 7); p. 98 (lines 8-12).

be interested in re-financings or resets for CLOs managed by the Debtor-Acis;<sup>113</sup> and (b) the new Passive Investor wanted the Debtor-Acis out of the picture.<sup>114</sup> Mr. Ellington further elaborated: “The equity, you know, calls the tune, so to speak, in terms of the CLO . . .”<sup>115</sup> In summary, an overarching theme of Mr. Ellington’s testimony was that the Debtor-Acis was tainted or toxic in the marketplace and the Passive Investor wanted the Debtor-Acis out of the picture—thus, this was the motivation for the prepetition transactions orchestrated by Highland prior to the Bankruptcy Cases. The problems with the Scott Ellington testimony were at least two-fold. First, there is no credible evidence that the Debtor-Acis is/was toxic in the market place. In fact, in April 2017 (well after the litigation with Mr. Terry commenced), the Debtor-Acis issued a new CLO (CLO-7). And in market publications as recently as August 21, 2017, Highland was touting the *Acis* structure stating “our vehicle will allow us to issue between six and 12 CLOs over the next few years.”<sup>116</sup> Second, the Passive Investor denies demanding that the Debtor-Acis be removed as the CLO manager. Term sheets as recent as August 21, 2017 contemplated the Debtor-Acis as the continuing portfolio manager of CLOs, with apparently no protestations by the Passive Investor.<sup>117</sup>

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<sup>113</sup> *E.g., Id.* at p. 177 (line 21) though p. 178 (line 12); p. 184 (lines 13-17) (“The underwriters in this case, Mizuho, Goldman, et al., the equity, they said we want every possible relation to anything that could be legacy Acis or Acis-related affiliates to be severed”).

<sup>114</sup> *Id.* at p. 202 (lines 11-13) (“we have third-party investors that said we don’t want to be involved in this brand; and their equity is one of the reasons that new CLOs can be launched”); p. 203 (lines 7-8) (“It was call the deal and terminate the CMAs or transfer the CMAs”); p. 223 (lines 8-12) (“Because if the involuntary remains, and I’m just – I’m just being frank – we’ve already been told by equity holders, including the separate account, BBK, that you may have seen on some of the exhibits, they’re pulling everything.”).

<sup>115</sup> *Id.* at p. 74 (lines 3-6).

<sup>116</sup> Exh. 801, pp. 3 & 5.

<sup>117</sup> Exh. 802, p.1.

2. Michael Pugatch: The Passive Investor Made Into a Scapegoat.

The reality is that Highland, indeed, started working on the concept of doing resets of some of the older vintage Acis CLOs in at least early 2017 (and perhaps late 2016). Highland, in fact, completed a reset of one Acis CLO in April 2017 (with the Debtor-Acis still in place as the portfolio manager for that reset in April 2017). As part of that process of implementing resets for the Acis CLOs, Highland worked on bringing in a new investor or investors to have a share of the equity tranche of the Acis CLOs. Highland finally obtained the commitment of the Passive Investor in November 2017, after starting initial discussions with them in the second quarter of 2017.<sup>118</sup> A representative for the Passive Investor referred to itself as “passive” in a deposition.<sup>119</sup> Concepts and documentation for the Passive Investor’s investment in the Acis CLOs were discussed for a while during 2017. As recently as August 2017, the negotiations with the Passive Investor appeared to contemplate the Debtor-Acis still as the portfolio manager for the CLOs.<sup>120</sup> Then the arbitration trial with Mr. Terry began in September 2017 and the Terry Arbitration Award was issued on October 20, 2017. Suddenly, it appears that the dismantling of the Debtor-Acis began with all deliberate speed. The court believes, based on the totality of the evidence, that it was Highland who did not want the Debtor-Acis as CLO manager going forward, so that Highland could keep reaping the benefits of the reset CLOs. Specifically, when deposed on the topic, a representative for the Passive Investor, Mr. Pugatch, denied the accuracy of Mr. Ellington’s testimony, stating that the Passive Investor “viewed Acis and Highland as interchangeable from the perspective of the—you know, the actual investment

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<sup>118</sup> See Exh. 720, Pugatch Deposition Transcript dated November 27, 2018, p. 18, lines 14-20.

<sup>119</sup> *Id.* at p. 22 (lines 2-3) (“we’re you know, 49 percent sort of passive minority investor”).

<sup>120</sup> Exh. 802, p. 1.

opportunity.”<sup>121</sup> When asked, “Are you aware that Scott Ellington, general counsel for HCM, testified that [the Passive Investor] said with absolute certainty that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO?” Mr. Pugatch testified that he had read that testimony and that the statement was not true.<sup>122</sup> He further stated that “the ultimate sort of name change did not come from [the Passive Investor].”<sup>123</sup> In fact, when further asked whether the Passive Investor knew why Acis CLO Funding Limited changed its name to Highland CLO Funding Limited (*i.e.*, HCLOF Guernsey), Mr. Pugatch testified, “We were told that it was a change in the brand or the name, as requested by Highland.”<sup>124</sup> And when asked “Did [the Passive Investor] request that the name be changed?” he answered “No.”<sup>125</sup> When asked whether the Passive Investor considered “Acis toxic in the industry?” Mr. Pugatch answered: “No. What I would say is, when the suggested name change did occur, there were commercial reasons given to us as to why that would be beneficial in terms of the ongoing management of those CLOs and the intended investment thesis around the investment that we had made, which seemed to make commercial sense.”<sup>126</sup> When Mr. Pugatch was asked, “Those reasons were given by Highland, correct?” he replied “Correct” and confirmed that they were not demanded by the Passive Investor.<sup>127</sup> Mr. Pugatch was emphatic that the Passive Investor was

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<sup>121</sup> *Id.* at p. 30 (lines 19-20).

<sup>122</sup> *Id.* at p. 31 (lines 6-19).

<sup>123</sup> *Id.* (lines 24-25).

<sup>124</sup> *Id.* at p. 27 (lines 24-25).

<sup>125</sup> *Id.* at p. 28 (lines 1-3).

<sup>126</sup> *Id.* at p. 32 (lines 1-8).

<sup>127</sup> *Id.* at p. 32 (lines 9-12).

just that—a passive investor—that did not have the ability to “start calling the shots” and dictate the terms of any reset transactions.<sup>128</sup> When asked if the Passive Investor was concerned about the Terry Arbitration Award, Mr. Pugatch replied: “The award itself, no. I think the only thing we were concerned about or focused on was that vis-à-vis our equity investment in Highland CLO Funding Limited and, in turn, the equity that that vehicle held in the various CLOs was appropriately, you know, ring-fenced or not exposed to any potential damages or economic loss in value as a result of that arbitration award.”<sup>129</sup>

The Passive Investor further testified that Brigade has “a fine reputation in the market” but that it had no interaction with them historically.<sup>130</sup> The Passive Investor also testified that it was concerned about the cash buildups that had happened recently due to actions while Highland had still been the sub-advisor on the Acis CLOs.<sup>131</sup>

### 3. The Seemingly Rehearsed Testimony of the Two HCLOF Guernsey Witnesses.

The court was presented with video depositions of HCLOF Guernsey’s two non-executive directors (*i.e.*, its only directors): Mr. William Scott<sup>132</sup> and Ms. Heather Bestwick.<sup>133</sup> It was very apparent to the court that HCLOF Guernsey is controlled by Highland in every way. Putting things in the kindest way possible, Mr. Scott and Ms. Bestwick appear to be nominal figureheads who are paid to act like they are in charge, while they are not. They are both

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<sup>128</sup> *Id.* at p. 32 (lines 16-17); pp. 33-35.

<sup>129</sup> *Id.* at p. 43 (lines 3-9); p. 89.

<sup>130</sup> *Id.* at p. 68 (lines 11-13).

<sup>131</sup> *Id.* at p. 82, lines 9-24.

<sup>132</sup> *See* Exh. 721.

<sup>133</sup> *See* Exh. 719.

basically professional directors-for-hire, for companies that choose to form/organize in the nation of Guernsey.

Ms. Bestwick testified that she is a nonexecutive director for six companies in Guernsey (none of the others are in the CLO business).<sup>134</sup> She testified that she earned £35,000 per year to serve as a director of HCLOF Guernsey.<sup>135</sup> She testified that she was selected by Highland<sup>136</sup> and that Highland also made the decision to hire HCLOF Guernsey's law firm in the Bankruptcy Cases.<sup>137</sup> Ms. Bestwick, when questioned as to why the Equity/ALF PMA it had with the Debtor-Acis was terminated shortly after the Terry Arbitration Award was issued, testified that she was told it was "a condition precedent to the new Passive Investor" coming in and that she was told this by Highland.<sup>138</sup> She also testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey)<sup>139</sup> or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey).<sup>140</sup> She reiterated that she only talks to Highland employees. She also was under the impression that terminating the Equity/ALF PMA would improve marketability of the CLOs going forward but that it was the same people and "business as usual for us."<sup>141</sup> She testified that she learned of the Terry

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<sup>134</sup> *Id.* at pp. 7-8; p. 21 (line 5) through p. 22 (line 20); p. 26 (lines 10-12).

<sup>135</sup> *Id.* at p. 43 (lines 18-19).

<sup>136</sup> *Id.* at p. 42 (lines 17-25).

<sup>137</sup> *Id.* at p. 53 (lines 7-20).

<sup>138</sup> *Id.* at p. 16 (line 13) through p. 17 (line 23); p. 58 (line 21) through p. 60 (line 17).

<sup>139</sup> *Id.* at p. 188 (lines 12-15).

<sup>140</sup> *Id.* at p. 188 (line 19) through p. 189 (line 9).

<sup>141</sup> *Id.* at p. 189 (lines 12-15); p. 200 (line 22).

Arbitration Award in mid-April 2018 (some six months after the fact)<sup>142</sup> and “[y]ou’d have to ask Highland”<sup>143</sup> why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were “heavily reliant on our service providers, and that means Highland.”<sup>144</sup> With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.

Mr. Scott, the other HCLOF Guernsey director, is a “professional director” for 10-15 Guernsey companies<sup>145</sup>—all of which are “paying assignments.”<sup>146</sup> He became rather incensed when testifying, at the suggestion that he and Ms. Bestwick were not in control of HCLOF Guernsey, stating that board minutes and other documents would show that they took a great level of interest in running the company.<sup>147</sup> He testified that he earned £40,000 per year to serve as a director of HCLOF Guernsey and that, due to the extra work of the Bankruptcy Cases, he also was charging another £350 per hour, after the first 35 hours<sup>148</sup> (the court notes, anecdotally, that it required participation in court hearings by a director of HCLOF Guernsey each time that HCLOF Guernsey took a position in court). Mr. Scott confirmed that he was not aware of the litigation with Mr. Terry nor the Acis Bankruptcy Cases until April 2018.<sup>149</sup> He also testified

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<sup>142</sup> *Id.* at p. 61 (lines 3-19); p. 130 (line 14) through p. 136 (line 2).

<sup>143</sup> *Id.* at p. 137 (line 21).

<sup>144</sup> *Id.* at p. 152 (lines 18-19).

<sup>145</sup> *See* Exh. 721 at p 8 (line 9) through p. 9 (line 5); p. 79 (lines 20-25).

<sup>146</sup> *Id.* at p. 80 (lines 3-5).

<sup>147</sup> *Id.* at p. 13 (lines 1-12); p. 22 (line 23) through p. 23 (line 12).

<sup>148</sup> *Id.* at p. 80 (lines 6-18).

<sup>149</sup> *Id.* at p. 132 (line 20) through p. 135 (line 10).

that Highland had proposed the legal counsel HCLOF Guernsey used in the Bankruptcy Cases and that he had never disagreed with Highland's advice.<sup>150</sup> He confirmed that all investment decisions were made by Highland and that he and Ms. Bestwick's role was to "police" service providers.<sup>151</sup> Like Ms. Bestwick, Mr. Scott testified that they were told that the Passive Investor had made it a condition precedent to their investment in HCLOF Guernsey that "Acis depart."<sup>152</sup> But he had not talked to the Passive Investor.<sup>153</sup> As if all this deference to Highland were not enough, HCLOF Guernsey's lender is NexBank (an affiliate of Highland—which is based in Dallas, not Guernsey) and HCLOF Guernsey has given its actual equity notes to NexBank as security for its loans from NexBank.<sup>154</sup> Also, interestingly, when asked about the adversary proceeding that HCLOF Guernsey filed against the Chapter 11 Trustee a few months ago in the Bankruptcy Cases (*i.e.*, the Highland Entities Adversary Proceeding—it was originally commenced by Highland and HCLOF Guernsey as Plaintiffs), Mr. Scott testified that "we haven't sued the trustee, he has sued us" but later acknowledged his mistake when corrected by counsel.

This court is not naïve—it realizes that so-called "fiduciary services firms" are apparently a typical thing in the world of off-shore jurisdictions that are large financial centers.<sup>155</sup> Maybe

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<sup>150</sup> See generally *id.* at pp. 277-280.

<sup>151</sup> *Id.* at p. 106 (lines 1-7).

<sup>152</sup> *Id.* at p. 254 (line 20) through p. 260.

<sup>153</sup> *Id.* at p. 155 (lines 2-25).

<sup>154</sup> See Exh. 719 at p. 213 (line 2-22); Exh. 721 at p. 129 (line 10) through p. 130 (line 13).

<sup>155</sup> During the testimony of both Ms. Bestwick and Mr. Scott, the court was reminded of an old TV commercial in which an actor states, "I am not a doctor, but I play one on TV." The court could not help but conclude that these were not real directors but were playing them (when legally necessary).

the system works, for the most part and in many business contexts. But not when trying to convince a bankruptcy court of the bona fides of transactions that look like attempts to denude another party of value and/or to thwart creditors. And not when accusations are made that you are the alter ego of the party (Highland) who orchestrated the company's creation. The evidence was overwhelming that: (a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey's behalf.

In summary, the testimony of these two HCLOF Guernsey Directors was of little or no value in convincing the court that the Objector, HCLOF Guernsey, has valid concerns of its own (separate from Highland's) with regard to the bona fides of the Plan.

## **VII. Conclusion.**

This Bench Ruling and Memorandum Opinion is intended to address some of the most pertinent facts and issues raised in connection with confirmation of the Plan. Among other things, the court believed it was necessary to stress, in a separate ruling: (a) *the unique status of the Objectors* (they are "insiders" as defined in the Bankruptcy Code whose prepetition actions suggest unclean hands—this seems highly relevant to consider, when there are no non-insider creditors or other relevant parties objecting to the Plan); (b) *the appropriateness and legality of the proposed Plan Injunction* that would temporarily prevent nonconsensual redemptions/liquidations (it is in all ways justified given the allegations in the Highland Entities Adversary Proceeding and under the traditional four-prong test for preliminary injunctions); and

(c) *the feasibility of the Plan* (Mr. Terry and Brigade are well qualified to perform their contemplated roles).

The court will separately sign the Findings of Fact, Conclusions of Law and Order Confirming Plan submitted by the Chapter 11 Trustee to address all other relevant issues.

**#### End of Bench Ruling and Memorandum Opinion ####**

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

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

Exhibit	DKT. #	DESCRIPTION
CC	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
Z	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)<u>382</u> Order on motion for protective order)</b>
BB	1738	<b>SEALED document regarding: Exhibit A--Members Agreement per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1737</u> Order on motion to seal)</b>

{00375303-1}

Y	1739	<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
AA	1740	<b>SEALED document regarding: Exhibit C--Offering Memorandum per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)

**EXHIBIT C**

**LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS**

***Highland Capital Management, L.P.  
Disclaimer For Financial Projections***

This document includes financial projections for July 2020 through December 2022 (the “Projections”) for Highland Capital Management, L.P. (“Company”). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company’s anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

**Highland Capital Management, L.P.**  
**Statement of Assumptions**

- A. Plan effective date is January 31, 2021.
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021.
- D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
- E. Fixed assets used in daily business operations are sold in February 2021.
- F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
- H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
- I. Litigation Trustee budget is \$6,500,000.
- J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for UBS, IFA, HM and HV.
  - Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$9.96 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 – additional \$50,000,000
  - o By June 30, 2022 – additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

**Highland Capital Management, L.P.  
Plan Analysis Vs. Liquidation Analysis  
(US \$000's)**

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	25,076	25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
Total estimated \$ available for distribution	181,879	138,042
Less: Claims paid in full		
Unclassified [4]		
Administrative claims [5]	(1,078)	(1,078)
Class 1 - Jefferies Secured Claim	(10,574)	(10,574)
Class 2 - Frontier Secured Claim [6]	-	-
Class 3 - Other Secured Claims	(5,463)	(5,463)
Class 4 - Priority Non-Tax Claims	(551)	(551)
Class 5 - Retained Employee Claims	(16)	(16)
Class 6 - PTO Claims	-	-
Class 7 - Convenience Claims [7][8][9]	-	-
Subtotal	(10,255)	-
	(27,937)	(17,682)
Estimated amount remaining for distribution to general unsecured claims	153,942	120,359
Class 8 - General Unsecured Claims [8][10]	176,049	192,258
Subtotal	176,049	192,258
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 - Subordinated Claims	no distribution	no distribution
Class 10 - Class B/C Limited Partnership Interests	no distribution	no distribution
Class 11 - Class A Limited Partnership Interest	no distribution	no distribution

**Footnotes:**

- [1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
- [2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
- [3] Estimated expenses through final distribution exclude non-cash expenses:  
Depreciation of \$462 thousand in 2021
- [4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
- [5] Represents \$4.7 million in unpaid professional fees and \$4.5 million in timing of payments to vendors
- [6] Debtor will pay all unpaid interest estimated at \$253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
- [7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of \$13.15 million
- [8] Class 7 includes \$1.1 million estimate for aggregate contract rejections damage and Class 8 includes \$1.4 million for contract rejection damages
- [9] Assumes 3 claimants with allowed claims less than \$2.5 million opt into Class 7 along with claims of Senior Employees
- [10] Class estimates \$0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

**Notes:**

All claim amounts are estimated as of November 20, 2020 and subject to change

**Highland Capital Management, L.P.**  
**Balance Sheet**  
**(US \$000's)**

	Actual		Forecast --->		Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
	Jun-20	Sep-20	Actual Sep-20	Forecast Dec-20								
<b>Assets</b>												
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 28,342	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803	\$ 52,322	\$ 23,641	\$ 21,344	\$ -
Other Current Assets	13,182	13,651	10,559	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	2,592	1,348	-	-	-	-	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>
<b>Liabilities</b>												
Post-petition Liabilities	\$ 26,226	\$ 19,138	\$ 19,280	\$ 19,280	\$ 2,891	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-petition Liabilities	126,365	126,343	121,950	121,950	-	-	-	-	-	-	-	-
Claims												
Unclassified	-	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-	-
Class 2 – Frontier Secured Claim	-	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 – Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 6 – PTO Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 141,230</b>	<b>\$ 184,150</b>	<b>\$ 176,049</b>	<b>\$ 126,049</b>	<b>\$ 126,049</b>	<b>\$ 76,049</b>	<b>\$ 51,049</b>	<b>\$ 51,049</b>	<b>\$ 22,107</b>
Partners' Capital	199,551	182,842	161,596	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
<b>TOTAL LIABILITIES AND PARTNERS' CAPITAL</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$'000's)**

	Actual		Actual		Forecast -->		Total 2020		3 month ended		3 month ended		3 month ended		Total 2021		
	Jan 2020 to June 2020 Total	3 month ended Sept 2020	3 month ended Sept 2020	3 month ended Dec 2020	3 month ended Dec 2020	3 month ended Dec 2020	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	3 month ended Mar 2021	3 month ended Jun 2021	3 month ended Sept 2021
Revenue																	
Management Fees	\$ 6,572	\$ 1,949	\$ 2,651	\$ 11,173	\$ 779	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	-	-	-	-	-	-	-	-	-
Other Income	3,126	538	340	4,004	113	-	-	-	-	-	-	-	-	-	-	-	-
Total revenue	\$ 17,370	\$ 6,252	\$ 6,779	\$ 30,401	\$ 2,154	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655	14,536								
Income/(loss) From Operations	\$ 4,042	\$ (2,918)	\$ (2,301)	\$ (1,177)	\$ (6,274)	\$ (1,646)	\$ (1,807)	\$ (2,655)	\$ (12,380)								
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605	14,160								
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423	(57,598)								
Operating Gain/(Loss)	\$ (11,178)	\$ (9,107)	\$ (8,985)	\$ (29,270)	\$ (70,741)	\$ (6,130)	\$ (3,432)	\$ (3,837)	\$ (84,130)								
Realized and Unrealized Gain/(Loss)																	
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	(24,100)								
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)	(12,979)								
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-	-								
Net Realized Gain/(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)	(23,927)								
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-								
Total Realized and Unrealized Gain/(Loss)	\$ (139,129)	\$ (7,601)	\$ (12,262)	\$ (158,992)	\$ (1,053)	\$ (22,037)	\$ (4,702)	\$ (9,355)	\$ (37,147)								
Net Income	\$ (150,307)	\$ (16,708)	\$ (21,247)	\$ (188,262)	\$ (71,794)	\$ (28,167)	\$ (8,134)	\$ (13,192)	\$ (121,287)								

**Footnotes:**

- [1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
- [2] Other income and expenses of \$61.2 million in January 2021 includes:
  - [a] \$77.7 million was expensed to record for the increase of allowed claims.
  - [b] Income of \$15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

Forecast ---->					
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Plan
Revenue					
Management Fees	\$ -	\$ -	\$ -	\$ -	\$ 779
Shared Service Fees	-	-	-	-	1,263
Other Income	-	-	-	-	113
Total revenue	\$ -	\$ -	\$ -	\$ -	\$ 2,154
Operating Expenses	1,443	643	758	1,088	3,932
Income/(loss) From Operations	\$ (1,443)	\$ (643)	\$ (758)	\$ (1,088)	\$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	22,313
Other Income/(Expenses)	408	419	434	184	(56,154)
Operating Gain/(Loss)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (2,193)	\$ (94,780)
Realized and Unrealized Gain/(Loss)					
Other Realized Gains/(Loss)	-	-	-	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-	(23,927)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (51,775)	\$ (88,922)
Net Income	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)	\$ (183,702)

**Highland Capital Management, L.P.**  
**Cash Flow Indirect**  
*(US \$000's)*

	Forecast ---->									
	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net (Loss) Income	(16,708)	(21,247)	(71,794)	(28,167)	(8,134)	(13,192)	(3,823)	(3,013)	(1,613)	(53,957)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash	231	231	231	231	-	-	-	-	-	-
Depreciation and amortization	-	-	763	(522)	-	-	-	-	-	-
Other realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	51,775
Investment realized (gain)/ loss	(9,150)	-	-	-	-	-	-	-	-	-
Unrealized (gain) / loss	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,000
(Increase) Decrease in Current Assets	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	-
Increase (Decrease) in Current Liabilities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(152)
Net Cash Increase / (Decrease) - Operating Activities										
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,900)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,900)
Net Change in Cash	(9,107)	22,454	(23,408)	91,979	(6,484)	16,374	(54,481)	(28,681)	(2,297)	(21,344)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,304
Ending Cash	5,887	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344	1,960

## For Review - Creditflux Statement/Background



Lucy Bannon

Tue 9/15/2020, 9:29 PM

James Seery <jpseeryjr@gmail.com>

Reply all

Sent Items



Enterprise Vault



Jim -Let me know what you think of the below. (And again, the first would be on the record; the second would be sent for information purposes to ensure accuracy, not for attribution.)

**STATEMENT (ON THE RECORD, ATTRIBUTED TO "A SPOKESPERSON FOR HCMLP" OR SOMETHING ALONG THOSE LINES)**

"HCMLP continues to advance the reorganization process toward with the objective of reaching a consensual reorganization with creditors. Given that goal, we are pleased to reach the stage of the process where, after assessing all potential claims, we can identify those that are legitimate and incorporate them accordingly into a final plan.

"While we dispute the allegations made in the filing and believe the underlying claims are invalid, our focus is on assessing the claims—along with any others outstanding—in a transparent, orderly manner that helps move HCMLP’s reorganization process forward toward a resolution."

**BACKGROUND/CLARIFICATION (NOT FOR ATTRIBUTION)**

Given the complex history and background here (which is likely challenging to capture concisely in this format), we want to ensure that the various parties involved are characterized accurately. In particular, it’s important to note the scale and sophistication of HarbourVest in any summary of their position here. (It’s a \$70B global investment firm that operates across asset classes and fund/investment structures. And it serves a client base largely comprised of institutional investors, which often means structuring complex, customized investment solutions.) Then it’s important to note the background of HarbourVest’s involvement here, in that it not only invested in HCLOF, but was an active participant throughout the Acis bankruptcy proceedings, and played a material role in various outcomes related to that case.

LUCY BANNON | DIRECTOR OF PUBLIC RELATIONS & COMMUNICATIONS



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.419.6272 | C: 224.436.3266

[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com) | [www.highlandcapital.com](http://www.highlandcapital.com)

Dondero Ex. N

002017

Re: For Review - Creditflux Statement/Background



Lucy Bannon

Tue 9/15/2020, 11:02 PM

Jim Seery ✉

↻ Reply all | v

Sent Items



Enterprise Vault



Good w all these. Will clean up and send shortly and fwd to you once I do.

Thanks for the quick turnaround.

Sent from my iPhone

On Sep 15, 2020, at 10:33 PM, James Seery <jpseeryjr@gmail.com> wrote:

Lucy. Some thought below.

Good to submit with your final edits/revisions. Please send me a blind/forward copy of the email you send to the reporter.

Thanks Jim

Best. Jim

Jim Seery  
631-804-2049  
jpseeryjr@gmail.com

---

**From:** Lucy Bannon <LBannon@HighlandCapital.com>

**Date:** Tuesday, September 15, 2020 at 10:29 PM

**To:** Jim Seery <jpseeryjr@gmail.com>

**Subject:** For Review - Creditflux Statement/Background

Jim -Let me know what you think of the below. (And again, the first would be on the record; the second would be sent for information purposes to ensure accuracy, not for attribution.)

**STATEMENT (ON THE RECORD, ATTRIBUTED TO "A SPOKESPERSON FOR HCMLP" OR SOMETHING ALONG THOSE LINES)**

process where, after assessing all potential claims, we can identify those that are legitimate and incorporate them accordingly into a final plan.

“We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be treating all valid claims in a transparent, orderly, and equitable manner and vigorously disputing meritless in the court. That focus will assure that HCMLP’s reorganization progresses toward an efficient and equitable resolution.”

**BACKGROUND/CLARIFICATION (NOT FOR ATTRIBUTION)**

Given the complex history and background here (which is likely challenging to capture concisely in this format), we want to ensure that the various parties involved are characterized accurately. In particular, it’s important to note the scale and sophistication of HarbourVest in any summary of their position. (It’s a \$70B global investment firm that operates across asset classes and fund/investment structures. And it serves a client base largely comprised of institutional investors, which often means structuring complex, customized investment solutions.) Then it’s important to note the background of HarbourVest’s active and deep involvement in the investment of which it now complains. HarbourVest was not simply invested in HCLOF as an ignorant, unsophisticated passive investor, but it was an active and informed participant from the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF. We believe that neither the facts nor the law support HarbourVest’s “we were too lazy to know” allegations.

—

LUCY BANNON | DIRECTOR OF PUBLIC RELATIONS & COMMUNICATIONS

<image001.jpg>

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# FW: Creditflux article: HarbourVest litigation



Lucy Bannon

Wed 9/16/2020, 1:54 AM

James Seery

Reply all |

Sent Items

Enterprise Vault

See below for responses sent to Creditflux. Will follow up w/ the story when it runs or w/ any other updates.

Lucy Bannon | Director of Public Relations & Communications  
O: 972.419.6272 | C: 224.436.3266  
[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com)

**From:** Lucy Bannon  
**Sent:** Wednesday, September 16, 2020 1:51 AM  
**To:** 'Sayed Kadiri' <sayed.kadiri@acuris.com>  
**Subject:** RE: Creditflux article: HarbourVest litigation

Hi Sayed, See below for a statement you can use on the record regarding the filings from Friday that you mentioned. (You can attribute the statement to "a spokesperson for Highland Capital Management, L.P.")

Then I also included some additional information that is not for any kind of attribution. I'm including that to help avoid confusion and prevent any misleading characterization of the parties here, given the complexity of the relationships and involvement in prior legal situations. (I know you've covered those, but they may not be as easy to follow for someone who hasn't been closely involved.)

Please let me know if you have any questions or need any additional information here. And since the filing you referenced is extensive, please let me know if there's anything you plan to include in the story that we may want to address. I tried to make the statement and background broadly applicable, but can revisit if there's anything significant that this doesn't cover.

And thank you again for the flexibility on the timing here.

Lucy

---

**STATEMENT ON THE FILING**

***(NOTE: This can be used on the record and attributed to "a spokesperson for Highland Capital Management, L.P. or something similar)***

"HCMLP continues to advance the reorganization process forward with the objective of reaching a consensual reorganization with valid creditors. Given that goal, we are pleased to reach the stage of the process where, after

"We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be on treating all valid claims in a transparent, orderly, and equitable manner, while disputing those that are meritless through the appropriate channels in the court. That focus will assure that HCMLP's reorganization progresses toward an efficient and equitable resolution."

**ADDITIONAL INFORMATION FOR BACKGROUND/CLARIFICATION**

***(NOTE: This is intended for informational purposes only to ensure accuracy; it is not intended for any kind of attribution)***

Given the complex history and background here—which is likely difficult to capture concisely in any news story—we want to make sure the various parties involved are characterized accurately.

Two key points on this:

1. It's important to note the scale and sophistication of HarbourVest in any summary of their position on these matters.
  - o It's a \$70B global investment firm that operates across asset classes and fund/investment structures.
  - o Its client base is largely comprised of institutional investors, and in descriptions of its service offerings for this audience, the firm highlights its capabilities and experience structuring complex, customized investment solutions.
2. It's also important to note the background of HarbourVest's active and deep involvement in the investment at the center of its complaints.
  - o HarbourVest was not invested in HCLOF as an uninformed, unsophisticated passive investor; it was an active and informed participant from the inception of its investment through all of the Acis bankruptcy proceedings, and HarbourVest played a material role in various outcomes related to that case and its impact on HCLOF.

It's important that readers are aware of these points, as it is impossible to gain a clear understanding of this matter and accurately evaluate the allegations without them. We believe that neither the facts nor the law supports HarbourVest's allegations, but it would be misleading to include that view in any coverage of the allegations without an objective account of those facts.

Lucy Bannon | Director of Public Relations & Communications  
O: 972.419.6272 | C: 224.436.3266  
[lbannon@highlandcapital.com](mailto:lbannon@highlandcapital.com)

**From:** Sayed Kadiri <[sayed.kadiri@acuris.com](mailto:sayed.kadiri@acuris.com)>  
**Sent:** Monday, September 14, 2020 9:01 AM  
**To:** Lucy Bannon <[LBannon@HighlandCapital.com](mailto:LBannon@HighlandCapital.com)>  
**Subject:** RE: Creditflux article: HarbourVest litigation

Sure thing Lucy – it's part of the bankruptcy proceedings

Case No. 19-34054

**From:** Lucy Bannon <[LBannon@HighlandCapital.com](mailto:LBannon@HighlandCapital.com)>  
**Sent:** 14 September 2020 14:58  
**To:** Sayed Kadiri <[Sayed.Kadiri@iongroup.com](mailto:Sayed.Kadiri@iongroup.com)>  
**Subject:** Re: Creditflux article: HarbourVest litigation

A spokesperson for Highland told *Creditflux*: "We dispute the allegations made in the filing and believe the underlying claims are invalid and will be found to be without merit. Our focus continues to be on treating all valid claims in a transparent, orderly, and equitable manner, while disputing those that are meritless through the appropriate channels in the court. That focus will assure that HCMLP's [Highland Capital Management LP] reorganisation progresses toward an efficient and equitable resolution."

A spokesperson for HarbourVest declined to comment on the matter. But in filings the firm says Highland claimed HarbourVest had the ability to control CLO resets, which was one of the reasons the Acis trustee (when that entity went through its own reorganisation) had investigated HarbourVest, on the basis that it was directing the transfer of assets from Acis to Highland.

It further claims in filings that with Highland and its affiliates objecting to and slowing the Acis's chapter 11 proceedings, some of the legal bills were funded by Highland CLO Funding. It estimates the CLO fund has incurred more than \$15 million in legal fees, which it should not have been charged.

HarbourVest's investment in Highland CLO funding is believed to be about \$150 million, with earlier court filings stating Highland was in talks with a private equity firm about an investment of that size (HarbourVest is a private equity firm, with about \$71 billion in assets under management). In November 2017, *Creditflux* had reported the fund had reached \$153 million. HarbourVest states in filings the value of its investment has declined sharply and lays the blame on Highland for conducting the transfers and subsequent actions.

The Acis CLOs that were previously under the Highland umbrella became a separate independent entity as part of Acis's reorganisation, with Terry taking over that business in February 2019. But in an offshoot from Highland's bankruptcy, **Acis is at loggerheads with risk retention financier Nearwater Capital** over an agreement signed by Highland in 2018.

Thanks for checking in, Sayed. Could you send me the filings when you have a minute? Checking on this now, but that should help expedite the turnaround here given the timing.

Sent from my iPhone

On Sep 14, 2020, at 8:24 AM, Sayed Kadiri <[sayed.kadiri@acuris.com](mailto:sayed.kadiri@acuris.com)> wrote:

Hi Lucy, how are you?

I saw the filing on Friday about HarbourVest's claims against Highland for a CLO investment fund and I am looking to put out a report tomorrow morning London time.

Ahead of that, I wanted to check if Highland would like to comment on the matter?

Regards,  
Sayed

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# HarbourVest fights back over CLO fund investment after Highland's objection

By Sayed Kadiri

Thursday, September 17, 2020

HarbourVest Partners, which was the key investor in Highland CLO Funding, a risk retention vehicle, has shot back at Highland Capital Management LP's claim objection as part of its chapter 11 bankruptcy.

Highland filed the omnibus objection against 92 claims. But HarbourVest, in court filings, maintains that "Highland's actions preceding and following the investment caused serious injury to HarbourVest, leading to damages well in excess of \$100 million". Highland filed for bankruptcy protection in October and HarbourVest filed its proof of claim in April.

HarbourVest argues it had not insisted on changing the manager on its CLO fund from Acis to Highland, as Highland had claimed. It adds that Highland had sought to take assets away from Acis following an arbitration award in favour of former Highland employee Josh Terry, which had detrimentally impacted HarbourVest's investment.

HarbourVest invested in Highland CLO Funding (previously known as Acis CLO funding) in November 2017, taking a 49% interest in the fund. It claims that Highland had originally pitched the fund as being managed by Acis Capital Management, which at that point was a Highland affiliate. But over the course of negotiations it changed all references from Acis to Highland, which HarbourVest claims in its filing was done under false pretenses.

Specifically, HarbourVest pinpoints Terry's near-**\$8 million arbitration award**, which he won against his former employer Highland in October 2017, as a turning point. It claims that after this, "Highland orchestrated several transfers that siphoned assets away from Acis".

In 2016, Acis had sold Highland a participation interest based on cashflows deriving from its CLO collateral management agreements for \$666,655 plus a \$12.6 million note payable from Highland to Acis. In filings, HarbourVest says the note was transferred from Acis to an entity known as Highland CLO Management, but with Acis receiving no consideration for the transfer, when the balance on the note was over \$9 million.

HarbourVest claims in its filing that during its due diligence phase on the Highland investment, Highland did not disclose its efforts to strip assets from Acis. When the name of the fund was changed to adopt Highland branding, Highland's reason for doing so was the was "reputational harm" to Acis from Terry's arbitration award, says HarbourVest.

But HarbourVest states in its argument that Highland falsely claimed in court the reason behind the change in manager from Acis to Highland was at HarbourVest's insistence.

**From:** Brad Eden <BEden@HighlandCapital.com>  
**To:** Willard, Dustin  
**CC:** Thomas Surgent  
**Sent:** 8/15/2017 6:10:27 PM  
**Subject:** Legal summary  
**Attachments:** HarbourVest Legal Summaries.pdf

Dustin, attached is the legal summary. Of course, Thomas is available to answer any follow-up questions.

Best,  
Brad

H. Bradley Eden, J.D. | Managing Director, Global Head of Marketing & IR



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**From:** Hunter Covitz <HCovitz@HighlandCapital.com>  
**To:** Willard, Dustin; Pugatch, Michael; Bellisario, Nick  
**CC:** Trey Parker; Brad Eden  
**Sent:** 11/29/2017 5:33:02 PM  
**Subject:** RE: Wall Street Journal Article  
**Attachments:** Highland Capital Management Letter to the Wall Street Journal \_November ....pdf

Dustin/Mike/Nick,

We write to provide an additional update and more extensive response to the recent Wall Street Journal article and the inaccuracies it contained. The article is the result of a reporter with an agenda, fueled by a lack of oversight and intervention on behalf of the Journal that enabled that agenda to make its way into print to the detriment of Highland and, in turn, our investors.

We hope you can understand that we cannot let this agenda-driven reporting be what defines our firm in the public realm, especially when the reporting challenges the quality of our people, the strength of our culture and the regard we have toward our fundamental responsibility to our clients. For the sake of our employees and our investors, which together are what truly defines Highland, we feel we must correct these inaccuracies and refute the accusations against us. To do so we have contacted Wall Street Journal editor-in-chief Gerard Baker to make him aware of the situation and provide him with the facts that the reporter responsible and his editors received from Highland in advance of the article, yet deemed irrelevant. Attached is the letter we shared last night.

We also will be making public a response that addresses the inaccuracies of the article and the situation we encountered at the Journal. While our response is substantial, we believe a full account of the background here was required given the severity of the claims made in the article. Our brand and reputation as strong investors and fiduciaries for our clients' capital is sacrosanct. Therefore, as unfortunate as it is to have to publicly defend ourselves and create more noise for our firm and our investors, we felt it was acutely necessary to stand up for ourselves and what is right under these circumstances.

As always, please let us know if you have any questions or there is anything additional we can provide.

Thank you,  
Hunter

Hunter Covitz  
972-628-4124

**From:** Hunter Covitz  
**Sent:** Monday, November 27, 2017 3:56 PM  
**To:** 'Willard, Dustin' <dwillard@harbourvest.com>; Pugatch, Michael <mpugatch@harbourvest.com>; Bellisario, Nick <nbellisario@harbourvest.com>  
**Cc:** Trey Parker <TParker@HighlandCapital.com>; Brad Eden <BEden@HighlandCapital.com>  
**Subject:** Wall Street Journal Article

Hello, as you may be aware, the Wall Street Journal published an article (attached) which ran online yesterday and in print this morning on the ongoing compensation dispute between Highland and a former employee, Josh Terry, who was terminated in 2016. Specifically, the article addresses the recently completed arbitration, which resulted in additional compensation awarded to Mr. Terry related to his position in Acis, the structured products affiliate.

Despite our willingness to provide the *Wall Street Journal* with the relevant facts, the article that was published severely mischaracterizes the situation and provides a misleading account of this and other activities.

002026

Case 3:21-cv-00261-L Document 11-8 Filed 04/13/21 Page 264 of 264 PageID 2442  
Outside of the compensation award, there were no findings by the arbitrators against Acis. Further, Mr. Terry lost all of his claims against Highland. The firm did not ask Mr. Terry to breach his fiduciary duty, nor did it breach any duty to its investors, and these facts were confirmed by the arbitrators' findings.

Highland has a number of outstanding claims against Mr. Terry, including contract and fiduciary breaches, the malicious taping of co-workers and counter parties for over a year, and other misconduct that contributed to Mr. Terry's termination from Highland. Since Highland's claims were not subject to the arbitration and were stayed pending the completion of the arbitration, they were not addressed by the arbitrators. Now, Highland will have the opportunity to adjudicate these claims in court, which are likely to be substantially larger than the arbitration award.

This situation, while contentious, highlights the strength of our compliance process and culture of accountability, both areas of the firm in which we take great pride. Mr. Terry was found in violation of our compliance standards and Highland took swift action to address that and other misconduct that was uncovered. Thanks to this response, Mr. Terry's misconduct did not affect investors, and Highland took every step to ensure clients' interests were first and foremost protected.

While the dispute has no impact on our investment activities, as always, we welcome any questions you may have. In the meantime, we are so extremely excited about the opportunity to work together with Harbourvest and we are fully committed to managing our clients' money with the highest standards of ethics and execution.

Thank you,  
Hunter

HUNTER COVITZ | MANAGING DIRECTOR



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002027

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLANT RECORD  
VOLUME 9**

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

IN RE: \* Chapter 11  
\*  
\* Case No. 19-34054sgj11  
\*  
HIGHLAND CAPITAL MANAGEMENT, L.P. \*  
\*  
Debtor

*INDEX\**

**AMENDED DESIGNATION OF RECORD PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Fed. R. Bankr. P. 8009, The Dugaboy Investment Trust and Get Good Trust (“*Appellants*”) by and through undersigned counsel, hereby submit this amended designation as instructed by docket no. 1912 of the record on appeal for the appeal on *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788]*:

*Vol. 1*

- 1. Notice of Appeal
  - 000001* a. Notice of Appeal and Statement of Election filed on February 1, 2021 at Docket # 1870 for Bankruptcy Case No. 19-34054-sgj 11; and
  - 000005* b. Amended Notice of Appeal and Statement of Election filed on February 3, 2021 at Docket # 1889 for Bankruptcy Case No. 19-34054-sgj 11.
- 2. The Judgment, Order, or Decree Appealed from:
  - 000009* a. Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith [Dkt. # 1788].

- Vol. 1 3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:
- a. To the extent included in or underlying the documents identified in part 5 and 6 herein.
- 000032 4. The Docket Sheet for Bankruptcy Case No. 19-34054-sgj11.
5. Documents listed below (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

DATE	DKT. #	DESCRIPTION
01/22/2020	382	Agreed Order Granting Motion for Protective Order
12/23/2020	1625	Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.
12/23/2020	1626	Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/13/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for 1625
12/24/2020	1631	Declaration re: ( <i>Declaration of John A. Morris in Support of the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7)
12/24/2020	1634	Support/supplemental document ( <i>Exhibit A to the Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1625 Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

		Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)	
Vol. 2 000450	12/30/2020	1646	Certificate of service re: <i>Documents Served on or Before December 24, 2020</i> Filed by Claims Agent Kurtzman Carson Consultants LLC
000466	01/06/2021	1697	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Interested Party James Dondero
000481	01/08/2021	1706	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) <i>Objection to Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith with Certificate of Service</i> filed by Get Good Trust, The Dugaboy Investment Trust
000491	01/08/2021	1707	Objection to (related document(s): <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. filed by Debtor Highland Capital Management, L.P.) filed by Creditor CLO Holdco, Ltd.
000501	01/08/2021	1708	<b>SEALED document regarding: Exhibit A to CLO Holdco, Ltd.'s Objection to Harbourvest Settlement [Docket No. 1707] Members Agreement Relating to the Company dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco - Confidential [Confidential Subject to Agreed Protective Order See Docket No. 382] per court order filed by Creditor CLO Holdco, Ltd.</b>
000502	01/09/2021	1714	Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.)
000505	01/11/2021	1717	<b>SEALED document regarding: Exhibit 4, Members Agreement Relating to the Company dated November 15, 2017</b>

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Thru Vol. 4

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			by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco [Confidential Subject to Agreed Protective Order] per court order filed by Creditor CLO Holdco, Ltd. (RE: related document(s)382 Order on motion for protective order)
01/13/2021	1731		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) filed by Debtor Highland Capital Management, L.P.
01/13/2021	1733		Expedited Motion to file document under seal./Expedited Motion for Leave to File Documents Under Seal in Connection with the HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith Filed by Creditor HarbourVest et al (Attachments: # 1 Exhibit A - Proposed Order)
01/13/2021	1734		Omnibus Reply to (related document(s): 1697 Objection filed by Interested Party James Dondero, 1706 Objection filed by Creditor The Dugaboy Investment Trust, Creditor Get Good Trust, 1707 Objection filed by Creditor CLO Holdco, Ltd.) /HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al
01/13/2021	1735		Support/supplemental document /Appendix to HarbourVest Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest and Authorizing Actions Consistent Therewith filed by Creditor HarbourVest et al (RE: related document(s)1734 Reply)
01/13/2021	1736		Emergency Motion to file document under seal.(Debtor's Emergency Motion for Entry of an Order Authorizing the Filing under Seal of Exhibits to Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith) Filed by Debtor Highland Capital Management, L.P. (Attachments: # 1 Exhibit A--Proposed Order)
01/14/2021	1737		Order granting motion to seal exhibits (related document # 1736)
01/14/2021	1738		<b>SEALED document regarding: Exhibit A--Members Agreement per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1739		<b>SEALED document regarding: Exhibit B--Articles of Incorporation per court order</b> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)1737 Order on motion to seal)
01/14/2021	1740		<b>SEALED document regarding: Exhibit C--Offering</b>

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Vol 4		Memorandum per court order filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1737</u> Order on motion to seal)
000940	01/14/2021 1742	Exhibit List ( <i>Supplemental Exhibit List</i> ) filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. N)
No PDF	01/14/2021 1754	Hearing held on 1/14/2021. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (Appearances: J. Pomeranz, J. Morris, and G. Demo for Debtor; J. Wilson, M. Lynn, J. Bonds, and B. Assink for J. Dondero; E. Weisgerber for HarbourVest; J. Kane for CLO Holdco; D. Draper for Dugaboy and Get Good Trust; M. Clemente for UCC; R. Matsumura for HCLOF. Evidentiary hearing. Motion granted. Counsel to upload order.)
000950	01/15/2021 1761	Certificate of service re: <i>Documents Served on or Before January 12, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s) <u>1714</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.. Filed by Debtor Highland Capital Management, L.P.). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1625</u> , filed by Debtor Highland Capital Management, L.P., <u>1715</u> Order granting application for compensation (related document <u>1552</u> ) granting for Wilmer Cutler Pickering Hale and Dorr LLP, fees awarded: \$709256.22, expenses awarded: \$0.0 Entered on 1/11/2021. (Ecker, C.), <u>1718</u> Amended Notice of hearing ( <i>Amended Notice of (I) Hearing to Confirm Plan and (II) Related Important Dates</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1472</u> Amended chapter 11 plan filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>944</u> Chapter 11 plan, <u>1079</u> Chapter 11 plan, <u>1287</u> Chapter 11 plan, <u>1383</u> Chapter 11 plan, <u>1450</u> Chapter 11 plan).). Confirmation hearing to be held on 1/26/2021 at 09:30 AM at Dallas Judge Jernigan Ctrm. filed by Debtor Highland Capital Management,

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000989

		<p>L.P., <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P., <u>1720</u> Amended Notice of hearing filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1207</u> Motion to allow claims of HarbourVest Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan Filed by Creditor HarbourVest et al Objections due by 11/9/2020. (Attachments: # 1 Proposed Order)). Hearing to be held on 1/14/2021 at 09:30 AM Dallas Judge Jernigan Ctrm for <u>1207</u>, filed by Debtor Highland Capital Management, L.P., <u>1722</u> Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). filed by Debtor Highland Capital Management, L.P.).</p>
<p>01/26/2021</p>	<p>1844</p>	<p>Certificate of service re: <i>Documents Served on January 21, 2021</i> Filed by Claims Agent Kurtzman Carson Consultants LLC (related document(s)<u>1788</u> Order granting motion to compromise controversy with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and authorizing actions consistent therewith (related document <u>1625</u>) Entered on 1/21/2021. (Okafor, M.), <u>1791</u> Notice (<i>Notice of Withdrawal of Certain Executory Contracts and Unexpired Leases from List of Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1648</u> Notice (<i>Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of</i></p>

vol 4

		<p><i>Reorganization of Highland Capital Management, L.P.)</i> filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1719</u> Notice (<i>Second Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)), <u>1749</u> Notice (<i>Third Notice of (I) Executory Contracts and Unexpired Leases to Be Assumed by the Debtor Pursuant to the Fifth Amended Plan, (II) Cure Amounts, If Any, and (III) Related Procedures in Connection Therewith</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1606</u> Support/supplemental document (<i>Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.</i>) filed by Debtor Highland Capital Management, L.P. (RE: related document(s)<u>1472</u> Chapter 11 plan). (Attachments: # 1 Exhibit I--Schedule of Contracts and Leases to Be Assumed # 2 Exhibit J--Amended Form of Senior Employee Stipulation # 3 Exhibit K--Redline of Form of Senior Employee Stipulation)). filed by Debtor Highland Capital Management, L.P.)</p>
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6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11):

001021

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001024

01/11/2021	1716	Witness and Exhibit List filed by Creditor CLO Holdco, Ltd. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
01/11/2021	1721	Witness and Exhibit List filed by Interested Party James Dondero (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P.,

Vol. 5			HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.). (Attachments: # <u>1</u> Dondero Ex. A - POCs # <u>2</u> Dondero Ex. B # <u>3</u> Dondero Ex. C # <u>4</u> Dondero Ex. D # <u>5</u> Dondero Ex. E # <u>6</u> Dondero Ex. F # <u>7</u> Dondero Ex. G # <u>8</u> Ex. H - M)
Vol. 6 001275	01/11/2021	1722	Witness and Exhibit List filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001280	01/11/2021	1723	Witness and Exhibit List filed by Creditor HarbourVest et al (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P.)
001287	01/13/2021	1732	Amended Witness and Exhibit List ( <i>Debtor's Second Amended Witness and Exhibit List with Respect to Hearing to Be Held on January 14, 2021</i> ) filed by Debtor Highland Capital Management, L.P. (RE: related document(s) <u>1722</u> List (witness/exhibit/generic), <u>1726</u> List (witness/exhibit/generic))
001375 Thru Vol. 8	01/14/2021	1782	Court admitted exhibits date of hearing January 14, 2021 (RE: related document(s) <u>1625</u> Motion to compromise controversy with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., filed by Debtor Highland Capital Management, L.P.) (COURT ADMITTED DEBTOR'S/PLAINTIFF EXHIBIT'S #A THROUGH #EE BY JAMES MORRIS AND EXHIBIT'S #34 & #36 BY ERICA WEISGERBER AND DEFENDANT'S DONDERO EXHIBIT #N (ONLY PORTIONS OF EXHIBIT) BY J. WILSON)
Vol. 9 002028	01/15/2021	1750	Request for transcript regarding a hearing held on 1/14/2021. The requested turn-around time is hourly
002029	01/17/2021	1765	Transcript regarding Hearing Held 01/14/2021

February 10, 2021

/s/Douglas S. Draper.

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*Attorneys for The Dugaboy Investment Trust  
and Get Good Trust*

### **CERTIFICATE OF SERVICE**

I, Douglas S. Draper, certify that on February 10, 2021, the *Designation Of Record Pursuant To Fed. R. Bankr. P. 8009* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

/s/Douglas S. Draper.

Douglas S. Draper, La. Bar No. 5073

BTXN 119 (rev. 03/19)

## AUDIO / TRANSCRIPT ORDER

1. ORDER REQUEST: <input type="checkbox"/> DUPLICATE OF AUDIO CD Recordings Only		<input checked="" type="checkbox"/> TRANSCRIPT		2. DATE OF ORDER: 1/15/21	FOR COURT USE ONLY DUE DATE:	
3. NAME: Melanie Holmes		4. PHONE NUMBER: 972-755-7105		5. EMAIL ADDRESS: mholmes@haywardfirm.com		
6. MAILING ADDRESS: 10501 N. Central Expy., Ste. 106		7. CITY: Dallas		8. STATE: TX	9. ZIP CODE: 75231	
10. CASE NUMBER: 19-34054		11. CASE NAME: Highland Capital Mgmt		12. JUDICIAL OFFICIAL: Jernigan		13. DATE OF PROCEEDING: FROM: 01 / 14 / 21
14. ORDER FOR:		<input type="checkbox"/> APPEAL		<input checked="" type="checkbox"/> BANKRUPTCY		<input type="checkbox"/> OTHER
15. ORDER:						
ORDINARY                      7 DAY EXPEDITED                      DAILY                      HOURLY						
A. <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>						
14 DAY EXPEDITED                      3 DAY EXPEDITED						
<input type="checkbox"/> <input type="checkbox"/>						
16. AUDIO/TRANSCRIPT REQUESTED Specify portion(s) and date(s) of proceeding(s):						
PORTION(S)				PORTION(S)		
<input checked="" type="checkbox"/> ENTIRE HEARING				<input type="checkbox"/> TESTIMONY (SPECIFY WITNESS)		
<input type="checkbox"/> OPENING STATEMENT (PLAINTIFF)						
<input type="checkbox"/> OPENING STATEMENT (DEFENDANT)						
<input type="checkbox"/> CLOSING ARGUMENT (PLAINTIFF)				<input type="checkbox"/> VOIR DIRE		
<input type="checkbox"/> CLOSING ARGUMENT (DEFENDANT)				<input type="checkbox"/> OTHER (SPECIFY)		
<input type="checkbox"/> COURT RULING ONLY						
CERTIFICATION				17. SIGNATURE: /s/ Melanie Holmes		
By signing 17. & 18, I certify that I will pay all charges (deposit plus additional as specified by the assigned transcriber).				18. DATE: 1/15/21		
COURT USE ONLY						
A. PROCESSED BY:				B. TRANSCRIPT TO BE PREPARED BY:		
PHONE NUMBER:				ADDRESS:		
EMAIL ADDRESS:				TELEPHONE: EMAIL ADDRESS:		
C. PARTY RECEIVED AUDIO:		DATE:		BY:		\$31 FEE PAID:

**DISTRIBUTION:**                                      COURT COPY                                      ORDER RECEIPT                                      ORDER COPY

002028

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

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In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Thursday, January 14, 2021  
) 9:30 a.m. Docket  
Debtor. )  
) - MOTION TO PREPAY LOAN  
) [1590]  
) - MOTION TO COMPROMISE  
) CONTROVERSY [1625]  
) - MOTION TO ALLOW CLAIMS OF  
) HARBOURVEST [1207]  
)

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

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz  
PACHULSKI STANG ZIEHL & JONES, LLP  
10100 Santa Monica Blvd.,  
13th Floor  
Los Angeles, CA 90067-4003  
(310) 277-6910

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1                   DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, the Honorable Stacey Jernigan presiding.

5                   THE COURT: Good morning. Please be seated. All  
6 right. We're a little late getting started because we had  
7 lots of reading material for the Court today. All right.  
8 This is Judge Jernigan, and we have a couple of Highland  
9 settings. The HarbourVest matters are the primary thing we  
10 have set today, and then we also have a Debtor's motion  
11 pursuant to protocols for authority for Highland Multi-Strat  
12 to prepay a loan.

13                  All right. Well, let's get a few appearances. First, for  
14 the Debtor team, who do we have appearing this morning?

15                  MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
16 Pomerantz, John Morris, and Greg Demo here on behalf of the  
17 Debtor.

18                  THE COURT: Okay. Thank you.

19                  All right. We have objections on HarbourVest. Who do we  
20 have appearing for Mr. Dondero this morning?

21                  MR. WILSON: Your Honor, it's John Wilson, and I'm  
22 also joined by Michael Lynn, John Bonds, and Bryan Assink.

23                  THE COURT: Okay. I'm sorry. Could -- the court  
24 reporter does yeoman's work in this case. Let me just make  
25 sure we got all three of those names. Say again, Mr. Wilson.

1 MR. WILSON: John Bonds and Michael Lynn and Bryan  
2 Assink.

3 THE COURT: Oh, okay. So, see, I thought I heard  
4 somebody Wilson in all of that, which was why I was pressing  
5 the issue.

6 All right. Is Mr. Dondero present on the video for  
7 today's hearing?

8 MR. WILSON: I believe he is, Your Honor.

9 THE COURT: Mr. Dondero, could you confirm that you  
10 are out there? (No response.) Okay. My court reporter says  
11 he sees the name out there. Is he in your office?

12 MR. WILSON: Your Honor, he is appearing remotely  
13 from my office. I'm not sure exactly where he's appearing  
14 from.

15 THE COURT: Okay. Well, Mr. Dondero, if you're out  
16 there and you're speaking up to confirm you're present, we're  
17 not hearing you. Maybe your device is on mute. So please  
18 unmute yourself.

19 (No response.)

20 THE COURT: All right. I'm going to take some other  
21 appearances and you -- you need to try to communicate with  
22 your client and let him know I need to confirm he's present.  
23 Okay?

24 All right. Meanwhile, let's go to our other Objectors.  
25 CLO Holdco. Who do we have appearing today?

1 MR. KANE: John Kane; Kane Russell Coleman & Logan;  
2 on behalf of CLO Holdco.

3 THE COURT: All right. Thank you, Mr. Kane.

4 We had an objection from Dugaboy Investment Trust and Get  
5 Good Trust. Who do we have appearing?

6 MR. DRAPER: Douglas Draper, Your Honor, for -- for  
7 Draper.

8 THE COURT: All right. Thank you, Mr. Draper.

9 All right. I think those were the only written objections  
10 we had. Mr. Pomerantz, do you confirm, we don't have any  
11 other objectors for the motions set, correct?

12 MR. POMERANTZ: Your Honor, there was those three.

13 THE COURT: I'm sorry. I didn't catch your full  
14 sentence.

15 MR. POMERANTZ: That is correct, Your Honor. There  
16 were three objections to the motion.

17 THE COURT: Okay. Mr. Clemente, you're there for the  
18 Creditors' Committee?

19 MR. CLEMENTE: Yes. Good morning, Your Honor. Matt  
20 Clemente on behalf of the Official Committee of Unsecured  
21 Creditors.

22 THE COURT: All right. Good morning. Thank you.  
23 All right. We have a lot of other folks on the video. I'm  
24 not going to go ahead and take a roll call of other lawyers.

25 MS. WEISGERBER: Your Honor?

1 THE COURT: Yes?

2 MS. WEISGERBER: Excuse me, Your Honor. It's Erica  
3 Weisgerber from Debevoise on behalf of HarbourVest.

4 THE COURT: Okay.

5 MS. WEISGERBER: And I'm joined by Natasha Labovitz  
6 and Dan Stroik --

7 THE COURT: Okay.

8 MS. WEISGERBER: -- from Debevoise as well.

9 THE COURT: Thank you. I was neglectful in not  
10 getting your appearance, because, of course, you're at the  
11 front and center of this motion to compromise, and I did see  
12 that you filed a reply brief yesterday afternoon. Okay.  
13 Thank you.

14 All right. Do we have -- do we have Mr. Dondero on the  
15 line? I'm going to check again.

16 (No response.)

17 THE COURT: Mr. Dondero's counsel, I cannot hear you,  
18 so please unmute your device.

19 MR. WILSON: Your Honor, it appears to me that Mr.  
20 Dondero's device was unmuted as soon as you asked if he was  
21 available. I sent him a communication a second ago asking if  
22 he's having technical difficulties. I have not received a  
23 response, so I --

24 MR. DONDERO: Hello. Can anybody hear me?

25 THE COURT: Oh.

1 MR. WILSON: Okay. I hear him.

2 THE COURT: Mr. Dondero?

3 MR. DONDERO: Hello?

4 THE COURT: Is that you?

5 MR. DONDERO: Yeah, it is. I've been on. I've heard  
6 everything since the beginning. It's just we've had technical  
7 difficulties. I couldn't use the Highland offices. We've  
8 been trying to set up something else.

9 THE COURT: All right.

10 MR. DONDERO: But I'm on now, if -- yes.

11 THE COURT: All right. Very good. Well, I'm glad  
12 we've got you.

13 All right. Well, Mr. Pomerantz, how did you want to  
14 proceed this morning?

15 MR. POMERANTZ: Your Honor, we could take up the  
16 HarbourVest motion first, and I will turn it over to John  
17 Morris. He and Greg Demo will be handling that. And then  
18 after that we can handle the other motion, which is unopposed.

19 THE COURT: All right. Mr. Morris?

20 MR. KANE: Your Honor, this is -- sorry. This is  
21 John Kane for CLO Holdco. Just very briefly, if I may. And  
22 this will affect, I think, the Debtor's case in chief, so I'll  
23 expedite things a little bit, I believe.

24 CLO Holdco has had an opportunity to review the reply  
25 briefing, and after doing so has gone back and scrubbed the

1 HCLOF corporate documents. Based on our analysis of Guernsey  
2 law and some of the arguments of counsel in those pleadings  
3 and our review of the appropriate documents, I obtained  
4 authority from my client, Grant Scott, as Trustee for CLO  
5 Holdco, to withdraw the CLO Holdco objection based on the  
6 interpretation of the member agreement.

7 THE COURT: All right. Well, thank you for that, Mr.  
8 Kane. I think that -- that eliminates one of the major  
9 arguments that we had anticipated this morning. So, thank you  
10 for that.

11 Any other housekeeping matters that maybe someone had that  
12 I didn't ask about?

13 MS. MATSUMURA: Yes, Your Honor. This is Rebecca  
14 Matsumura from King & Spalding representing Highland CLO  
15 Funding, Ltd. I just wanted to put on the record, we -- our  
16 client had requested that some of its organizational documents  
17 be filed under seal. But we have given permission for the  
18 parties to present the relevant excerpts, to the extent it's  
19 still relevant after Mr. Kane's announcement, in court. And  
20 we'd just ask that the underlying documents remain sealed, but  
21 we're not going to object if they show them on a PowerPoint or  
22 anything like that.

23 So, to the extent that you had that on your radar, I just  
24 wanted to clear that up for the proceedings.

25 THE COURT: All right. Well, I did sign an order

1 late last night. I don't know if it's popped up on the  
2 docket.

3 MS. MATSUMURA: Yes, Your Honor. That's what this  
4 referred to. That was what -- these are the documents that  
5 were being sealed. And so I just wanted to note, if you --  
6 you know, if the Debtor puts up an excerpt of those documents  
7 and you're like, wait a minute, didn't I seal those, that we  
8 were the party that requested them be under seal and we're  
9 fine with them being shown in court, as long as the underlying  
10 documents aren't publicly accessible.

11 THE COURT: Okay. Got you. Thank you.

12 All right. Any other housekeeping matters?

13 MR. MORRIS: Yes, Your Honor. This is John Morris  
14 from Pachulski Stang for the Debtor. Good morning.

15 THE COURT: Good morning.

16 MR. MORRIS: The only other matter that I wanted to  
17 raise, and I can do it now or I can do it later, or Your Honor  
18 may tell me that it's not appropriate to do at this time, is  
19 to schedule the Debtor's motion to hold Mr. Dondero in  
20 contempt for violation of the TRO.

21 THE COURT: All right. Well, let's do that at the  
22 conclusion today. And please make sure I do it. I think I  
23 was going to address this last Friday, and we went very late  
24 and it slipped off my radar screen. But I did see from my  
25 courtroom deputy that you all were reaching out to her

1 yesterday to get this set, and then Mr. Dondero's counsel  
2 reached out to her and said, We're going to file an objection  
3 to a setting next Wednesday, or I think you had asked for a  
4 setting next Tuesday or Wednesday.

5 MR. MORRIS: I did.

6 THE COURT: And I don't -- I don't know if that  
7 response/objection was ever filed last night. I haven't seen  
8 it if it was. So, we'll -- please, make sure I don't forget.  
9 We'll take that up at the end of today's matters. All right.  
10 Well, --

11 MR. MORRIS: All right. So, --

12 MS. WEISGERBER: Your Honor, one last housekeeping  
13 item from -- I'm joined this morning by Michael Pugatch of  
14 HarbourVest, who will present some testimony this morning. I  
15 just want to confirm he's on the line and confirm no  
16 objections to him sitting in for the rest of the hearing.

17 THE COURT: All right. Mr. Pugatch, this is Judge  
18 Jernigan. Could you respond? Are you there with us?

19 MR. PUGATCH: Yes. Good morning, Your Honor. Mike  
20 Pugatch from HarbourVest here.

21 THE COURT: All right. Very good. I think we had  
22 you testify once before in the Acis matter, if I'm not  
23 mistaken. Maybe. Maybe not. Maybe I saw a video deposition.  
24 I can't remember.

25 All right. So, we're going to let Mr. Pugatch sit in on

1 this. Anyone want to say anything about that? I consider him  
2 a party representative, so I don't -- I don't think anyone  
3 could invoke the Rule.

4 All right. Very good. Well, let's go forward if there  
5 are no more housekeeping matters.

6 MR. MORRIS: Okay.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Thank you. Thank you very much, Your  
9 Honor. John Morris; Pachulski Stang Ziehl & Jones; for the  
10 Debtor.

11 It's a rather straightforward motion today. It's a motion  
12 under Rule 9019, pursuant to which the Debtor requests the  
13 Court's authority and approval to enter into a settlement  
14 agreement with HarbourVest that will resolve a number of  
15 claims that HarbourVest has filed against the Debtor.

16 What I -- the way I propose to proceed this morning, Your  
17 Honor, is to give what I hope is an informative but relatively  
18 brief opening statement. I'll defer to HarbourVest and its  
19 counsel as to whether they want to make a presentation in  
20 advance of the offer of evidence. Any objecting party, I  
21 suppose, should then be given the opportunity to present their  
22 case to the Court. Then the Debtor will call Jim Seery, the  
23 Debtor's CEO and CRO. We will offer documents into evidence.  
24 I would propose then that the objecting parties take the  
25 opportunity to ask Mr. Seery any questions they'd like on the

1 matter.

2 After the Debtor rests, I think HarbourVest would like to  
3 put Mr. Pugatch on the stand to offer some testimony on their  
4 behalf. And I think that that will conclude the case. We can  
5 finish up with some closing arguments as to what we believe  
6 the evidence showed, but that's the way that I'd like to  
7 proceed, if that's okay with the Court.

8 THE COURT: All right. That sounds fine.

9 OPENING STATEMENT ON BEHALF OF THE DEBTOR

10 MR. MORRIS: Okay. So, as I said, Your Honor, this  
11 is a -- this should be a very straightforward motion under  
12 Rule 9019. The standard is well-known to the Court. There  
13 are four elements to a 9019 motion. The Debtor clearly has  
14 the burden of proof on each one. And we easily meet that  
15 burden, Your Honor.

16 The standard, just to be clear, the first part is that we  
17 have to establish a probability of success, with due  
18 consideration for uncertainty of law and fact. The second one  
19 is the complexity, likely duration, expense and inconvenience  
20 of the litigation. The third part of the test is the  
21 paramount interest of creditors. And the fourth part of the  
22 test is whether or not the proposed settlement was reached  
23 after arm's-length negotiations.

24 The Debtor believes that it easily meets this standard,  
25 and frankly, is a little bit frustrated that it's being forced

1 to incur the expense by Mr. Dondero in going through this  
2 process.

3 A plain reading, a fair reading of the economics here  
4 relative to the claim shows that this is a very reasonable  
5 settlement. I don't need to go beyond that, Your Honor. I  
6 don't even need to use the word reasonable. It surely meets  
7 the lowest standard.

8 We've prepared a couple of demonstrative exhibits, Your  
9 Honor. I'm going to use them with Mr. Seery. But I'd like to  
10 just put one up on the screen now, if I may.

11 Ms. Canty, can you please put up Demonstrative Exhibit #3?

12 Demonstrative Exhibit #3 is an outline of the economics of  
13 the settlement. It includes the various pieces, the  
14 components that the parties have agreed to. And it shows, at  
15 least from the Debtor's perspective, just what HarbourVest is  
16 being given here.

17 Up on the screen is a demonstrative exhibit. It has  
18 citations to the evidence that will be admitted by the Court.  
19 The first line shows that HarbourVest will receive a \$45  
20 million allowed general unsecured nonpriority claim. And that  
21 -- that can be found at Debtor's Exhibit EE, Exhibit 1, at  
22 Page 2.

23 That claim is discounted by the expected recovery that  
24 general unsecured creditors are supposed to get. As of  
25 November, in the liquidation analysis that was part of the

1 disclosure statement -- that's the citation in the footnote --  
2 the Debtor believed that unsecured creditors were estimated to  
3 recover approximately eighty-seven and a half cents on the  
4 dollar. And so we just did the arithmetic there to get to the  
5 net economic value of the proposed general unsecured claim.

6 And from that, we reduced \$22-1/2 million because that is  
7 the net asset value of HarbourVest's interest in HCLOF, which,  
8 pursuant to the settlement agreement, it will transfer back to  
9 the Debtor, so that the net economic value is approximately  
10 \$16.8 million.

11 You will hear testimony from Mr. Seery that this number  
12 is, in fact, overstated, and it's overstated because, since  
13 the time the disclosure statement was filed in November, a  
14 number of events have occurred that will -- that have caused  
15 the estimated recovery percentage to be reduced from  
16 approximately 87-1/2 percent to something lower than that. We  
17 don't have the exact number, Your Honor, but Mr. Seery will --  
18 and the evidence will show that there's been more expenses,  
19 that there's been some resolution of certain claims. There's  
20 been some positive issues, too. But that number is probably  
21 in the 70s somewhere.

22 And in any event, I think the point here is, Your Honor,  
23 HarbourVest invested \$80 million in HCLOF, which was going to  
24 participate in the investment in CLOs. They filed a claim for  
25 \$300 million, through treble damages and other claims. But

1 the net economic impact of this is going to be somewhere  
2 probably in between \$12 and \$14 million. I'll let Mr. Seery  
3 give more precision to that. And it represents less than -- a  
4 less than five percent recovery on the total claim.

5 And we think it's important for the Court to keep that in  
6 mind. What are the economics here? Are we overpaying? Is  
7 this an unreasonable settlement? And I think the evidence  
8 will show that the Debtor is not, but that this settlement  
9 that you see before you was the product of arm's length, and  
10 I'm going to go in reverse order of the four-part test under  
11 9019.

12 So, the last part is whether or not the settlement, the  
13 proposed settlement was the product of arm's-length  
14 negotiation. You'll hear lots of evidence that this  
15 settlement that's up on the screen right now very much was the  
16 product of arm's-length negotiation.

17 The third part of the test, Your Honor, is whether it  
18 meets the paramount interest of creditors. You know,  
19 regrettably, Mr. Dondero is the only purported creditor who is  
20 objecting here. He may have done so through different  
21 vehicles, but every objecting party here is a debtor [sic]  
22 owned and controlled by Mr. Dondero. No other creditor -- not  
23 the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty  
24 -- nobody is objecting to this settlement except for Mr.  
25 Dondero. And we believe that that highlights the Debtor's

1 ability to meet the third prong of the test, and that is these  
2 are -- this settlement is in the paramount interest of  
3 creditors.

4 Again, going in reverse, the second part of the test is  
5 the complexity, duration, and expense of litigation. There  
6 will be no disputed evidence that we meet -- the Debtor easily  
7 meets this prong of the test. The evidence is going to show  
8 that HarbourVest's claim is based on fraud, fraud in the  
9 inducement, fraudulent statements and omissions, the kind of  
10 case, Your Honor, that I'm sure you're familiar with that is  
11 incredibly fact-intensive, that will be incredibly difficult  
12 to navigate through. It will be prolonged, it will be  
13 expensive, because you're necessarily relying on he said/she  
14 said, basically. And so we're going to have to get testimony  
15 from every person that spoke in connection with the events  
16 leading up to the transaction. So we think the second prong  
17 will be easily met, Your Honor.

18 And then the last prong -- the first prong, if you will --  
19 is the likelihood of success on the merits. We think that the  
20 settlement, the economic recovery that's up on the screen  
21 here, which ultimately will be less than five percent of the  
22 claimed amount, in and of itself shows that the settlement is  
23 consistent with the Debtor's perception of its likely success  
24 on the merits. I'm certain that HarbourVest disagrees, but  
25 that's okay, we're here today and that's the Debtor's view,

1 and the Court is here to assess the Debtor's business judgment  
2 and whether the Debtor has properly analyzed the issues and  
3 gone through the process. And the evidence will show  
4 conclusively that it will. That it has.

5 Mr. Seery will testify at some length as to the risks that  
6 he saw. I think that you'll hear counsel for Mr. Dondero ask  
7 both Mr. Seery and Mr. Pugatch a number of questions designed  
8 to elicit testimony about this defense or that defense. And  
9 it's a little -- it's a little ironic, Your Honor, because,  
10 really, every defense that they're going to try to suggest to  
11 the Court was a valid defense is a defense that the Debtor  
12 considered. In fact, it's, you know, it's a little spooky,  
13 how they've -- how they've been able to identify kind of the  
14 arguments that the Debtor had already considered in the  
15 prosecution of their objections here.

16 But be that as it may, the evidence will conclusively show  
17 that the Debtor acted consistent with its fiduciary duties,  
18 acted in the best interests of the Debtor's estate, acted  
19 completely appropriately here in getting yet another very  
20 solid achievement for the Debtor, leaving very few claims that  
21 are disputed at this point, all but one of which I believe are  
22 in the hands of Mr. Dondero.

23 So, that's what we think that the evidence will show.

24 I do want to express my appreciation to Mr. Kane for  
25 reflecting on the arguments that we made with respect to the

1 ability of the Debtor to engage in the transfer or the  
2 acquisition of the asset from HarbourVest. I would -- I would  
3 respectfully request that we just enter into a short  
4 stipulation on the record reflecting that the Debtor's  
5 acquisition of HarbourVest's interests in HCLOF is compliant  
6 with all of the applicable agreements between the parties.

7 And with that, Your Honor, I look forward to putting Mr.  
8 Seery on the stand and presenting the Debtor's case.

9 THE COURT: All right. Other opening statements?

10 OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

11 MR. KANE: Yes, Your Honor. Sorry. John Kane on  
12 behalf of CLO Holdco.

13 In response to Mr. Morris, I'm not going to enter into a  
14 stipulation on behalf of my client, but the Debtor is  
15 compliant with all aspects of the contract. We withdrew our  
16 objection, and we believe that's sufficient.

17 THE COURT: All right. Well, I'm content with that.  
18 Other opening statements?

19 OPENING STATEMENT ON BEHALF OF HARBOURVEST

20 MS. WEISGERBER: Your Honor, Erica Weisgerber on  
21 behalf of HarbourVest.

22 HarbourVest joins in Mr. Morris's comments in support of  
23 the settlement, and we believe that the question of whether  
24 the settlement between HarbourVest and the Debtor satisfies  
25 the Rule 9019 standard is not even a close one.

1           Some Objectors have made arguments about the merits of  
2 HarbourVest's claims, which is why we're here. As Your Honor  
3 will hear this morning, HarbourVest has meaningful and  
4 meritorious claims against Highland, but made the business  
5 decision to avoid the time, expense, and inherent risk of  
6 litigation in the interest of preserving value, both for  
7 itself and for the estate.

8           Today, Michael Pugatch, a managing director of  
9 HarbourVest, will testify before the Court. He'll explain  
10 that HarbourVest claims against Highland arise out of certain  
11 misrepresentations and omissions by Highland to HarbourVest in  
12 connection with HarbourVest's purchase of an interest in  
13 HCLOF, one of Highland's managed funds. Those  
14 misrepresentations and omissions, as Your Honor will hear,  
15 relate to Highland's litigation with its former employee,  
16 Joshua Terry, and transfers that were conducted in 2017 to  
17 strip Acis of value and prevent Mr. Terry from collecting on  
18 an \$8 million judgment.

19           Mr. Pugatch will further explain that HarbourVest would  
20 not have invested in HCLOF had it known the underlying facts  
21 about those Acis transfers.

22           Mr. Pugatch will also testify that not only did  
23 HarbourVest not know about those transfers, it learned about  
24 those transfers when it was accused of orchestrating the  
25 transfers itself in the Acis bankruptcy. Your Honor will hear

1 that the Acis trustee sought extensive discovery from  
2 HarbourVest after numerous accusations that HarbourVest was  
3 behind the transfers.

4 Mr. Pugatch will also testify that Highland charged legal  
5 fees for itself and its affiliates to HCLOF, essentially  
6 forcing HCLOF to fund the litigation involving the Acis  
7 bankruptcy and Mr. Terry.

8 In total, HarbourVest's claims for damages are over a  
9 hundred million dollars in investment-related losses, lost  
10 profits, legal fees inappropriately charged to HCLOF, its own  
11 legal fees. And that's before interest or trebling damages.

12 But HarbourVest stands ready to litigate its claims, but  
13 following hard-fought and extensive negotiations with the  
14 Debtors, the parties reached the settlement that's now before  
15 the Court. Mr. Pugatch's testimony regarding the strong  
16 factual bases for HarbourVest's claims against Highland and  
17 its recoverable damages will further underscore the risks that  
18 the Debtors faced if they chose to litigate these claims, and  
19 why this settlement is fair, equitable, and in the best  
20 interest of the estate.

21 THE COURT: All right. Thank you, Counsel.

22 Other opening statements?

23 OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

24 MR. DRAPER: Your Honor, this is Douglas Draper on  
25 behalf of one of the Objectors. I'd like to just make a few

1 comments with respect to what I've heard and what the Court is  
2 going to hear.

3 The first issue I'd like to address is the comment by  
4 counsel for the Debtor that no other party has objected. The  
5 9019 motion is one of the issues that this Court has to rule  
6 on, whether or not there was an objection or not. So the fact  
7 that this may be -- bankruptcy is not a popularity contest and  
8 not an issue of who votes for what and doesn't vote. This,  
9 along with the 1129(a) tests, are clearly within your  
10 province, and you need to listen carefully because you'll have  
11 to make your own independent analysis whether my objection is  
12 correct or incorrect.

13 Two other points I'd like to make that I think are very  
14 salient. Number one is, if you look at the Debtor's  
15 disclosure statement, it basically took the position that the  
16 HarbourVest claim is of little or no value. And lo and  
17 behold, thirty days later, there's a settlement that brings  
18 about a significant recovery to HarbourVest. The timing is  
19 interesting, and I think the Court needs to pay careful  
20 attention to what transpired between the two dates.

21 And then the last point I'd like to make is, as you listen  
22 to the evidence, and what I learned abundantly clear from  
23 hearing the depositions, is that the claim of HarbourVest, if  
24 there is a claim at all, is probably one hundred percent --  
25 should be subordinated in that it appears to arise out of the

1 purchase or sale of a security. And, again, I would ask the  
2 Court to listen carefully to this because that's what it  
3 appears to be and that's what the evidence is going to show to  
4 the Court.

5 THE COURT: All right. Mr. Draper, let me clarify  
6 something I'm not sure if I heard you say or not. Were you  
7 saying that the Court still needs to drill down on the issue  
8 of whether the Debtor can acquire HarbourVest's interest in  
9 HCLOF?

10 MR. DRAPER: No.

11 THE COURT: Okay. I was confused whether you were  
12 saying I needed to take an independent look at that, now that  
13 the objection has been withdrawn of Holdco. You are not  
14 pressing that issue?

15 MR. DRAPER: No, I am not. Basically, I think it's  
16 the fairness of the settlement. I think the transferability  
17 of the interest is separate and apart from the fairness of the  
18 settlement itself. I think the fairness -- the  
19 transferability was a contractual issue between two parties  
20 that the Court does not have to drill down on.

21 THE COURT: All right. I have another question for  
22 you. I want to clarify your client's standing. Tell me --  
23 I'm looking through a chart I printed out a while back. I  
24 guess Dugaboy Investment Trust filed a couple of proofs of  
25 claim; is that right?

1 MR. DRAPER: Yes.

2 THE COURT: Okay. What --

3 MR. DRAPER: And objections are pending.

4 THE COURT: Pardon?

5 MR. DRAPER: Objections to those claims are pending  
6 before the Court, Your Honor, --

7 THE COURT: Okay.

8 MR. DRAPER: -- and have not been litigated.

9 THE COURT: And what about Get Good Trust?

10 MR. DRAPER: Get Good Trust has a proof of claim also  
11 that objections are pending to. Pending.

12 THE COURT: Okay. I don't want to get too  
13 sidetracked here, but I know standing was -- was mentioned as  
14 a legal argument today. What is the basis for those proofs of  
15 claim?

16 MR. DRAPER: The first one is, with respect to the  
17 proof of claim for Dugaboy, there is an investment that  
18 Dugaboy made that was then funneled, we believe, up to the  
19 Debtor. And the -- the loan that exists, we believe is a  
20 Debtor loan, as opposed to a loan to the entity that we made  
21 the loans to.

22 And, again, it's a matter that the Court is going to hear.  
23 The claim may or may not be allowed. It has not been  
24 disallowed yet.

25 The second part to the Dugaboy ownership is we own an

1 interest in the Debtor. And so we are, in fact, a party in  
2 interest.

3 THE COURT: Okay.

4 MR. DRAPER: It may be a small interest, but it is an  
5 interest.

6 THE COURT: It has a limited partnership interest in  
7 the Debtor?

8 MR. DRAPER: Yes.

9 THE COURT: Is that correct?

10 MR. DRAPER: Yes.

11 THE COURT: Okay. Well, I'll move forward. Thank  
12 you.

13 Does that cover -- any other opening statements? I think  
14 that covered everyone who was -- who filed some sort of  
15 pleading today. No.

16 MR. WILSON: Your Honor, John Wilson on behalf of --

17 THE COURT: I'm sorry. I'm sorry.

18 MR. WILSON: -- Mr. Dondero.

19 THE COURT: I missed Mr. Dondero's counsel. I knew  
20 we had visited at some point this morning. I just got  
21 confused there. Go ahead, Mr. Wilson.

22 MR. WILSON: No problem, Your Honor. I was just  
23 going to say that we will reserve our comments until after the  
24 conclusion of the testimony.

25 THE COURT: All right. Very well.

1 Mr. Morris, you may call your first witness.

2 MR. MORRIS: Thank you, Your Honor. Before I do,  
3 just two very, very quick points.

4 THE COURT: Okay.

5 MR. MORRIS: To be clear, Dugaboy's interest in the  
6 Debtor is 0.1866 percent. Less than two-tenths of one  
7 percent.

8 Secondly, the argument that Mr. Draper just made with  
9 respect to subordination is one that appears in nobody's  
10 papers. And, in fact, not only doesn't it appear in anybody's  
11 papers, but Mr. Dondero, I believe, specifically took issue  
12 with the fact that a portion of the consideration that  
13 HarbourVest would receive would be on a subordinated basis,  
14 and he would -- and I think he took the position there is no  
15 basis to give them a subordinated claim.

16 So, I just wanted to point those items out to the Court,  
17 not that I think either one makes a large difference today,  
18 but I do want to deal with the facts.

19 THE COURT: Thank you.

20 MR. MORRIS: The Debtor would call -- you're welcome,  
21 Your Honor. The Debtor calls Mr. James Seery.

22 THE COURT: All right. Mr. Seery, welcome back to  
23 virtual court. If you could say, "Testing, one, two" so I can  
24 see you and swear you in.

25 MR. SEERY: Testing, one, two.

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1 THE COURT: All right. I heard you but I'm not yet  
2 seeing your video. Is your video turned on?

3 MR. SEERY: Video is on. Yes, Your Honor.

4 THE COURT: Okay. I see you now. Please raise your  
5 right hand.

6 JAMES SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MORRIS:

11 Q Good morning, Mr. Seery. Can you hear me?

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

13 Q Okay. Let's just cut to the chase here. Are you familiar  
14 with HarbourVest's claims filed against the Debtor?

15 A I am, yes.

16 Q And did you personally review them?

17 A I did, yes.

18 Q Do you recall that over the summer the Debtor objected to  
19 HarbourVest's claim?

20 A Yes, we did.

21 Q Why -- can you explain to the judge why Harbour -- why the  
22 Debtor objected to HarbourVest's claim last summer?

23 A Sure. The HarbourVest claims, I believe there are about  
24 six of them, initially were filed, and they were -- they were  
25 relatively vague in terms of what the specifics of the claims

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1 were.

2 So, we saw the claims but didn't, frankly, pay a lot of  
3 attention to the underlying transaction that was referred to  
4 in the proofs of claim and the losses that HarbourVest had  
5 claimed to suffer -- to suffer with respect to their purchase  
6 of securities related to HCLOF and the damages caused by the  
7 Acis case. So we filed a pretty pro forma objection. I  
8 believe it was a simply stated objection that we didn't have  
9 any record that there was anything in the Debtor's books and  
10 records that they had a valid claim for any amount against the  
11 Debtor.

12 Q Are you aware that HarbourVest subsequently filed a  
13 response to the Debtor's objection to their claims?

14 A Yes. Yes, I am aware.

15 Q And did you familiarize yourself with that particular  
16 response?

17 A I did indeed. It was a pretty extensive response, really  
18 developing the full panoply of their claims, which included  
19 claims for expenses relating to the Acis case, which  
20 HarbourVest viewed as being improperly charged to HCLOF by its  
21 manager, which is effectively Highland. Those expenses,  
22 HarbourVest took the view, were excessive, had nothing to do  
23 with the investment, and were simply a pursuit of a personal  
24 vendetta against Mr. Terry and his interests by Mr. Dondero,  
25 and using HCLOF's money to actually pursue those interests.

1           In addition, and this was the first time we saw that,  
2 HarbourVest brought forth its claims that it was entitled to  
3 effectively rescind the transaction. And I say rescind the  
4 transaction: In security parlance, they claim that they were  
5 induced by fraud, I think as most are -- to enter into the  
6 transaction.

7           As most are aware, the liability limitations in the OMs  
8 and the exculpation in the documents are pretty broad, and  
9 HarbourVest's position was that they weren't going to be  
10 subject to those limitations because the actual transaction  
11 that they entered into was a fraud on them, designed by Mr.  
12 Dondero, Mr. Ellington, and the Highland team.

13 Q       All right. Let's talk about your understanding, the  
14 Debtor's understanding of the factual background to  
15 HarbourVest's claim. What is your understanding of the  
16 investment that HarbourVest made?

17 A       Well, HarbourVest made an investment in the Highland CLO  
18 business. The Highland CLO business was -- was Acis. And  
19 effectively, the business had been separated, but in name  
20 only. Acis was just a shell, with a few partners --  
21 obviously, Mr. Terry as well -- but it was all Highland  
22 personnel doing all the work.

23           And what they were trying to do with Acis was, in essence,  
24 resuscitate a business that had been in a bit of a decline  
25 from its pre-crisis heyday.

1 They were looking to take additional outside capital.

2 They would -- they would pay down or take money out of the

3 transaction, Highland would, or ultimately Mr. Dondero, and

4 they would -- they would seek to invest in Acis CLOs,

5 Highland's 1.0 CLOs. And then with respect to the Acis CLOs,

6 and potentially new CLOs, but with the Acis CLOs, they'd seek

7 to reset those and capture what they thought would be an

8 opportunity in the market to -- to really use the assets that

9 were there, not have to gather assets in the warehouse but be

10 able to use those assets to reset them to market prices for

11 the liabilities and then make money on the equity.

12 Q Do you have an understanding --

13 A Then --

14 Q I'm sorry. Go ahead.

15 A Why don't I continue? So, the transaction, they found

16 HarbourVest as a potential investor, and the basis of the

17 transaction was that they would make an investment into Acis.

18 Shortly before the transaction, and while they were doing

19 diligence, Mr. Terry received his arbitration award. I

20 believe that was in October of 2017. The transaction with

21 HarbourVest closed in mid- to late November of 2017. But Mr.

22 Terry was not an integral part. Indeed, he wasn't going to be

23 a key man. He had been long gone from Highland by that time.

24 What the -- I think you asked me originally what the basis

25 of their claim was. The transaction went forward, and the

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1 basis of their claim is that they really were never -- nothing  
2 was disclosed to them about the nature of the dispute with Mr.  
3 Terry other than in the highest-level terms; the animosity  
4 with respect to which that dispute was held by Highland and  
5 potentially Mr. Terry; and really, how those costs would be  
6 borne and risks be borne by the investment that they were  
7 making.

8 That was, in essence, the transaction and the high-level  
9 view of their claim.

10 Q Okay. Just a few very specific facts. Do you have an  
11 understanding as to how much HarbourVest invested and what  
12 they got in exchange for that investment?

13 A Yeah. HarbourVest invested in a couple tranches, and I  
14 forget the exact dates, but approximately \$75 million  
15 originally, and then they added another five. Some  
16 distributions were made in the first half of 2018, putting  
17 their net investment in the mid-seventies on the investment,  
18 which now is worth about 22-1/2 million bucks.

19 Q And what percentage interest in HCLOF did HarbourVest  
20 acquire, to the best of your knowledge?

21 A They have 49.98 percent of HCLOF. HCLOF, just to refresh  
22 -- the Court is, I think, well aware of this, but to refresh,  
23 is a Guernsey entity. Not -- not atypical for structures of  
24 this type to use offshore jurisdictions and sell the  
25 securities under -- at least to U.S. -- can't sell them to

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1 U.S. investors unless they qualify, and these are sold under  
2 Reg S to -- to investors that otherwise qualify. And  
3 HarbourVest was investing in that transaction through the  
4 Guernsey structure.

5 Q And do you have an understanding as to who owned the 50-  
6 plus percent of HCLOF that HarbourVest was not going to  
7 acquire?

8 A Yeah. There's -- you can tell by the name. HCLOF is  
9 Highland CLO Funding. This is a Highland vehicle. So  
10 Highland owned and controlled the vehicle. The DAF, which is  
11 -- which is Dondero-controlled trusts, have the -- 49 percent.  
12 Highland has, I believe, around .63-65 percent directly. And  
13 then Highland employees at the time who were involved in the  
14 business owned another small percentage.

15 So the majority was going to be controlled by Highland  
16 through its control of DAF and its control of the employees  
17 that worked for it. HarbourVest would be a minority investor.

18 Q Okay. And I believe you testified that the investment was  
19 made in mid-November; is that right?

20 A That's correct. I think it was the 15th, may have been  
21 the 17th of November.

22 Q And do you recall when in October the Terry arbitration  
23 award was rendered?

24 A It was about a month before. I think it was right around  
25 the 20th, the 17th to the 20th. I may be slightly wrong on

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1 each of those dates.

2 Q Okay. What is your understanding as to what happened  
3 after the issuance of the award that is the basis or at least  
4 one of the bases for HarbourVest's claim?

5 A I don't think there's -- I don't think there's any  
6 dispute. And there certainly are judicial findings. Dondero  
7 and Highland went about stripping Acis of all of its assets.  
8 So, remember that Acis is not a separate standalone company,  
9 in any event. It's controlled and dominated completely by  
10 Highland at the time. But it did have contracts. And those  
11 contracts had value.

12 So the first idea was to strip out the management contract  
13 and put it into a separate vehicle, which we called HCF  
14 Advisor, which Highland still owns. The second piece was to  
15 strip out some valuable assets, the risk retention piece,  
16 which was a loan that in essence was equity that Highland had  
17 put into Acis but structured as a loan, as many of the  
18 transactions we'll see down the road are, in order to deal  
19 with some -- avoid taxes in any way possible. And that  
20 structure, that value moved value out of Acis for the express  
21 purpose of trying to run, in essence, the Highland business  
22 back in Highland.

23 Remember, as I said, Acis is just a Highland business  
24 moved to a separate shell. When Mr. Terry got his arbitration  
25 award against Acis and was seeking to enforce it, it was

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1 pretty straightforward, let's take all the assets -- Dondero  
2 scheme -- let's take all the assets and move them back into  
3 Highland so Terry can't get anything.

4 Q And how does that scheme relate to the HarbourVest claim,  
5 to the best of your knowledge?

6 A Well, HarbourVest -- HarbourVest's position is that they  
7 invested in Acis and -- and whether Acis was called Acis or  
8 called Highland, it doesn't really matter; there were valuable  
9 assets in the -- in the entity that they were going to be  
10 investing in through the equity in these CLOs and some of the  
11 debt securities in those CLOs.

12 And then the stripping out and the fraudulent conveyances  
13 out of Acis caused them damages because that's what left the  
14 damage to Mr. Terry.

15 The quick math on Acis, by the way, is Acis has probably  
16 lost, total damages, 175 million bucks. And that's pretty  
17 easy. DAF lost 50. HarbourVest lost 50. Fifteen million of  
18 fees charged to HCLOF. Another five million of fees, at  
19 least, incurred by Mr. Terry. Ten million that went to Mr.  
20 Terry, 15 to Highland fees, another five, plus Mr. Terry's  
21 settlement in this case, over eight million bucks.

22 So HarbourVest's position, which, on a factual basis, you  
23 know, is problematic for the estate, is, wait a second, we  
24 invested in this vehicle with Highland. That was supposed to  
25 invest in Highland CLOs. They were called Acis, but they were

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1 Highland CLOs. And then you went about causing tremendous  
2 damage to that vehicle that we ultimately were investing in,  
3 and then charge us for the pleasure.

4 Q You used the phrase earlier "OM," I believe.

5 A Offering memorandum.

6 Q Offering memorandum? Can you just explain to the Court  
7 your understanding of what an offering memorandum is?

8 A Typically, under U.S. law, and foreign jurisdictions have  
9 similar laws, you have to have a document that explains the  
10 securities that you're selling. And it goes into extreme  
11 detail about the securities and the risks related to those  
12 securities.

13 And the idea is not to have a document that tells you  
14 whether it's a good investment or a bad investment, but it's a  
15 document that discloses to the potential investor all of the  
16 risks with respect to that security or related to the  
17 investment over the duration of the security. It doesn't  
18 predict the future, but it's supposed to make sure that it  
19 gives you a very clean view of the past and a very clean view  
20 of what the facts from the past are and how they would  
21 implicate the future of the investment.

22 Q And in the course of its diligence, did the Debtor have an  
23 opportunity to review the offering memorandum in the context  
24 of the claims that were being asserted by HarbourVest?

25 A Oh, absolutely. It was originally effectively -- it's an

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1 HCLOF offering memorandum. But as I said, HCLOF was managed  
2 and controlled by Highland, and Highland originally prepared  
3 it. And then, of course, in connection with -- with this  
4 dispute and these claims, we reviewed it, both myself and my  
5 legal team.

6 Q All right.

7 MR. MORRIS: Your Honor, the offering memorandum is  
8 on the Debtor's exhibit list, and I think this is an  
9 appropriate time to move into evidence Debtor's Exhibits A  
10 through EE, all of which appear at Docket No. 1732.

11 THE COURT: 1732?

12 MR. MORRIS: It's the Debtor's Second Amended Witness  
13 and Exhibit List.

14 THE COURT: All right. Any objection to admission of  
15 A through EE?

16 MR. DRAPER: Douglas Draper. No objection, Your  
17 Honor.

18 THE COURT: All right. Mr. --

19 MR. MORRIS: May I proceed?

20 THE COURT: Yeah. Mr. Wilson, did you want to  
21 confirm no objection?

22 (Echoing.)

23 THE COURT: All right. Hearing no objection,  
24 Debtor's A through EE are admitted.

25 (Debtor's Exhibits A through EE are received into

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1 evidence.)

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you, Your Honor. The offering  
4 memorandum itself is one of the documents that we filed under  
5 seal, and we did so at the request of counsel to HCLOF. But  
6 HCLOF has consented to our sharing up on the screen certain  
7 very limited provisions of the document, without waiving the  
8 request that the agreement otherwise be maintained under seal.

9 THE COURT: All right.

10 MR. MORRIS: So may I proceed on that basis, Your  
11 Honor?

12 THE COURT: You may. Uh-huh.

13 MR. MORRIS: Okay. Ms. Canty, can you please put up  
14 on the screen Demonstrative Exhibit #1? Okay. Can we just --  
15 is there a way to just expand that just a bit, Ms. Canty?  
16 Thank you very much. And if we could just scroll it up?  
17 Thank you very much. Perfect.

18 Okay. So, Your Honor, this, as the footnote says, is an  
19 excerpt from the offering memorandum that can be found at  
20 Debtor's Exhibit AA. Double A. And this particular portion  
21 of the offering memorandum is at Page 35.

22 THE COURT: Okay.

23 BY MR. MORRIS:

24 Q Mr. Seery, have you seen this portion of the offering  
25 memorandum before?

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1 A Yes, I have. But before I continue, I just -- I should  
2 have checked. Are you able to hear me clearly? Am I speaking  
3 too quickly or am I cutting out? I just want to make sure.  
4 I'm using a different set of audio today.

5 THE COURT: All right.

6 MR. MORRIS: That's fine.

7 THE COURT: I hear you very well.

8 MR. MORRIS: Yeah.

9 THE COURT: So I think we're good right now. Thank  
10 you.

11 THE WITNESS: Yeah. Thank you, Your Honor. I was  
12 just checking.

13 THE COURT: Okay.

14 THE WITNESS: In response to your question, Mr.  
15 Morris, yes, I have seen this before.

16 BY MR. MORRIS:

17 Q Okay. And can you -- did you form a view in doing the due  
18 diligence as to the adequacy of this disclosure?

19 A Yes, I did.

20 Q Can you share your -- or share with Judge Jernigan the  
21 Debtor's view as to the adequacy of this disclosure concerning  
22 the litigation between Highland and Acis?

23 A With respect to the litigation between Highland and Acis,  
24 or, really, between Acis, Highland, and Highland's principals  
25 and Acis's principal, totally inadequate. The disclosure here

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1 is very high-level. And if there were no other litigation  
2 going on, it might serve to suffice. It basically says, In  
3 our business, because we invest in distressed loans, there's a  
4 lot of litigation around distressed investments, and that's  
5 what we have. And then it says, We've talked with the  
6 investor about other things and we're -- we think that's  
7 enough.

8 Q Is there anything in this portion or anywhere in the  
9 offering memorandum that you're aware of that disclosed to  
10 HarbourVest that in the weeks leading up to the investment  
11 Highland was engaged in the fraudulent transfer of assets away  
12 from Acis?

13 A No. And I apologize, because I think it's -- I've  
14 conflated two provisions. This one only deals with the very  
15 high-level nature of the business. It doesn't give any  
16 indication that there's any material litigation going on  
17 elsewhere with respect to Acis.

18 I believe there's another provision that says, We -- we  
19 have talked to -- oh, here -- I'm sorry. It is here.  
20 Shareholders have had an opportunity to discuss with Highland  
21 to their satisfaction all litigation matters against Highland  
22 and its affiliates unrelated to its distressed business.

23 That, in my opinion, is wholly inadequate.

24 Q Okay.

25 MR. MORRIS: And let's put up -- actually, let's just

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1 move on.

2 BY MR. MORRIS:

3 Q Let's go to the settlement itself.

4 MR. MORRIS: Can we put back up Demonstrative Exhibit  
5 #3?

6 BY MR. MORRIS:

7 Q Mr. Seery, can you see that?

8 A Yes, I can.

9 Q Does this generally describe the net economic recovery of  
10 the HarbourVest settlement based on estimated recoveries for  
11 general unsecured creditors as of November 2020?

12 A As of November 2020, it does. And you alluded to this in  
13 your opening, but to be clear, the numbers have shifted.  
14 Costs have increased. The -- so the -- effectively, the  
15 numerator, in terms of distributable value that we estimate,  
16 is lower. And settlements, the denominator, have also  
17 increased. So the claims against the estate that have been  
18 recognized have increased. And that, that probably takes it  
19 down closer, in our view, to about seventy cents distribution,  
20 a number closer to nine to ten million, maybe a little bit  
21 less.

22 However, there's also some additional value that we -- we  
23 believe we will recover directly. There are north of \$150  
24 million of intercompany notes owed by Dondero entities to  
25 Highland. A number of those notes are demand notes, and we've

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1 already made demand. We'll be initiating actions next week.  
2 So those are -- those value, we believe, we'll recover  
3 directly from Mr. Dondero and from related entities.

4 To the extent those related entities don't have value, we  
5 feel very strongly about our ability to pierce the veil and  
6 reach in to Mr. Dondero. And then his assets, either his  
7 personal assets or the assets that he claims are in trusts.

8 In addition, there are a significant amount of notes that  
9 were extended in two -- I believe around 2017, for no  
10 consideration. Those notes were demand notes, I believe, and  
11 then extended it 30 years. So they have 2047 maturities.  
12 Those were probably going to have to be subject to fraudulent  
13 conveyance type actions or -- or some sort of sale at a very  
14 discounted value because third parties wouldn't want long-  
15 dated notes with Mr. Dondero as the counterparty for very much  
16 money.

17 Those -- they defaulted on some of those parties, so we  
18 effectively turned them into demand notes. We've accelerated,  
19 and we'll be bringing actions against those entities next week  
20 as well.

21 So I think (garbled) have come up, so I apologize. One  
22 way of saying I think the sixteen and a half is a bit high  
23 right now, based upon what we know, but the value is going to  
24 be higher than our estimate a couple of weeks ago because we  
25 do believe we'll be able to recover on the notes.

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1 One additional caveat, just to be fully transparent here.  
2 This summary with the 16.8 doesn't include the subordinated  
3 piece of this -- of this claim and our resolution. That --  
4 recovery of that piece will be dependent upon the success of  
5 litigations.

6 In order for the subordinated piece to get paid, all  
7 general unsecured claims in Class -- Classes 7 and 8 will have  
8 to be paid in full. And then -- and then the subordinated  
9 class in Class 9, which we believe UBS will have a piece of,  
10 and HarbourVest will have a piece of by this settlement, those  
11 will be able to recover, and those will be based upon other  
12 claims of action against -- primarily against related parties.

13 Q And then that last point, is that what's reflected in  
14 Footnote 3 on this page?

15 A That's correct, yes.

16 Q Okay. And just for the record, there's a reduction in  
17 value of \$22-1/2 million. Do you see that?

18 A Yes.

19 Q And can you just explain to the Court what that is and how  
20 that value was arrived at?

21 A Yes. I may be getting slightly ahead of you, Mr. Morris.  
22 But to give the Court a reflection of the transaction -- and  
23 we can go into the details in a moment -- ultimately, the  
24 transaction we structured we think is very fair both  
25 economically to the Debtor, but there -- there is some

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1 complexity to it to satisfy some of HarbourVest's concerns  
2 that they be able to effectively rescind the transaction, at  
3 least from an optical perspective. Value was important, but  
4 optics were as well. The twenty-two and a half is the current  
5 -- actually, the November value of HCL -- the HarbourVest  
6 interests in HCLOF. And that's based upon Highland's  
7 evaluation of those interests.

8 So we do believe that that is a fair value as of that  
9 date. It has not gone down. It hasn't gone up explosively,  
10 either, but it hasn't gone down. We think that's good, real  
11 value. That value is in the Acis CLOs, the equity in those  
12 CLOs, which is 2 through 6, that we -- we will be working with  
13 the HCLOF folks to get Mr. Terry to monetize those assets and  
14 those longer-dated CLOs.

15 In addition, I think it's 85 percent of the equity in Acis  
16 7 -- Acis 7 is managed by Highland -- that is also beyond its  
17 reinvestment period. And in talking to the directors -- and  
18 they're new directors, and I'll get to that in a minute, for  
19 HCLOF -- they'll seek to push Highland, which is the  
20 reorganized Highland, to monetize that asset, with due regard  
21 to fair value.

22 In addition, Harbour -- HCLOF owned a significant amount  
23 of the preferred or equity pieces, if you will, in the  
24 Highland CLO, 1.0 CLOs. As we've talked about, those are not  
25 really CLOs. Those are effectively closed-end funds with

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1 illiquid assets, primarily illiquid assets in them. We've had  
2 some dispute in front of the Court about selling the liquid  
3 assets in them, which we can go into it another time. Those  
4 are being liquidated in the market at fair value.

5 But HCLOF also is a significant holder of those preferred  
6 shares, and those directors would -- have indicated to me that  
7 they would like to see those interests also monetized.

8 Q All right. Let's shift gears for a moment to talk about  
9 the diligence that the Debtor did before entering into this  
10 agreement. Can you just describe for the Court generally the  
11 diligence that was undertaken at your direction?

12 A Well, when we first received the reply to our objection,  
13 we dug into that reply and the specifics in it very  
14 aggressively. So we reviewed all of the underlying documents  
15 related to the original transaction. We discussed with  
16 counsel the legal basis for the HarbourVest claims. We  
17 interviewed our own HCMLP employees who were involved in the  
18 transaction and tested their recollection, specifically around  
19 who dealt with HarbourVest, who had the discussions with  
20 HarbourVest, what was disclosed to HarbourVest with respect to  
21 the Terry dispute and the Acis litigation.

22 We also had done, as I think the Court is well aware from  
23 prior 9019 testimony, extensive work around the transfers and  
24 the issues related to Acis. So we were familiar with their  
25 impact on HCLOF.

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1 We also did extensive work valuing the remaining HCLOF  
2 interests to get a good feel of not only how much HarbourVest  
3 originally invested, but how much they actually lost in this  
4 transaction. And as I said, their original investment was  
5 around, in total, in two tranches, about \$80 million, of which  
6 they got about \$5 million back, and they've lost \$22 million.  
7 So it -- I mean, remaining with \$22 million. So they've lost,  
8 you know, in excess of \$50 million.

9 Q Do you recall whether the Debtor reviewed and analyzed all  
10 of the documents that were cited in HarbourVest's response to  
11 the Debtor's objection to the HarbourVest proofs of claim?

12 A Yeah. I think -- I forget, to be honest, which -- exactly  
13 what documents were in there. But we went through their  
14 objection with a fine-toothed comb, not only with respect to  
15 the issues related to the Acis case, but also their references  
16 to Guernsey law, other U.S. law, any of the documents between  
17 the parties. And obviously, as I mentioned before, the  
18 offering memorandum.

19 MR. MORRIS: Your Honor, I would just note for the  
20 record that Debtor's Exhibits I through X are all of the  
21 documents that are cited in HarbourVest's response to the  
22 Debtor's objection to the HarbourVest proofs of claim, and  
23 those are the documents that Mr. Seery just referred to.

24 THE COURT: All right.

25 MR. MORRIS: Just, they're in evidence now, and I

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1 just wanted the Court to understand why they're in evidence.

2 THE COURT: Okay. Thank you.

3 MR. MORRIS: You're welcome.

4 BY MR. MORRIS:

5 Q Let's talk about the Debtor and whether or not it had or  
6 has any viable defenses. Did the Debtor form any views as to  
7 whether or not it had any defenses to the HarbourVest claims?

8 A Yes, we did.

9 Q Can you describe for the Court the defenses that were  
10 reviewed and analyzed by the Debtor?

11 A Yeah. I think we -- we had very significant defenses.  
12 So, first and foremost, with respect to the original proof of  
13 claim, as I mentioned earlier, it alluded to the expenses and  
14 the overcharge. And I think with respect to the 15 million of  
15 fees that were charged to HCLOF by Highland, we didn't have a  
16 lot of defenses to that claim.

17 It's pretty clear, by any fair view of the Acis case, that  
18 HCLOF, as the investor in the Acis CLOs and the Highland CLOs,  
19 had no real responsibility for fighting with Acis and Josh  
20 Terry and shouldn't have been charged those fees. I don't --  
21 I don't think there's a legitimate investor that would  
22 actually think that that was an appropriate amount to be  
23 charged to a fund.

24 However, the claim was not as broad -- the proof of claim  
25 was not as fulsome in terms of discussing and only vaguely

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1 referred to other damages. So we did -- we did, as a  
2 threshold matter, think about whether we could argue that it  
3 was time-barred because they had not met their obligations to  
4 fully disclose under the proof of claim.

5 Secondly, we considered the defenses to the overall claim  
6 of fraudulent inducement. Our perspective was that if we  
7 could stop the claim of fraudulent inducement, the damages  
8 would likely be limited to the 15 and maybe some -- some other  
9 damages. With respect to the 15, again, the problem that we  
10 had when we got past -- past motions for summary judgment is  
11 the factual predicate for our defense was going to be that we  
12 divulged these things to HarbourVest and that they did not  
13 reasonably -- it was -- reasonably rely on some failure to  
14 divulge because they're a sophisticated investor.

15 The problem with that defense is that our witnesses, which  
16 really would have primarily been Mr. Dondero and Mr.  
17 Ellington, and one other employee who runs the CLO business,  
18 Mr. Covitz, would not be pretty good. They've been -- two of  
19 them have been in front of this Court and they're not viewed  
20 favorably and their testimony would be challenged and  
21 potentially suspect.

22 So that gave us a real focus on trying to make sure that  
23 we could, if we had to litigate, that we would litigate around  
24 the fraudulent inducement.

25 As I said, reasonable reliance, what was disclosed, lack

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1 of digging into the public record, because you don't have to  
2 go far on Google to find "fraud" within two words of  
3 "Highland," and the tremendous, you know, litigious nature of  
4 Highland. You know, even at that point, when this investment  
5 was made, aside from Mr. Terry's arbitration, which by that  
6 point, at least by the time (inaudible) was public, there was,  
7 you know, significant public disclosure around the Credit  
8 Strat and the litigation, the Crusader litigation, the UBS  
9 litigation, the, gosh knows, the Daugherty litigation.

10 So our defense was going to be that you should have  
11 figured this out, you're a sophisticated investor, and you  
12 should have been able to figure out that there was significant  
13 risk that, with respect to Mr. Terry, that Mr. Dondero would  
14 not stop litigating and that those costs would put significant  
15 risk on the investment.

16 The problem with that, as I mentioned earlier, is that the  
17 OM is wholly deficient. If you have a typical risk factor in  
18 the offering memorandum, you would have disclosed that there  
19 was a litigation with Mr. Terry, a former partner in the  
20 business, and that the Debtor had no intention of settling it.  
21 There was no intention of settling. That litigation would go  
22 on. It could go on for years and it could result in  
23 bankruptcy or attachments and other risks to the business, and  
24 that the investor should be fully aware that the Offeror does  
25 not intend to be involved in any -- or the manager, in any

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1 settlement with Mr. Terry, and the fact it undermined the  
2 investment. That wasn't there.

3 But that was our preliminary focus, to try to stop fraud  
4 in the inducement. And then we -- we had specific facts  
5 related to that. You know, once they knew about the  
6 bankruptcy in HarbourVest of -- I'm sorry, of Acis,  
7 HarbourVest made a second funding, which was there was a -- it  
8 was an initial \$75 million draw, and then a second, I believe,  
9 about a \$5 million draw, which was in -- I believe in  
10 February. And they made it without -- without objection, and  
11 that was after the commencement of the bankruptcy.

12 In addition, they were -- they were active in the  
13 bankruptcy, so the -- some of the things that happened in the  
14 bankruptcy, there were many opportunities to settle that case,  
15 from our examination, all of which were turned down to -- by  
16 Mr. Dondero. But you don't see HarbourVest pounding the table  
17 to settle, either, either with respect to the Oaktree  
18 transaction or any other transaction.

19 Now, HarbourVest's defense to that is, well, we were  
20 taking advice and all of our information from Highland, and we  
21 were getting that information directly from senior folks at  
22 Highland why -- what the value was and why we shouldn't do  
23 those things. We thought that that would mitigate some of the  
24 arguments that -- some of the damages that we might have, I'm  
25 sorry, if we -- if we lost.

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1 But the focus at that point, you know, our legal strategy,  
2 was can we stop HarbourVest at the very forefront to say,  
3 You've got to come into the factual realm and get out of the  
4 fraud in the inducement realm. And then the defenses and the  
5 exculpations and the liability limitations in the documents  
6 would also come into play.

7 So that -- those are some of the defenses that we focused  
8 on and our analytical thinking around them.

9 Q So, if the Debtor had viable defenses, why is it settling?

10 A Well, this is a significant claim. And we -- we looked at  
11 it with respect to both the impact on the case, but, really,  
12 the merits of the claim.

13 As I said, there's really little dispute that the legal  
14 fees should not have been charged to HarbourVest. We think  
15 based upon the testimony in Acis, the suspect credibility of  
16 those who would have been our witnesses, and the experience in  
17 Acis that the Court has had in terms of the completely hell-  
18 bent on litigation, it would be hard for anyone to justifiably  
19 defend those fees being charged. So, as an initial matter, we  
20 had exposure there.

21 In addition, if HarbourVest got by our defense of -- was  
22 able, for example, to claim fraud in the inducement, then we  
23 were open to significant damages.

24 We really didn't put much value, frankly, on the RICO part  
25 of it. We think that that's waved around often to show treble

1 damages. Although in this case certainly somebody could lay  
2 out the predicate acts and put forth a RICO-type argument, we  
3 just didn't think that that had real merit in this commercial  
4 dispute, even with a fraud claim.

5 But even without the trebling of the damages, there's no  
6 dispute that HarbourVest lost more than \$50 million in this  
7 investment. You know, we -- we thought about that risk as  
8 well.

9 In addition, because the case would really be fact-based,  
10 even if we had a high degree of confidence based upon our  
11 discussions with our employees and the factual testimony, it  
12 was going to be expensive to litigate this case, and time-  
13 consuming.

14 And so we looked at the economic value, the potential  
15 risks, and the actual value that we were giving up, and found  
16 this to be an extremely, extremely reasonable settlement.

17 Importantly, and I think what drove it, you -- one of --  
18 one of the things that drove it is another one of our defenses  
19 on why, notwithstanding their -- what they held out as  
20 meritorious claims, I don't think HarbourVest really wanted to  
21 publicly litigate this claim. And we were aggressive in our  
22 discussions with HarbourVest of how we would litigate it,  
23 which would be quite publicly.

24 Now, that may or may not be fair, but that does put risk  
25 on the counterparty. And so I think that helped drive the

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1 settlement.

2 In addition, the structure of the settlement we think is  
3 extremely favorable to the Debtor and to the estate because,  
4 rather than taking the full claim and putting it into a senior  
5 unsecured position, we have bifurcated it. We did think about  
6 whether this was a claim that could be subordinated under 510.  
7 There won't be any arguments, I would be surprised if there's  
8 arguments today that we didn't actually give to the Highland  
9 employees who have given them to Mr. Dondero's respective  
10 counsel.

11 We did structure it in a way that we thought gave  
12 HarbourVest the opportunity to effectively claim a rescission,  
13 even though that's not really what it is, and then be able to  
14 claim that their recovery is based on the bankruptcy, which it  
15 is, but not really dilute all the other stakeholders in the  
16 case.

17 (Pause.)

18 THE COURT: Mr. Morris? Anything else?

19 MR. MORRIS: I can hear you, Your Honor.

20 THE COURT: Okay.

21 MR. MORRIS: I can hear you.

22 THE COURT: Okay. Now can you --

23 MR. MORRIS: I got cut off from Mr. Seery for a  
24 moment.

25 THE COURT: Okay.

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1 BY MR. MORRIS:

2 Q Okay. I appreciate that. Are you done giving the  
3 Debtor's basis for entering into this settlement, Mr. Seery,  
4 if you can hear me?

5 A I think so, but I think as the Court has probably seen, I  
6 can go on.

7 Q Yes.

8 A So I will try to be -- I'll try to be more concise. But  
9 this was a -- this was a difficult settlement. We felt good  
10 about our defenses. Felt that we could -- we could try them.  
11 But it would be extremely expensive, time-consuming, and there  
12 would be a lot of risk. And settling at a level which we  
13 believe is actually below the damages that were clearly caused  
14 only by the fees was a -- was a -- is a -- is a very  
15 reasonable settlement.

16 Q Okay. Let's just talk about the process by which we got  
17 to the settlement. Do you recall generally when the  
18 settlement negotiations have -- were commenced?

19 A I believe it was -- was late summer, early -- early fall.

20 Q Okay. Before I move on, I just want to go back to the  
21 Acis matter that you were talking about, one last issue. Do  
22 you know how, if at all, the injunction that was entered in  
23 the Acis bankruptcy impacted or related to the HarbourVest  
24 claims?

25 A Yeah. I -- yes, I do. And I believe it -- it did. I

1 think there's an argument, and we analyzed it thoroughly, that  
2 the injunction effectively caused a lot of the damages.  
3 Because if you look at the values of the equity that  
4 HarbourVest had, the -- and HCLOF had in the CLOs, it went  
5 down dramatically after the Trustee in the Acis case took over  
6 and then subsequently, when the case was reorganized and Mr.  
7 Terry took over, you know, with Brigade as the sub-advisor.

8 Now, that would -- you know, we would -- we could  
9 certainly attempt to throw, in our defense, the causation at  
10 Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's  
11 retort is that none of this would have occurred but for the  
12 burn-it-down litigation that Mr. Dondero engaged in with  
13 Highland.

14 In addition, in Mr. Terry's defense, you know, he did try  
15 multiple times with HCLOF, tried to petition, if you will, the  
16 HCLOF entity to -- and directors, former directors, to reset  
17 the CLOs to make them more economically viable, based upon the  
18 current level of asset returns versus the debt costs in the  
19 CLOs. And that was rejected by the HCLOF and the Debtor as  
20 the controlling party of HCLOF. So, we thought about those  
21 risks.

22 You know, similarly, the economic values in Acis 7 went  
23 down pretty significantly from that date as well. So I think  
24 there's -- there are some defenses, but that's really Mr.  
25 Terry's issue, not our issue. So we thought about those

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1 issues, we analyzed them, and we certainly did all the work  
2 around month-to-month reductions in NAVs and how different  
3 events in the Acis case might have -- might have caused those  
4 and was that some sort of break from the original  
5 transgression that HarbourVest claims, which was the  
6 fraudulent inducement.

7 Q Do you recall that in November HarbourVest's motion under  
8 3018 was scheduled to be heard?

9 A Yes.

10 Q And can you just tell the Court your understanding of what  
11 the 3018 motion was about?

12 A Well, the 3018 motion was going to be on voting. And we  
13 took the view that it really was not -- it shouldn't have been  
14 that big an issue and HarbourVest should have been content  
15 with just taking their actual losses of roughly a \$50-\$60  
16 million claim for voting purposes and then we would move on.

17 HarbourVest was very insistent that they have a \$300  
18 million claim, because they took the position -- and with  
19 extensive documentation; not only the pleadings they filed,  
20 but also detailed decks that were prepared by their counsel,  
21 which they had presented to us on the merits of their claim --  
22 that they were going to litigate for -- the 3018 and for the  
23 full \$300 million value.

24 And that became the genesis, if you will, of the  
25 negotiations to settle.

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1           So, we started talking about the 3018. It was very  
2 contentious. My apologies to Ms. Weisgerber and her counsel,  
3 her partners, because it was a significant and contentious  
4 negotiating call. But the reasons for that I think were that  
5 -- their insistence on litigating the 3018 and our view that  
6 this was just, you know, another -- another of a series of  
7 delays and costs in this case that we really were hoping to  
8 avoid.

9           That led to Mr. Pugatch and I stepping away from counsel,  
10 no offense to counsel, you know, ours and his, to begin  
11 negotiations around the potential for a settlement. First, it  
12 started with a 3018, and then, you know, argued that we would,  
13 if we got past the 3018, we were going to litigate this,  
14 because we effectively had -- thought we could get everyone  
15 else done at -- in and around that time. And I think we were  
16 also probably a little bit optimistic about UBS at that time  
17 and the mediation, which subsequently we have settled. But  
18 that was the genesis of those settlements.

19       Q     And how did the structure, how did the Debtor and  
20 HarbourVest derive at the structure whereby there is a general  
21 unsecured claim, there is a subordinated piece, and there's  
22 the takeback of the HCLOF interest?

23       A     Well, as I outlined, we -- we aggressively set forth our  
24 various defenses. Their position was that they -- they should  
25 never have been in this transaction before. And they --

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1 HarbourVest is, in essence, a fund of funds, and they have  
2 investors, and it certainly wouldn't be their, I'm sure, the  
3 best-performing asset in their portfolio, to have made this  
4 investment and lost \$50 million over this period of time. So  
5 they felt strongly that they should never have been in this  
6 investment, and but for the failure to disclose and the  
7 improper disclosures, they would not have been in this  
8 investment.

9 So, optically, getting out of it was important to them,  
10 and that led to our idea and construction of a subordinated  
11 claim and the transfer of the HCLOF interests to the estate.

12 Importantly, the HCLOF interests, as I mentioned, are --  
13 the investments are in the Acis CLOs controlled by Acis and  
14 Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and  
15 the Acis 7.

16 So we were keenly focused on, if we were going to get that  
17 interest, would we then have the majority control in HCLOF,  
18 which we will, and would we be able to drive the recoveries,  
19 as opposed to what Highland typically does in these  
20 investments is use other people's money, drive down the value,  
21 and then try to buy back the interest on the cheap.

22 Q Just in terms of timing, because I think there was a  
23 suggestion in one of the openings that there was something  
24 untoward about the timing here: At the time the liquidation  
25 analysis was prepared on November 24th, had the Debtor reached

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1 any agreement in principle with HarbourVest?

2 A If we had, it would have been reflected, so I don't -- I  
3 don't think we were agreed by then. I don't recall the  
4 specific dates, but if we had, it would have -- it would have  
5 been reflected.

6 Q If I can refresh your recollection that the motion was  
7 filed on December 24th, does that help form your understanding  
8 or refresh your recollection that there was no agreement in  
9 principle on November 24th?

10 A Yeah. Well, I'm quite sure there was no agreement in  
11 principle or we would have reflected it minimally by a  
12 footnote. There's -- there's no chance. It's a material  
13 reduction in the claims pool that we were previously telling  
14 people that, at least for purposes of distribution, like UBS  
15 and a couple others we said we thought we would get to zero  
16 on. So we didn't calculate in that amount. So I'm quite sure  
17 we didn't have a deal when we filed the disclosure statement.

18 In terms of the timing, anyone who's done this business  
19 for any degree of time knows that the crucible of bankruptcy  
20 brings people to the settlement when they see something  
21 happening in the case, and not before. I think HarbourVest  
22 looked at our -- this is my supposition -- HarbourVest looked  
23 at our plan, our ability to get this done, our settlement with  
24 Redeemer, our settlement with Mr. Terry and Acis, and saw that  
25 this plan was coming together, and if they didn't think about

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1 the settlement, they were going to think about not only the  
2 risks that we laid forth for them with respect our defenses,  
3 but also the opportunity to litigate with the Claimant Trustee  
4 over a long period of time, which couldn't have been  
5 particularly appetizing.

6 Q Can you describe for the Court the role played by the  
7 independent board of Strand, the general partner of the  
8 Debtor, in analyzing and participating in the approval  
9 process?

10 A Yes. I think, as the Court is aware and I've testified  
11 before, Mr. Russell Nelms and Mr. John Dubel are fellow  
12 independent directors with me, appointed pursuant to the Court  
13 order. They are kept abreast of every detail, and -- along  
14 the way, not just in a summary form at the end. We have  
15 reviewed and analyzed collectively each of the issues. Mr.  
16 Dubel has extensive experience in these types of litigation  
17 matters. Obviously, Mr. Nelms, from his -- both his practice  
18 and his time on the bench, has a keen insight into how to  
19 resolve and what the risks and benefits are from settling  
20 litigation. So I consult them every step of the way.

21 Q And as part of this process, did the Debtor reach out to  
22 the directors of HCLOF?

23 A Yes, we did. So, we reached out and we've had several  
24 conversations on video chats with the directors. The  
25 directors of HCLOF are two new gentlemen, Mr. Richard Boleat

1 and Mr. Dicky Burwood. They are extremely professional. They  
2 are exceptionally well-informed. They are truly careful, and  
3 I would say very experienced professional not only directors,  
4 but experienced in -- in these matters, both in respect of  
5 structured finance as well as these types of vehicles and  
6 litigation.

7 They were appointed by the old directors, Scott and  
8 Bestwick, and they have been in control. They have outside  
9 counsel, which is King & Spalding in the U.S. They have  
10 Guernsey counsel. They have accountants and professional  
11 advisors, and are being, in my opinion, exceptionally careful.  
12 I've got -- very quickly developed a lot of respect for them,  
13 and we consulted with them on this settlement and how it would  
14 work.

15 They've been very clear that they represent HCLOF and they  
16 work for the benefit of the equity, whomever owns it, and  
17 taking a view that they would like to see these assets  
18 monetized swiftly, with due regard to value, for the benefit  
19 of the equity.

20 Q And is it your understanding that the directors of HCLOF  
21 approved of this transaction?

22 A They -- I don't know that their approval was required.  
23 It's really -- there are a number of hoops to jump through  
24 under the documentation, including opinion of outside counsel  
25 that we received from WilmerHale in terms of the effectiveness

1 of the transfer under the documents. We had a negotiation  
2 with -- with those directors, and making sure that we did  
3 everything correct -- correctly, excuse me -- with respect to  
4 the requirements for the transfer under the documents. And  
5 they've indicated their support and acknowledgement that we're  
6 doing it correctly.

7 I don't know if it's fair to say they approved it. I'd  
8 just have to go check the documents. But they certainly  
9 support it. And I think they generally support our position  
10 with respect to how to move forward with the assets.

11 Q I appreciate that. I guess I meant approval with a small  
12 a and not a capital A.

13 You mentioned WilmerHale. Who do they represent in all of  
14 this?

15 A WilmerHale is the Debtor's outside corporate counsel, in  
16 particular with respect to the fund issues that we don't  
17 handle in-house. We have significant support for fund issues  
18 from the expertise of Mr. Surgent, who's been the CCO, and he  
19 is also a lawyer, with respect to, you know, some of the  
20 difficult fund issues that Highland has. But when we use  
21 outside counsel, we use WilmerHale for that, and they've been  
22 -- they've been exceptional.

23 Q Okay. Just the last two points that were made in Mr.  
24 Dondero's objection, I believe. Did the Debtor overpay in  
25 this settlement in order to gain the support of HarbourVest in

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1 connection with its -- with the Debtor's attempt to get its  
2 plan confirmed?

3 A Not in any way. My -- I believe the settlement is  
4 extremely reasonable. As I testified, it's -- it's less than  
5 the -- the actual value going out, depending on unless there's  
6 successful litigation, and there well could be, is less than  
7 on a pro forma basis the fees that were taken and charged to  
8 HCLOF. We didn't do this for votes. We will have Class 2,  
9 Class 7, Class 8, and Class 9. So I don't think that's a --  
10 there's no vote purchasing, I think you called it. No, not at  
11 all.

12 Q Yeah. Well, on that topic, I think the phrase that was  
13 used was gerrymandering. Are you aware of the argument that's  
14 been made that the subordinated claim was dropped in there in  
15 order to gerrymander a positive vote for the impaired class of  
16 Class 9, I believe?

17 A In a word, I would say that's preposterous. The -- as I  
18 said, we have a number of classes that will vote for the plan.  
19 The plan is -- the plan is a monetization plan. And if -- if  
20 the creditors determine that they don't want to pursue this  
21 plan, we'll go forward with another -- we'll try to get  
22 another plan. We tried to have a grand bargain plan. We  
23 tried to have a pot plan, as I've testified previously. I'm  
24 quite certain that I've done more work on that than anyone  
25 else, including Mr. Dondero and anybody who works for him.

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1 And he hasn't been willing to do that.

2 This is a -- this is a plan that's come together. We  
3 think it's going to be in the best interests of the estate.  
4 That'll be confirmation next week. Or two weeks, I guess.  
5 But I don't see how this is any way related -- this settlement  
6 is not any way related to the voting on that -- on that -- on  
7 that plan.

8 Q Just to put the finest point on it, is the Debtor relying  
9 on Class 9 to be the impaired consenting class?

10 A No. I think -- I think what I've -- as I said, I believe  
11 we already have the votes in Class -- I think it's 2 or 3, 7,  
12 8, and -- and 9 will vote in favor as well. So that won't be  
13 an issue.

14 MR. MORRIS: Your Honor, I have no further questions  
15 of Mr. Seery.

16 THE COURT: All right. Pass the witness. I'll ask  
17 HarbourVest counsel first: Do you have any questions of Mr.  
18 Seery?

19 MS. WEISGERBER: No, Your Honor.

20 THE COURT: All right. Thank you.

21 What about cross-examination? Mr. Dondero's counsel?

22 CROSS-EXAMINATION

23 BY MR. WILSON:

24 Q Mr. Seery, how are you doing today?

25 A I'm well, thank you.

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1 Q I'm John Wilson, and I represent Jim Dondero. I have a  
2 few questions for you today.

3 Now, the HarbourVest proof of claims were filed on April  
4 8th, 2020; is that your recollection?

5 A I believe that's correct. I don't recall the specific  
6 date.

7 Q Okay. And do you know when you first became aware of the  
8 HarbourVest claims?

9 A I believe it was early in the summer when we filed the  
10 omnibus objection. It may have been in late spring, shortly  
11 after that. I don't recall the specific date of the filing.

12 Q And before the time of the filing of the omnibus  
13 objection, did Highland educate itself regarding the  
14 HarbourVest proof of claims?

15 A I'm sorry, could you say that again? I didn't quite  
16 understand it.

17 Q Before the omnibus objection was filed, did HarbourVest --  
18 I'm sorry, did Highland educate itself on the HarbourVest  
19 proof of claims?

20 A Not especially, no.

21 Q Okay. And -- but at some point, Highland did investigate  
22 those proofs of claim, correct?

23 A That's correct.

24 Q And when would you -- when do you recall that that  
25 investigation began?

1 A I don't recall the date, but the triggering event was  
2 HarbourVest's response to our omnibus objection.

3 Q Okay. And that would have been filed September 11th of  
4 2020?

5 A I'll take your representation. I don't -- I don't recall  
6 the specific date.

7 Q Okay. And so when you began to investigate the  
8 HarbourVest claims, what was your initial reaction?

9 A My initial reaction was that the -- the larger claims that  
10 they were asserting -- the fraud in the inducement, the RICO  
11 -- that those claims were, in my view, attorney-made and that  
12 when we dug in and did the work, we saw that HarbourVest  
13 clearly lost north of \$50 million on the investment. We had  
14 just started to uncover the fee issue and saw the risk we had  
15 there.

16 But I thought the bulk of those claims were attorney-made.  
17 Clever, but attorney-made, as opposed to what I would think  
18 are more legitimate. And so we started to develop our  
19 defenses around that.

20 Q And was your initial reaction that the HarbourVest claims  
21 were largely worthless?

22 A I think with respect to the claim around the fees, I  
23 believed there was significant risk. With respect to the  
24 other claims, I thought our defenses would make them  
25 worthless, yes.

1 Q And did you ever represent to any party that the  
2 HarbourVest claim was worth, at most, \$5 million?

3 A I think I represented often, including to HarbourVest,  
4 that it was worth nothing. I don't recall if I specifically  
5 said \$5 million. \$5 million would have been a nominal amount  
6 to -- which is litigation costs. So it may -- it may have  
7 been in my models that I put in that as a settlement amount,  
8 but I -- I thought that there were valid and good defenses to  
9 those larger claims.

10 Q And you recognize that HarbourVest was a large,  
11 sophisticated investor, correct?

12 A Yes. I think they manage north of -- right around a  
13 hundred billion dollars.

14 Q And you recognize that HarbourVest routinely structured  
15 complex customized investments, correct?

16 A I believe that -- I don't know the intricate part of their  
17 businesses, but as a fund of funds who does creative  
18 investments, I think that they do do quite a bit of that.  
19 This, I believe, was their first investment in the CLO space.

20 Q And it was not -- or I should say, you did not believe  
21 that HarbourVest was simply a passive investor in HCLOF,  
22 correct?

23 A I don't think that that's true, no.

24 Q You don't -- you don't believe that you denied their claim  
25 to be a passive investor?

1 A Oh, I think -- I'm sure that in defense of their claims I  
2 would argue that they were -- they were more than a passive  
3 investor. But it was pretty clear when you look at the  
4 structure of what they invested that there was an intent that  
5 they be passive on their part. They didn't take a majority  
6 interest.

7 In fact, Highland made it clear in the structure of the  
8 deal that they couldn't -- it would be hard for them to get a  
9 majority interest because Highland entities would control that  
10 and Dondero-controlled entities or individuals would control  
11 the majority.

12 I think that they -- they had hoped to be a passive  
13 investor.

14 Q But was it not your position that HarbourVest was actually  
15 an active, involved investor?

16 A I think our defense was going to be that they knew exactly  
17 what was going on, that they participated, that they were  
18 active, and that, indeed, that they were in and around some of  
19 the subsequent issues in the Acis case.

20 Q And you understood that HarbourVest played a material role  
21 in the various outcomes in the Acis bankruptcy case, correct?

22 A I don't believe that to be correct, no.

23 Q Have you ever made that representation to anyone before?

24 A Not -- not that I recall.

25 Q Well, do you recall giving statements to a reporter named

1 Syed Khaderi?

2 A I've never spoken to a reporter named Syed Khaderi in my  
3 life.

4 Q Well, did you participate in the preparation of statements  
5 to be given to Syed Khaderi?

6 A I've never heard of Syed Khaderi, nor have I participated  
7 in any preparation of statements. I don't know who that is.

8 MR. WILSON: All right. I'm going to have Bryan  
9 Assink put on the screen a document.

10 And Bryan, can you go to Page 7? Bottom of -- the top of  
11 Page 7. Well, actually, before you do that, go to the very  
12 top of the document.

13 BY MR. WILSON:

14 Q Now, Mr. Seery, are you familiar with Lucy Bannon?

15 A Yes.

16 Q And who is Lucy Bannon?

17 A She is the Highland public relations person.

18 MR. WILSON: Okay. Now go back to Page 7.

19 BY MR. WILSON:

20 Q Now, do you -- do you see on your screen an email of  
21 September 14th from Syed Khaderi that says, Hi, Lucy, how are  
22 you?

23 A Yes.

24 Q Have you seen this email before?

25 A Not that I recall, no.

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1 Q All right. It continues on that, I saw the filing on  
2 Friday about HarbourVest claims against Highland for a CLO  
3 investment, and I'm looking to put out a report tomorrow  
4 morning London time. Ahead of that, I wanted to check if  
5 Highland would like to comment on the matter.

6 MR. MORRIS: Your Honor, this is -- the Debtor  
7 respectfully objects. A, this document is not in evidence.  
8 B, it's rank hearsay.

9 THE COURT: Response, Mr. Wilson?

10 MR. WILSON: Your Honor, I am attempting to  
11 authenticate this document, but I'm using it in rebuttal to  
12 the testimony that Mr. Seery just offered.

13 THE COURT: All right. I'll allow it. Overrule the  
14 objection.

15 MR. WILSON: All right. Thank you, Your Honor.

16 BY MR. WILSON:

17 Q All right. Now, if we -- and oh, that September 14th  
18 date, that was three days after the September 11th date that  
19 we discussed was the date that HarbourVest filed its response  
20 to the omnibus objection, correct?

21 A Yes. If that's the date that they filed it, then I -- if  
22 you're representing that, I concede that the 14th is three  
23 days after the 11th.

24 Q All right. And if you go back to the first page of this,  
25 it looks like, on the following day, Lucy Bannon sends an

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1 email to you, and is that your email address,  
2 jpseeryjr@gmail.com?

3 A That's correct, yes.

4 Q And do you recall receiving this email from Lucy Bannon?

5 MR. MORRIS: Your Honor, I renew my objection that  
6 this is hearsay. He's not rebutting anything that Mr. Seery  
7 testified to. He testified that he'd never heard of the  
8 gentleman at the bottom of the document. There's nothing in  
9 this document that rebuts Mr. Seery's testimony at all.

10 THE COURT: Response, Mr. Wilson?

11 MR. WILSON: Well, I'm not -- I'm not trying to rebut  
12 his statement that he hadn't -- that he hadn't heard of Syed  
13 Khaderi. My rebuttal is attempted to -- attempting to show  
14 that he has made various statements that he denied.

15 THE COURT: I'll overrule the objection.

16 BY MR. WILSON:

17 Q All right. So, back to this exhibit, Mr. Seery. You  
18 recall receiving this email from Lucy Bannon on Tuesday,  
19 September 15, 2020?

20 A Not specifically. But to be clear, I recall talking to  
21 Lucy Bannon about the HCMLP dispute with HarbourVest.

22 Q Okay. And --

23 MR. WILSON: Bryan, can you go down to the next page?  
24 Scroll down to where -- the James Seery email.

25 BY MR. WILSON:

Seery - Cross

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1 Q Do you see this email on your screen that's dated  
2 September 15, 2020 at 10:33 p.m.?

3 A Yes, I do.

4 Q And do you recall sending this email to Lucy?

5 A Not specifically, no.

6 Q Well, do you deny that you sent this email to Lucy?

7 A It appears to be my email.

8 MR. WILSON: Your Honor, we would move to admit this  
9 document into evidence as Dondero Exhibit Letter N.

10 THE COURT: Any objections?

11 MR. MORRIS: I would consent to the admission of Mr.  
12 Seery's email, but the balance of it ought to be excluded as  
13 hearsay.

14 THE COURT: What about that?

15 MR. WILSON: Well, Your Honor, I think that this  
16 document -- and I'll get into this in a little more detail in  
17 a second -- but I think this document is a combination of the  
18 work product of Lucy Bannon and Mr. Seery in preparing a  
19 response for the reporter who requested comment from Highland.

20 THE COURT: Okay. I --

21 MR. MORRIS: Your Honor, um, --

22 THE COURT: Go ahead.

23 MR. MORRIS: I just -- I do question how they got  
24 this document, but that's for another day. That's number one.  
25 Number two, in addition to the hearsay argument, I just --

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1 relevance grounds.

2 THE COURT: Okay. I'll allow the portion that is the  
3 communication of Seery, that portion of Exhibit N. All right?

4 MR. WILSON: Okay. With due -- thank you, Your  
5 Honor. With due respect, I -- to use that portion, I need to  
6 refer to the portion below it, because he says, Good to submit  
7 with your final edit/revisions. And so we need to know what  
8 those final edit/revisions are, which are contained in the  
9 email directly below that on the document that was four  
10 minutes earlier in time.

11 THE COURT: All right. Fair enough. That'll be  
12 allowed.

13 MR. WILSON: All right. Thank you, Your Honor.

14 (James Dondero's Exhibit N is received into evidence as  
15 specified.)

16 MR. WILSON: So, Bryan, now can you scroll to the  
17 next page? Oh, actually, let's just -- let's just stop at the  
18 top -- at the bottom of the page. What's this statement?

19 BY MR. WILSON:

20 Q So, to be clear, Mr. Seery, when -- in response to Mr.  
21 Khaderi's request for information and comment, you prepared  
22 actually two responses, and one of those was a statement on  
23 the record attributed to a spokesperson for HCMLP or something  
24 along those lines. And then --

25 MR. WILSON: Can you scroll down to that next page?

1 BY MR. WILSON:

2 Q And this says -- I think part of this got cut off for some  
3 reason, but it looks like the official statement is in  
4 quotation marks. It says, "We dispute the allegations made in  
5 the filing and believe the underlying claims are invalid and  
6 will be found to be without merit. Our focus continues to be  
7 treating all valid claims in a transparent, orderly, and  
8 equitable manner, and vigorously disputing meritless in the  
9 court. That focus will assure that HCMLP's reorganization  
10 process -- progress is towards an efficient and equitable  
11 resolution."

12 And then below that there's another section of this email  
13 that says, Background/Clarification, Not for Attribution. And  
14 do you know the purpose of this second section of the  
15 response?

16 A Do I know the purpose of that? Yes.

17 Q And what would that purpose be?

18 A Ms. Bannon was speaking on background to reporters. As I  
19 said earlier, I've -- I never heard of the gentleman from  
20 London. If he's at the bottom of the email, I didn't pay any  
21 mind, never heard of him. Nor have I heard it since. Ms.  
22 Bannon didn't ever reference the specific person.

23 But she is the public relations person. So, as I  
24 testified earlier, she does communicate with the press. And  
25 as I previously testified when Mr. Morris questioned me, one

1 of our tactics and our defenses for HarbourVest was going to  
2 be that we were going to be very public and aggressive about  
3 the investment and it would have a negative impact or negative  
4 perspective for viewers, in our opinion, about HarbourVest's  
5 investment.

6 Q All right. Well, look with me in the middle of that  
7 paragraph right after the closed parenthetical, where it says,  
8 "But it's important to note the background of HarbourVest's  
9 active and deep involvement in the investment of which it now  
10 complains."

11 And so it was your position that HarbourVest had an active  
12 and deep involvement in the investment, correct?

13 A No. I don't think that's correct. Ms. Bannon prepared  
14 the statement, it was a litigation defense on background, and  
15 that's our -- that was our position for this purpose. It was  
16 not my view that they were active and deeply involved. They  
17 were certainly involved. There's no doubt about it. But they  
18 got all their information, in our estimation and our research,  
19 from Highland.

20 Q But in any event, you would agree with me that four  
21 minutes after receiving this email, you approved this  
22 statement to go out to the reporter, correct?

23 A No, that's not correct. That's -- this portion is on  
24 background. That statement doesn't go out. The previous  
25 statement was the official statement. This is the background

1 discussion that she would have. So, no, she was not  
2 authorized in any way whatsoever to send that out. She was  
3 authorized to have conversations with those general facts.

4 MR. WILSON: Okay. Bryan, go to the top, or the  
5 bottom of the page immediately preceding that. That's it.  
6 Yes, that's it right there.

7 BY MR. WILSON:

8 Q Now, you'll see that this email from Lucy Bannon on  
9 September 15, 2020 at 10:29 p.m. starts off, "Jim, let me know  
10 what you think of the below. And, again, the first would be  
11 on the record and the second will be sent for information  
12 purposes to ensure accuracy, not for attribution."

13 So the intent was that this -- that this entire statement  
14 be sent to the reporter, correct?

15 A I don't believe that's correct. I think when she goes on  
16 background she doesn't send them a written doc. It's got to  
17 be clear to the reporter, at least my understanding is that  
18 what on background means -- I've been involved with this  
19 before -- is that typically that's done orally. I don't know  
20 if she's done it in a written statement before. I have never  
21 seen that done in a written statement before. You give the  
22 official statement and then you walk the reporter through your  
23 other views on background. And you're not quoted. And it's  
24 usually attributed to a source with knowledge.

25 Q Okay. We'll come back to that in a minute. The next

1 sentence after the one I just read to you --

2 MR. WILSON: Go back to where we were on the  
3 background.

4 BY MR. WILSON:

5 Q Now, we just read you the sentence that starts with, "Then  
6 it's important." The following sentence says, "HarbourVest  
7 was not simply invested in HCLOF as an ignorant,  
8 unsophisticated, passive investor, but was an active and  
9 informed participant in the inception of its investment  
10 through all of the Acis bankruptcy proceedings, and  
11 HarbourVest played a material role in various outcomes related  
12 to that case and its impact on HCLOF."

13 And is it -- did you not just tell me before we  
14 investigated this document that HarbourVest did not play a  
15 material role in the various outcomes of the Acis bankruptcy?

16 A I don't know exactly what I said, but I think that's  
17 correct, after we'd done the research on it, yeah.

18 Q But you took the position in this email that you approved  
19 to go out to a reporter that says that -- that HarbourVest was  
20 an active and informed participant in the inception of -- of  
21 its investment through all of the Acis bankruptcy proceedings  
22 and played a material role in various outcomes related to that  
23 case and its impact on HCLOF. Can we agree with that?

24 A Yes.

25 Q And then the final sentence of this paragraph says that,

1 We believe that neither the facts nor the law support  
2 HarbourVest's, quote, We-were-too-lazy-to-know allegations.

3 Whose words were those, "We-were-too-lazy-to-know  
4 allegations"?

5 A I don't recall. They may be mine. It's aggressive the  
6 way I am, so that -- that may well be the case.

7 MR. WILSON: All right. Go -- go down to the next  
8 page.

9 BY MR. WILSON:

10 Q And with respect your comment that that second paragraph  
11 would not have gone to the reporter, look at this email in the  
12 middle of the page from Lucy Bannon to Syed Khaderi, September  
13 16, 2020, at 1:51 a.m. And --

14 MR. MORRIS: Your Honor, this I will object to as  
15 hearsay. There is no witness here to testify to anything on  
16 this document.

17 THE COURT: All right. How about that?

18 MR. WILSON: Well, it's -- well, scroll up just a  
19 little bit. This email at the top of the page is three  
20 minutes after the one in the middle of the page, where Lucy  
21 Bannon is forwarding this to James Seery, saying, See below  
22 for responses sent to *Creditflux*. Will follow up with the  
23 story when it runs or with any other updates.

24 MR. MORRIS: Your Honor, these --

25 MR. WILSON: So I think this --

1 MR. MORRIS: These documents don't appear on the  
2 witness list. They're not being offered to impeach anything.  
3 They're just -- he's taking discovery as we sit here.

4 MR. WILSON: Your Honor, in response, I'm simply  
5 trying to rebut the statements that Mr. Seery made. In fact,  
6 he told me just a minute ago that that second paragraph would  
7 not have gone out to the reporter. However, this email from  
8 Lucy Bannon to Syed Khaderi directly rebuts that statement.

9 THE COURT: But your whole purpose in this line of  
10 questioning, with an undisclosed document, is to rebut the  
11 earlier testimony he gave before you even put this exhibit in  
12 front of him.

13 MR. WILSON: I'm trying to rebut multiple statements  
14 that Mr. Seery has made today, and I think it -- you know, if  
15 he's going to testify that this information did not go out to  
16 a reporter, I think I'm allowed to rebut that to demonstrate  
17 that it did.

18 THE COURT: All right. Why didn't you disclose this  
19 in advance? It's feeling less and less like an impeachment  
20 document the more we go through it.

21 MR. WILSON: Your Honor, I did not -- I did not  
22 actually have this document at the time we filed our witness  
23 and exhibit list, but I would also say that I didn't have any  
24 purpose to use it if I didn't need it for rebuttal.

25 THE COURT: Okay. First off, you're supposed to

1 disclose all exhibits you anticipate using except those for  
2 purposes of impeachment. Okay? Not rebuttal, to be  
3 technical.

4 So, if you didn't disclose this exhibit, the only way you  
5 can use it, subject to other possible objections, is if you're  
6 impeaching a statement. And I'm just saying I think we're  
7 going beyond trying to impeach the original statement and now  
8 we're trying to impeach statements he's made after seeing  
9 portions of the document.

10 What did you mean, you didn't have this document in time  
11 to disclose it?

12 MR. WILSON: Well, I actually just received this  
13 document this morning, Your Honor.

14 THE COURT: Where did you receive it from?

15 MR. MORRIS: From who?

16 MR. WILSON: I -- I honestly do not know the source  
17 of this document, although it was provided to me by my client.

18 MR. MORRIS: Your client being Mr. Dondero?

19 THE COURT: Could you answer that, Mr. Wilson?

20 MR. WILSON: Yes, that's -- yes, that's correct.

21 THE COURT: All right. I will -- that's --

22 MR. MORRIS: Your Honor, I'd like to --

23 THE COURT: That's a different can of worms. But for  
24 now, I sustain the objection. You're done questioning on this  
25 document.

1 MR. WILSON: That's fine, Your Honor. I can move on.

2 BY MR. WILSON:

3 Q Now, Mr. Seery, you would agree with me that whether or  
4 not HarbourVest played an active role in the Acis bankruptcy,  
5 it was kept apprised of the -- of the ongoings in the  
6 bankruptcy? (Pause.) I'm sorry. Could you hear that?

7 A Yes. My understanding is that -- that they were.

8 Q And in fact, did Highland have weekly conference calls  
9 with HarbourVest during the Acis bankruptcy to discuss what  
10 was going on in the bankruptcy?

11 A I don't know if they were weekly. I've been told that  
12 they had regular calls updating HarbourVest, yes.

13 Q Okay. And did Highland produce over 40,000 pages of  
14 documents to HarbourVest related to the Acis bankruptcy?

15 A I'm not aware of that, no.

16 Q Have those documents been provided to you?

17 A I hope not.

18 Q So, in your role --

19 A I'm sorry. I don't -- I didn't receive 40,000 documents  
20 from anybody.

21 Q Well, did you receive any number of documents that were  
22 provided by Highland to HarbourVest during the Acis  
23 bankruptcy?

24 A I wasn't involved in this during the Acis bankruptcy. I'm  
25 sorry.

1 Q Well, I'm referring to, after you became involved in this  
2 Highland bankruptcy, whether you were provided with these  
3 documents that were sent from Highland to HarbourVest.

4 A I don't -- I don't know what the documents are. I've  
5 reviewed tons of documents with respect to the HarbourVest  
6 claims, but I don't know of the documents to which you're  
7 referring.

8 Q Okay. And after you performed your investigation into the  
9 HarbourVest claim, what was your opinion as to the cause in  
10 the reduction in value of HarbourVest's investment in HCLOF?

11 A I think the main cause of the reduction in the investment  
12 was the imposition of the Trustee and the failure of Highland  
13 HCLOF and then subsequently with the injunction to reset the  
14 CLOs.

15 You know, these are -- these are some of the worst-  
16 performing CLOs in the market because they weren't reset. And  
17 when the liabilities of the CLOs are set at a level to match  
18 assets, and then liability -- the assets run off, and the  
19 asset financings or the new deals come in at much lower  
20 levels, and the obligations of the CLO are not reset, the  
21 arbitrage that is the CLO shrinks. And that's what happened  
22 to these CLOs.

23 Q And during the course of the Acis bankruptcy, Acis and  
24 Brigade were given management responsibilities over the CLOs  
25 and HCLOF, correct?

1 A I believe that the Trustee had the overall, and then  
2 subsequently, with the confirmation of the plan, they took it  
3 over. So I think that ultimately Mr. Terry had the management  
4 authority, full management authority, and some advice through  
5 Brigade. But I think technically it wasn't actually during  
6 the Chapter 7. The Chapter 7 proceeding, I believe that Mr.  
7 Phelan had the actual authority.

8 (Echoing.)

9 Q I'm sorry. And so your testimony is that Mr. Phelan had  
10 the actual authority but he delegated that authority to Josh  
11 Terry and Brigade?

12 A I think that's fair, yes.

13 Q And do you know when that occurred?

14 A I believe that the control of the CLOs was in July of  
15 2018, and then the ultimate confirmation of the case was at  
16 the very beginning of '19.

17 Q So, after being instituted as portfolio manager, and  
18 during the time when Acis and Brigade were working under the  
19 direction of the Trustee, who would have receive the fees for  
20 managing those portfolios?

21 A I believe -- I don't know. I believe the -- that the Acis  
22 estate would have received those fees.

23 Q And who -- and so is that your testimony, that prior to  
24 confirmation the Acis estate would have received the  
25 management fees?

1 A I believe that -- I believe they would have if they were  
2 the manager, yeah.

3 Q Okay. And who would have received the fees after  
4 confirmation?

5 A Acis.

6 Q Okay. And who would have had the discretion to set the  
7 amount of those management fees?

8 A They would be agreed to in the -- in the investment  
9 management agreement.

10 Q They would be agreed to?

11 A Yes. As far as I've seen, I've -- I haven't seen  
12 unilateral ability of a manager to set fees at its -- at its  
13 whim.

14 Q So is it your understanding that Acis and Brigade ended up  
15 charging substantially more fees than Highland had charged  
16 when it was under Highland's management?

17 A I think the fees were -- the fees were -- the fees were  
18 set by the agreement.

19 MR. MORRIS: Your Honor, I just object to the line of  
20 questioning on relevance grounds. This is a 9019 hearing,  
21 Your Honor. How -- I just don't think this has any relevance  
22 at all.

23 THE COURT: All right. Mr. Wilson, what is the  
24 relevance?

25 MR. WILSON: The relevance is that Mr. Seery has

1 testified that these Acis CLOs were among the worst-performing  
2 in the market, and frankly, we would agree with that, and I'm  
3 trying to get his understanding as to why, because I think  
4 there's direct relevance in the reason that the value of the  
5 HarbourVest investment diminished.

6 MR. MORRIS: I don't think that was his testimony,  
7 Your Honor. But at the end of the day, Your Honor has heard  
8 the litany of reasons why the Debtor is entering into this  
9 agreement. I just, I just think it's irrelevant, Your Honor.

10 THE COURT: All right. Mr. Wilson, I barely think  
11 this is relevant. I mean, I'm going to give you some benefit  
12 of the doubt on that because of, you know, the testimony that  
13 HarbourVest lost \$50 million of value and --

14 (Echoing.)

15 THE COURT: -- maybe that shouldn't, you know, lie at  
16 the feet of Highland. I think the compromise reflects that  
17 they don't -- it doesn't lie entirely at the feet of Highland.  
18 But, you know, maybe two or three more questions.

19 MR. WILSON: Yes. Thank you, Your Honor. And I  
20 didn't have very much more on this point. But to be a hundred  
21 percent honest, I can't remember my question right before the  
22 objection.

23 THE WITNESS: I think you were asking me about the  
24 fees and somehow alluding or implying that the manager could  
25 unilaterally set fees.

1 The fees are set in the investment management contract.

2 The manager doesn't get to wake up on Wednesday and say, you  
3 know, I'd like another half a basis point. It doesn't work  
4 that way.

5 BY MR. WILSON:

6 Q But you would agree with me that the fees and expenses  
7 charged to an investment would impact the performance of that  
8 investment in the market?

9 A Absolutely.

10 Q Would you also agree with me that there was one CLO -- and  
11 I think you referred to it in your direct testimony -- but CLO  
12 7, which continued to be managed by Highland?

13 A That's correct.

14 Q And is it fair to say that CLO 7 exceeded the performance  
15 of the CLOs that were managed by Acis and Brigade?

16 A I think that's fair. I don't -- I don't recall the  
17 magnitude, but I think it's outperformed those -- those CLOs,  
18 yes.

19 Q All right. Well, thank you. I want to turn your  
20 attention to the portion of the settlement agreement that  
21 deals with voting of the HarbourVest claim. How did  
22 HarbourVest's commitment to vote for the plan become a part of  
23 the settlement?

24 A Pretty straightforward negotiation. We -- in negotiating  
25 the settlement, one of the key factors was the cost and

1 expense of the litigation, in addition to the risk on the --  
2 on the fees, and whether we could wrap this up in a global  
3 settlement now. So in my experience, it's fairly typical, we  
4 would try to do this in every settlement, have the settling  
5 party, be that the claimant, agree to support the case and the  
6 plan.

7 You know, we did not do that with the Committee members,  
8 although we wanted to. (Echoing) I frankly still wish I had.  
9 Those little -- little bits that have been difficult  
10 (echoing). The Committee members have a different interest in  
11 (echoing) than their more global interest for creditors at  
12 large, which is more difficult than traditionally in  
13 bankruptcy cases, less likely to have a Committee member, a  
14 sitting Committee member, actually support the (echoing) of  
15 the plan.

16 THE COURT: Mr. Wilson, could you be careful to put  
17 your device on mute every time you're not talking? Because  
18 we're getting some feedback loop from you when Mr. Seery  
19 answers your questions. Okay?

20 (Echoing continues.)

21 THE COURT: Like right now. I'm hearing feedback of  
22 my own voice through your speakers.

23 Right, Mike? Isn't that what --

24 A VOICE: I am, too.

25 THE COURT: Yes. Okay. So please be sure you put

1 your device on mute whenever you are not speaking. All right.

2 Go ahead.

3 BY MR. WILSON:

4 Q I mean, I think you just answered this question, but there  
5 was -- there was no similar voting provision in the Acis or  
6 the Redeemer settlements, correct?

7 A There is not, no. And just as a -- by way of explanation,  
8 if it's okay, the reason was my counsel advised against it. I  
9 did ask for it.

10 Q Your counsel advised against putting that voting  
11 requirement in the Acis and Redeemer settlements?

12 A For the reasons I stated. And in my experience, that's  
13 consistent, where sitting members of Committees don't  
14 generally sign up to resolve their own claims and support the  
15 plan because of their larger fiduciary duties to the creditor  
16 body as a whole.

17 Q And during the settlement negotiations of the HarbourVest  
18 claim, was this commitment to vote a topic of discussion?

19 A Not -- not particularly, no. It was pretty clear that  
20 HarbourVest, if they were going to agree to the settlement and  
21 the numbers, could see structure. Obviously, it wanted to  
22 understand what the potential distributions would be under the  
23 plan, but this was not a hotly-negotiated point.

24 Q And would you consider HarbourVest's commitment to vote  
25 for the plan an important part of the settlement?

1 A I think it's an important part of the settlement, that the  
2 part of the settlement is the subordinated claim. We could  
3 put that into presumably any plan. But our plan does -- does  
4 have a Class 9 for that. So I think it's a -- it's a part of  
5 the settlement that is important or we wouldn't have included  
6 it. It clearly wraps everything up and moves us towards  
7 confirmation.

8 Q And would you have made the deal with HarbourVest if they  
9 had pushed back on the commitment to vote for the plan?

10 A Yeah, I would have.

11 Q All right. Thank you.

12 MR. WILSON: No further questions.

13 THE COURT: All right. Mr. Draper, anything from  
14 you?

15 MR. DRAPER: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. DRAPER:

18 Q Mr. Seery, I may not understand the settlement, and I  
19 apologize, but the way I think the settlement reads, the  
20 interest that you're acquiring, you have the right to place in  
21 any entity. Is that my -- is that correct?

22 A I don't recall the -- the specifics, but just from a  
23 structural standpoint, we wanted to be able to put it into a  
24 subsidiary as opposed to putting it directly in HCMLP. If we  
25 couldn't do that, we would -- we would put it into HCMLP. So

1 there wasn't a -- I don't recall the actual specifics, but we  
2 certainly thought about holding that interest in a -- in a  
3 subsidiary, just to have a cleaner hold.

4 Q Why aren't you putting it into the Debtor so the Court and  
5 the estate have jurisdiction over that?

6 A I think the Court certainly has jurisdiction over an  
7 entity that the estate owns a hundred percent of. I don't  
8 think that's -- that's even a close call. So the important --

9 Q Now, --

10 A Can I finish?

11 Q Sure.

12 A You asked me why. To the extent that somebody thinks that  
13 problematic, I will consent to the Court having complete  
14 jurisdiction over it, since I control it a hundred percent.

15 Q No. The real reason is, if I remember correctly, Mr.  
16 Dondero and Judge Lynn filed a motion to have some say or some  
17 information as to sales by subsidiaries, and I think you took  
18 the position that they weren't entitled to it. And so my  
19 concern was that putting this in a subsidiary in a sense gave  
20 you unfettered control without any review of the item.

21 A I don't -- I don't think that's the case where we --  
22 there's a directly-held subsidiary where we own a hundred  
23 percent of it. I don't think that that's the case.

24 Q Okay. But you're willing to (a) put this into the Debtor,  
25 number one; and number two, have the estate and have the Court

1 have complete control over the disposition of it and its  
2 actions, correct?

3 A That's not correct, no.

4 Q What -- what is incorrect about my statement?

5 A The debtor-in-possession has control of its assets. The  
6 Court doesn't have complete control over its assets. There's  
7 --

8 Q Well, --

9 A -- issues -- hold on a second. This is not -- this is not  
10 a game and a trap. We put it in a subsidiary for specific  
11 reasons. You asked why. I'm giving you the why. It's not to  
12 hide it from anybody. We're not going to sell the asset  
13 unless somebody comes up with a great price for it. We're  
14 going to monetize the assets. We're going to control HCLOF by  
15 a majority.

16 Q But, again, the issue is, if it's in the estate, the Court  
17 has supervision over it. If it's not in the estate, the Court  
18 has no supervision of it.

19 A I don't think that's correct, because the Court has  
20 supervision over the estate, which owns a hundred percent of  
21 the special-purpose entity that will own the shares.

22 Q Okay. All right. Now, let's talk about the \$15 million  
23 that you discussed and the legal fees that were incurred. Is  
24 that the total amount that was spent, or is -- or is that --  
25 was the total amount \$30 million and HarbourVest was only

1 responsible for one half of it or functionally took the brunt  
2 of one half of it?

3 A I think the total amount is between \$15 and \$20 million.  
4 I don't have the exact numbers.

5 Q So, in fact, the HarbourVest loss due to its ownership  
6 would have been one half of that, not \$15 million?

7 A Well, the vehicle lost the money. HarbourVest owned 49.98  
8 percent of it, and Highland controlled the rest. So if you  
9 allocate it that way, I suppose that would be a -- that's how  
10 you would divide it, in -- roughly in half, yes.

11 Q And so HarbourVest's actual dollar loss due to the legal  
12 fees is really the 49-point-whatever percent of \$15 million,  
13 not \$15 million?

14 A I don't know if -- I certainly would argue that. I don't  
15 think that HarbourVest has that position.

16 Q Okay. Now, in connection -- you were asked a question  
17 about the documentation that was provided by Highland to  
18 HarbourVest both during the bankruptcy of Acis and before.  
19 You have control over the Harbour -- over the Highland server,  
20 correct?

21 A I'm sorry. Can -- can we do two things? One is, Mr.  
22 Draper, I can't see you, so it would be better if I could see  
23 you during the questioning.

24 Q Okay.

25 A And could you repeat the question?

1 Q All right. I'll be happy to. You were asked a question  
2 about the documentation that was provided by Highland to  
3 HarbourVest during the Acis bankruptcy and meetings that took  
4 place between the parties. Correct?

5 A Yes.

6 Q And you stated you were unaware of the material that was  
7 sent over?

8 A I think I testified that I didn't receive the 40,000  
9 documents that were mentioned.

10 Q Did you do any search or order a search of the Highland  
11 server to see what material was sent over by any party to  
12 HarbourVest to analyze what -- what information they had  
13 available to them and what was provided to them?

14 A Yes, we did a search.

15 Q And did you review the documentation that was sent over?

16 A The -- the documentation that we looked at was very  
17 specific to the investment and to the OM. So we didn't look  
18 for the -- the supposed 40,000 documents, no.

19 Q Did you look for the material that was provided to them  
20 during the Acis bankruptcy and the periodic meetings that you  
21 discussed? Or that you testified to earlier?

22 A The answer is no.

23 Q One last question. I think, and just so I understand your  
24 testimony, you've broken out the HarbourVest claim into two  
25 pieces. One is the legal fee amount that we've just

1 discussed, and I gather the other piece of that is the fraud  
2 in the inducement to enter into the CLO purchase?

3 A It's -- it's more -- it's much more than that.

4 Q Okay. Well, let me say it in a different way. The other  
5 part of it is the losses as a result of the fraud in the  
6 inducement to purchase the interest?

7 A I don't think that's -- that's fair. If I could explain?

8 Q Sure.

9 A Yeah. The legal fee piece is pretty clear. The other  
10 piece starts with fraud in the inducement, but it's extensive  
11 fraud claims. Fraud in the inducement, as I testified  
12 earlier, would get them around the exculpation and liability  
13 limitations in the OM. You don't get around all of those with  
14 just the fraud. And so that's -- that's the split of that  
15 claim. So the fraud in the inducement contains fraud  
16 allegations. Even if you didn't have inducement, you'd have  
17 other potential fraud claims.

18 Q But let me state it in a different fashion. But for the  
19 investment, the fraud that you allege wouldn't have occurred?

20 A I -- HarbourVest alleges it.

21 Q No, I'm just -- in your analysis of the claim, but for the  
22 inducement, the rest of the damages wouldn't have flowed?

23 A That's HarbourVest's position, yes. But for the fraud,  
24 they wouldn't have made the investment.

25 Q All right.

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1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. Any redirect, Mr. Morris?

3 MR. MORRIS: Just a few very questions, Your Honor.

4 Just a very few questions.

5 REDIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Seery, you were asked about that document that Lucy  
8 prepared. Do you remember that?

9 A Yes, I do.

10 Q In your experience, don't defendants often deny liability  
11 before entering into settlements, or even worse, getting  
12 adverse judgments entered against them?

13 A Of course. Yes.

14 Q Okay. And in response to Mr. Draper's questions, isn't  
15 the Guernsey claim another claim that the Debtor took into  
16 account in assessing the potential risks of this settlement?

17 A There's a number of claims contained in it. As I  
18 mentioned earlier, I mentioned the RICO claim. But there is a  
19 Guernsey shadow director claim, which is not dissimilar to  
20 U.S. claims that somebody effectively controls an enterprise,  
21 notwithstanding them not having the official role.

22 Q Okay.

23 MR. MORRIS: I have nothing further, Your Honor.

24 THE COURT: All right. Any recross on that redirect?

25 All right.

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1 MR. WILSON: No, Your Honor.

2 MR. DRAPER: No, Your Honor.

3 THE COURT: Thank you. Mr. Seery, that concludes  
4 your testimony. Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: We need to take a bathroom break. Before  
7 we do, I just want to be clear with what we have left. As I  
8 understood it, we were having Mr. Pugatch from HarbourVest.  
9 Mr. Morris, will that conclude the Debtor's evidence?  
10 (Pause.) Okay. You were on mute, but I think you were saying  
11 yes.

12 MR. MORRIS: Sorry. But to be clear, Debevoise is  
13 going to be putting their witness on the stand.

14 THE COURT: Okay.

15 MR. MORRIS: But it's part of the evidence in support  
16 of the motion.

17 THE COURT: All right. Do the Objectors have any  
18 witnesses today?

19 MR. WILSON: Your Honor, Mr. Dondero intends to  
20 examine Mr. Pugatch, but if he's going to be called by his  
21 counsel, then we will do that as a cross-examination.

22 THE COURT: All right.

23 MR. DRAPER: This is Douglas Draper. I have no  
24 witnesses.

25 THE COURT: Okay. All right. Well, I'm asking --

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1 well, I do want to ask: Can we get a time estimate  
2 potentially for Mr. Pugatch?

3 MS. WEISGERBER: For my examination, Your Honor,  
4 twenty minutes, perhaps.

5 THE COURT: Okay.

6 MS. WEISGERBER: Or less.

7 THE COURT: All right. Well, let me tell you what  
8 we're going to do. We're going to take a ten-minute bathroom  
9 break. But I have a 1:30 hearing and I have a 2:00 o'clock.  
10 Well, I have a 1:30 docket, multiple matters, and a 2:00  
11 o'clock docket. So, you know, I'm really intending that we  
12 get finished in time to give me and my staff a little bit of a  
13 lunch break before launching into the 1:30 docket, so I'm  
14 hopeful we can get done around 1:00-ish. If we can't, then  
15 we're going to have to reconvene, I'm going to say probably  
16 3:00-ish Central time. So let's hope we can get through  
17 everything. All right? Ten-minute break.

18 THE CLERK: All rise.

19 (A recess ensued from 11:58 a.m. until 12:08 p.m.)

20 THE CLERK: All rise.

21 THE COURT: All right. Please be seated. We're  
22 going back on the record in the Highland matters. Do we have  
23 everyone? It looks like we do. Ms. Weisgerber is going to  
24 call the next witness; is that correct?

25 MS. WEISGERBER: Yes, Your Honor. We call Michael

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1 Pugatch of HarbourVest to the stand.

2 THE COURT: All right. Mr. Pugatch, if you could  
3 turn on your video and say, "Testing one, two."

4 MR. PUGATCH: Two.

5 THE COURT: All right. There you are. Please raise  
6 your right hand.

7 MICHAEL PUGATCH, HARBOURVEST'S WITNESS, SWORN

8 THE COURT: Thank you. You may proceed.

9 MS. WEISGERBER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. WEISGERBER:

12 Q Good morning. Can you please state your name for the  
13 record?

14 A Sure. It's Michael Pugatch.

15 Q And where do you work, Mr. Pugatch?

16 A HarbourVest Partners.

17 Q And what is your title?

18 A I'm a managing director in our secondary investment  
19 group.

20 Q Did HarbourVest file claims in the Highland bankruptcy,  
21 Mr. Pugatch?

22 A We did, yes. Several claims, in fact.

23 Q What was the basis for those claims?

24 A Yeah. Among other things, fraudulent inducement based on  
25 misrepresentations and omissions on the part of Highland in

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1 connection with our original investment, mismanagement at the  
2 HCLOF level, including inappropriate fees that were charged  
3 to investors, among a number of other items as well.

4 Q Can you explain what you mean by misrepresentations made  
5 to HarbourVest by Highland?

6 A Yeah, sure. So, you know, based on a number of  
7 statements that were made to us around the litigation  
8 involving Mr. Terry, some of the intentions found, the  
9 structural changes that came to light with respect to HCLOF  
10 and our investment, as well as the fact that the arbitration  
11 award specifically against Mr. Terry would have no impact or  
12 implication on Highland's sale or business.

13 Q And can you explain what you mean by omissions made by  
14 Highland to HarbourVest?

15 A Sure. So I would say, really, the implications behind  
16 the structural changes that were made at the time of our  
17 investment into HCLOF. Also, the intention, clear intentions  
18 that Highland had to never, in fact, pay the arbitration  
19 award that came to light during our due diligence period to  
20 Mr. -- to Mr. Terry as part of the investment. And  
21 ultimately the -- what Highland went about doing in terms of  
22 stripping assets of Acis that led to the material value  
23 declines and destruction of value that we've experienced  
24 since our investment.

25 Q You mentioned a diligence period. Did HarbourVest

1 conduct diligence on the investment?

2 A We did. We conducted very detailed due diligence, as we  
3 do for all of our investments. That diligence period lasted  
4 several months ahead of our investment decision.

5 Q And did HarbourVest conduct that diligence by itself?

6 A No. So, in addition to internal investment professionals  
7 at HarbourVest, we engage with outside advisors, both  
8 consultants as well as legal advisors, in connection with  
9 that due diligence.

10 Q And did Highland answer all of HarbourVest's questions  
11 during that diligence period?

12 A They did. And they were numerous. But yes, they  
13 answered all the questions that we had for them.

14 Q Was the Terry dispute part of HarbourVest's diligence?

15 A It was. That came up as one of the outstanding items of  
16 litigation as part of our due diligence.

17 Q I'm going to ask my colleague to pull up on the screen an  
18 exhibit that was on our exhibit list as Items -- Exhibits 34  
19 and 35. It's an August 15, 2017 email from Brad Eden to  
20 Dustin Willard. Mr. Pugatch, do you recognize this document?

21 A I do, yes.

22 Q And what is it?

23 A This was an email sent to us during our due diligence  
24 period in response to a request for more information on the  
25 outstanding litigation that Highland was involved with.

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1 MS. WEISGERBER: And if my colleague can just scroll  
2 to the attachment to that email.

3 BY MS. WEISGERBER:

4 Q And do you recall the attachment as well, Mr. Pugatch?

5 A Yes, I do.

6 MS. WEISGERBER: And if you can scroll back up to the  
7 first email.

8 BY MS. WEISGERBER:

9 Q Who is Dustin Willard?

10 A Yes. Dustin is a colleague of mine at HarbourVest who  
11 worked closely with me on this investment.

12 Q And you said that this document was shared with  
13 HarbourVest during the diligence period before the HCLOF  
14 investment?

15 A It was, correct.

16 Q Is it typical during diligence to receive a description  
17 of litigation such as this?

18 A It is. It's a question that we always ask. Certainly a  
19 component of our diligence to understand any outstanding  
20 litigation on the part of our counterparty or manager that  
21 we're investing in.

22 MS. WEISGERBER: Your Honor, I'd move to offer this  
23 exhibit into evidence.

24 THE COURT: Any objection?

25 MR. DRAPER: No objection, Your Honor.

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1 MR. MORRIS: No objection from the Debtor, Your  
2 Honor.

3 THE COURT: All right. What is the letter or number  
4 for this exhibit?

5 MS. WEISGERBER: It's HarbourVest Exhibit 34.

6 THE COURT: All right. So HarbourVest Exhibit 34 is  
7 admitted.

8 (HarbourVest's Exhibit 34 is received into evidence.)

9 THE COURT: And I need to be clear where it appears  
10 on the docket. Can someone tell me?

11 MS. WEISGERBER: So, it's identified on our exhibit  
12 list, not -- it's not attached to the exhibits. It is on the  
13 docket. We were -- when we initially filed the exhibit list,  
14 we were working out confidentiality issues. But it was  
15 subsequently filed with our reply last night. It's at Docket  
16 No. 1735 --

17 THE COURT: All right.

18 MS. WEISGERBER: -- at Pages A -- Pages A345 to A350.

19 THE COURT: All right. Very well. Thank you.

20 BY MS. WEISGERBER:

21 Q Mr. Pugatch, we'll just scroll down to the second page of  
22 the attachment. Can you describe generally what the  
23 litigation says regarding the Terry dispute?

24 A Yes. Generally speaking, this dispute was described as  
25 an employee dispute, employment agreement dispute, with Mr.

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1 Terry, who was a former employee of Highland involved in  
2 their CLO business, and is described by Highland to us really  
3 having to do with a series of false claims, in their opinion,  
4 but having to do with a disgruntled former employee.

5 Q And did it strike you as an unusual or significant  
6 dispute?

7 A No. I would say we often -- we'll see, you know, former  
8 employees with, you know, claims against a former employer in  
9 connection with wrongful termination. I wouldn't say it's  
10 extremely common, but certainly not entirely out of the  
11 ordinary. And based on the explanations that we'd received  
12 from Highland, seemed to be more of an ordinary-course type  
13 former employee litigation suit.

14 Q Based on what you now know about the Terry dispute, do  
15 you believe that this was an adequate disclosure regarding  
16 the dispute?

17 A I would say very clearly not, you know, based on the  
18 facts that came to light subsequently, the various rulings in  
19 connection with the Acis bankruptcy case. What was very  
20 clearly not stated are the actual facts and implications of  
21 the ongoing litigation with Mr. Terry.

22 MS. WEISGERBER: I'd ask my colleague to put up the  
23 next exhibit. Okay. So, this is on a HarbourVest exhibit  
24 list, which is Document No. 1723. It's Exhibit 36 on that.  
25 Same issue with respect to initially not filed, but it is on

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1 the docket at our response last evening at ECF No. 1735 at  
2 Page A351.

3 THE COURT: Page what?

4 MS. WEISGERBER: A351.

5 THE COURT: A351. Thank you.

6 MS. WEISGERBER: You're welcome.

7 BY MS. WEISGERBER:

8 Q Mr. Pugatch, I just put up a November 29, 2017 email from  
9 Hunter Covitz to Dustin Willard, Michael Pugatch, and Nick  
10 Bellisario. Do you recall this document?

11 A I do, yes.

12 Q And what is this document?

13 A This was an email sent to us by Highland a couple weeks  
14 after we closed on our investment on the (inaudible) in  
15 response to a *Wall Street Journal* article that had come out  
16 regarding Highland, a number of actions that they had taken,  
17 and what Highland was articulating to us, a number of false  
18 claims that had been made about Highland's prior actions, and  
19 specifically trying to explain some of that and also share  
20 with HarbourVest a letter that was being sent to the editor  
21 of the *Wall Street Journal* highlighting, in their view, some  
22 of the inaccuracies around the reporting.

23 Q And did you receive this document?

24 A We did, yes.

25 MS. WEISGERBER: I'd move to offer this, so

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1 HarbourVest Exhibit 36, into evidence.

2 THE COURT: Any objections?

3 MR. WILSON: Your Honor, John Wilson. I would object  
4 as to the relevance of this document.

5 THE COURT: All right. What's your response?

6 MS. WEISGERBER: Your Honor, it shows  
7 misrepresentations that the witness will testify how it  
8 relates back to prior representations prior to HarbourVest's  
9 investment, as well as misrepresentations at that time.

10 THE COURT: Okay. I overrule the objection. I'm  
11 going to admit it.

12 (HarbourVest's Exhibit 36 is received into evidence.)

13 BY MS. WEISGERBER:

14 Q Mr. Pugatch, can you describe generally -- we spoke about  
15 this a little bit -- just what this communication from  
16 Highland was conveying to HarbourVest at the time?

17 A Yes. Specifically, again, responding to this *Wall Street*  
18 *Journal* article that had been published, trying to defend,  
19 again, Highland's own views why there were inaccuracies in  
20 the reporting. But importantly, from our perspective, trying  
21 to reassure us as to the fact that, you know, these  
22 accusations would have no bearing and any results from it  
23 would have no bearing on their ongoing business or  
24 partnership or the investment that we had made in HCLOF.

25 MS. WEISGERBER: And if you can scroll to the second

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1 page.

2 BY MS. WEISGERBER:

3 Q We'll just look at the last paragraph of another email  
4 from Mr. Covitz. Can you just read that first sentence of  
5 the last paragraph?

6 A Sure. (reading) While the dispute has no impact on our  
7 investment activities, as always, we welcome any questions  
8 you may have.

9 Q Mr. Pugatch, was this email and the discussion regarding  
10 the Terry dispute consistent with the representations made to  
11 you prior to HarbourVest's investment into HCLOF?

12 A It was, yes. Both the message, the lack of any impact  
13 that ultimately the dispute with Mr. Terry, the arbitration  
14 award would have around Highland's ongoing CLO business, or  
15 HCLOF specifically, was all, you know, very clear in this  
16 document, but all consistent with the representations that  
17 had been made to us leading up to our investment in the  
18 middle of November 2017 as well.

19 Q Thank you.

20 MS. WEISGERBER: And you can take down the exhibit,  
21 Emily. Thank you.

22 BY MS. WEISGERBER:

23 Q You mentioned, Mr. Pugatch, an arbitration award to Mr.  
24 Terry. How did you learn about that arbitration award?

25 A That was initially disclosed to us by Highland as we were

1 in the late stages of our diligence and closing process on  
2 the investment into HCLOF.

3 Q And generally, what did Highland tell you about the  
4 arbitration award?

5 A We were aware of its existence. We were aware of the  
6 quantum of the award, I think it was around an \$8 million  
7 arbitration award in the favor of Mr. Terry, and that was  
8 following the litigation around the wrongful termination and  
9 employee dispute that Highland had described to us  
10 previously.

11 Q Did you ask to see a copy of the arbitration award?

12 A No, we did not.

13 Q Why not?

14 A Ultimately, we -- you know, the explanations that  
15 Highland had provided to us all seemed very reasonable. We  
16 relied on their representations that this was, again, nothing  
17 more than a dispute with a former disgruntled employee, in  
18 their words, that had no bearing or, you know, would not have  
19 any bearing on our investment in HCLOF or their ongoing CLO  
20 business, which all very clearly was not the case, as  
21 we've -- as we've learned over the last several years.

22 Q Following learning about the arbitration award, did  
23 HarbourVest do other diligence?

24 A We did. So, in addition to asking questions related to  
25 the arbitration award and any impact that it would have, we

1 also spent some time diligencing a couple of structural  
2 changes that were proposed by Highland, and, in fact, ended  
3 up delaying the closing of our investment by about two weeks  
4 as we vetted some of those structural changes that Highland  
5 had proposed. Vetted those both, you know, internally with  
6 Highland directly and with external counsel in order to make  
7 sure that those structural changes were in fact legally sound  
8 in ultimately making our investment.

9 Q And were those changes proposed following the arbitration  
10 award?

11 A They were, yes.

12 Q Did Highland tell you the reason for the structural  
13 changes?

14 A Yeah. So, so some of this -- and specifically, this  
15 involved a change of the portfolio manager at the HCLOF level  
16 that was really in connection with a rebranding as Highland  
17 was going through a rebuild of its CLO business and wanting  
18 to align, from a brand perspective, their business on an  
19 ongoing basis with the Highland brand as opposed to the Acis  
20 brand. But more specifically, in the case of a late change  
21 from a structured standpoint, the -- part of the intention  
22 and the investment thesis of HCLOF was to pursue a reset, a  
23 refinancing of all the underlying CLOs as they approached the  
24 end of their investment period or came out of their  
25 investment period.

1 And in connection with that, in light of the arbitration  
2 award, Highland's view was that there may be difficulties in  
3 the market in resetting certain of those Acis CLOs with the  
4 Acis brand associated with them, given, again, the existence  
5 of the arbitration award and concerns in the market around  
6 the Acis brand reputation.

7 Q And what did they tell you was the market view of Acis,  
8 or the Acis brand?

9 A Yeah. Their view or their concern was that the, you  
10 know, because of the existence of that arbitration award, the  
11 brand would be viewed as toxic.

12 Q Didn't this put you on notice that perhaps there was  
13 something wrong with the structural changes?

14 A I mean, we -- I mean, short answer, no. We ultimately  
15 asked questions, we diligenced the legal structure, but  
16 relied on the representations that were made to us by  
17 Highland around the rationale for the structural changes,  
18 that these are all changes that were within a Highland-  
19 managed vehicle or sat below the vehicle that we were  
20 investing in, and so ultimately were in Highland's purview,  
21 was the representations that we relied on.

22 Q And did HarbourVest alone do that diligence of the  
23 structural changes?

24 A So, no. I mean, in connection with the diligence that we  
25 did internally and with Highland directly, we engaged with

1 outside counsel who was working with us at the time to vet  
2 those structural changes as well.

3 Q Did HarbourVest rely on Highland's representations  
4 regarding the arbitration award and the structural changes in  
5 making its investment in HCLOF?

6 A We did, absolutely.

7 Q If Highland had disclosed the nature of the structural  
8 changes, of removing Acis as the portfolio manager and  
9 related transfers, would HarbourVest have proceeded with its  
10 investment?

11 A Definitively, no, we would not have.

12 Q Why not?

13 A I think the reality is if we had understood the intent,  
14 you know, that Highland was ultimately undertaking here, we  
15 would not have wanted to be any part of this, and certainly  
16 getting dragged into all of this, the hassle, the value  
17 destruction that we've seen on behalf of the investors and  
18 the funds that we manage. And I would say, lastly, we just  
19 full stop would not have done business with a firm who  
20 engages with this type of behavior, had we actually known the  
21 truth.

22 Q Mr. Pugatch, are you familiar with the bankruptcy that  
23 followed of Acis?

24 A Yes.

25 Q And what was your -- or, did HarbourVest participate in

1 that bankruptcy?

2 A So, initially, no. Subsequently, we ended up getting  
3 dragged into that on account of a number of misstatements by  
4 Highland about the role that HarbourVest had played as part  
5 of our investment into HCLOF and some of that structure and  
6 the structural changes that I alluded to.

7 Q How did HarbourVest learn about those misstatements in  
8 the bankruptcy about HarbourVest's role?

9 A So, ultimately, those came to light on -- you know, on  
10 account of the ongoing proceedings within the Acis bankruptcy  
11 process, and specifically brought to light to us by the Acis  
12 trustee at the time, who decided to pursue, you know, further  
13 diligence or discovery around the claims that Highland had  
14 made around HarbourVest's involvement in those changes.

15 Q And what is your understanding of what the allegations  
16 were that caused the Acis trustee to investigate HarbourVest?

17 A Sure. So, you know, our understanding was that Highland  
18 had made statements, again, false statements that HarbourVest  
19 had actually instructed some of those structural changes,  
20 that we were the ones that had said that we would not do  
21 business with Acis and had ordered some of the underlying  
22 transfer of assets or, again, structural changes, that, you  
23 know, very clearly I would say were not the case. Also, that  
24 HarbourVest was -- was calling the shots as it relates to any  
25 of the ongoing management or future resets of the CLOs.

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1 Q Did HarbourVest instruct any of those structural changes  
2 or transfers to occur?

3 A We did not. Absolutely not.

4 Q Why didn't HarbourVest itself appear in the Acis  
5 bankruptcy and file a claim?

6 A Yeah. HarbourVest's role, again, in HCLOF, we were a  
7 passive investor in a Highland-managed company. We had no  
8 direct interaction with or relationship with Acis. There was  
9 really no reason for us to be directly involved until we were  
10 subsequently dragged into involvement on account of those  
11 misstatements. And then at that point our focus really  
12 pivoted to, you know, whether we needed to defend ourselves  
13 against those accusations that had been made by Highland and  
14 after a request for further information in discovery by the  
15 Acis trustee.

16 Q Did HCLOF participate in the Acis bankruptcy?

17 A They did, yes.

18 Q Did HCLOF incur fees for participating in the Acis  
19 bankruptcy?

20 A Yes. In fact, very meaningful fees, to the tune of well  
21 in excess of \$15 million of legal fees, as we understand it,  
22 that have been incurred, largely in connection with the  
23 ongoing Acis bankruptcy and Highland's continued pursuit of  
24 and in connection with the litigation with Mr. Terry, which  
25 we firmly believe was entirely inappropriate that HCLOF and

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1 ultimately investors in HCLOF bear those expenses, which were  
2 not just expenses of HCLOF but of Highland and a number of  
3 other Highland affiliates.

4 Q Do those expenses form a basis of separate claims filed  
5 by HarbourVest against Highland?

6 A They do, yes. One of the multiple claims that we had  
7 filed against Highland.

8 Q And a few more questions, just for the record, Mr.  
9 Pugatch. How much did HarbourVest initially invest in HCLOF?

10 A Sure. So, our initial investment in November of 2017 was  
11 right about \$73-1/2 million, I believe.

12 Q Did HarbourVest invest any additional money in HCLOF?

13 A We did. There was a subsequent capital call investment  
14 of about \$5 million, bringing our total investment to just  
15 under \$80 million in aggregate.

16 Q When HarbourVest initially made the investment, did it  
17 anticipate making a profit on it?

18 A We did, yes.

19 Q How much did HarbourVest anticipate earning from the  
20 investment?

21 A Yeah. So, our -- based on the original \$73-1/2 million  
22 investment, we had expected a total return of about \$137  
23 million on that -- on that investment.

24 Q What was that projection based on?

25 A So, that projection was based on materials that we had

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1 received from Highland, their internal projection models on  
2 the future performance of the underlying CLOs that we were  
3 acquiring exposure to through our investment in HCLOF, and  
4 was one of the inputs or formed the basis in connection with  
5 our diligence that we ultimately ran different sensitivities  
6 -- projections around and helped employ -- helped inform our  
7 investment thesis.

8 Q Do you know the current value of HarbourVest's investment  
9 in HCLOF?

10 A Yes. The current value is right around \$22-1/2 million.

11 Q So roughly how much has the investment itself decreased  
12 from HarbourVest's initial investment?

13 A So, net of what was about \$4-1/2 million of distributions  
14 that we received early on in the investment, we've lost, to  
15 date, in excess of \$50 million on our original investment.

16 Q And just for -- to close out, Mr. Pugatch, knowing all  
17 that you know, if HarbourVest had known that -- about the  
18 nature of the transfers by Acis or Highland's intent with  
19 respect to the arbitration award, would HarbourVest have made  
20 this investment?

21 A No. The reality is, had we known the truth, or even had  
22 a sense of the truth, the true intentions behind some of  
23 those transfers and ultimately what would have happened, we  
24 never would have made this investment, full stop.

25 Q Thank you, Mr. Pugatch.

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1 THE COURT: All right. I didn't hear you, Ms.  
2 Weisgerber. Do you pass the witness?

3 MS. WEISGERBER: Yes, I pass the witness.

4 THE COURT: All right. Thank you.

5 Mr. Morris, any examination from you?

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

7 THE COURT: All right.

8 (Interruption.)

9 THE COURT: All right. I'm not sure whose voice that  
10 was, but please, again, mute your devices when you're not  
11 talking.

12 Any cross-examination of Mr. Pugatch? I'll start with  
13 you, Mr. Wilson.

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q How are you -- I guess we're afternoon now. How are you  
19 this afternoon, Mr. Pugatch?

20 A I'm doing well. Yourself?

21 Q I'm doing well as well. Do you recall that on Monday of  
22 this week I took your deposition?

23 A Yes, I do.

24 Q And so you understand that my name is John Wilson and I  
25 represent Jim Dondero, who has filed an objection to the 9019

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1 motion filed by the Debtor?

2 I've got a few questions for you today. Has HarbourVest  
3 been around for over 35 years?

4 A We have, yes.

5 Q And does HarbourVest have ten offices around the world?

6 A Correct, yes.

7 Q And does HarbourVest employ over 150 investment  
8 professionals?

9 A Yes.

10 Q Does HarbourVest have over \$74 billion in assets under  
11 management?

12 A Correct, yes.

13 Q And is HarbourVest's client base largely comprised of  
14 institutional investors?

15 A Also correct.

16 Q And you would agree with me that HarbourVest is a  
17 sophisticated investor, right?

18 A I would, yes.

19 Q How long have you worked for HarbourVest?

20 A I've been employed by HarbourVest for 17 years now.

21 Q And how long have you been a managing director?

22 A I've been a managing director for approximately six  
23 years.

24 Q And you were, in fact, the managing director for the  
25 investment that HarbourVest made in Highland CLO Funding,

1 Ltd., which has been referred to today as HCLOF, correct?

2 A I was, correct.

3 Q And HarbourVest, I think you just testified, invested  
4 approximately \$73 million as its initial investment in HCLOF?

5 A Yes, correct.

6 Q And before HarbourVest made that investment, it had made  
7 many investments of this type, correct?

8 A Yeah. We've made hundreds of investments into  
9 partnerships over our history, correct.

10 Q So HarbourVest was well-experienced in evaluating and  
11 deciding whether to invest in large investments, correct?

12 A It was, yes.

13 Q Now, in your -- and by your, I mean HarbourVest -- in the  
14 response to the Debtor's omnibus objection, it says that by  
15 summer 2017 HarbourVest was engaged in preliminary  
16 discussions with Highland regarding the investment. Is that  
17 a correct statement?

18 A Correct, yes.

19 Q And, in fact, those talks began in the second quarter of  
20 2017, correct?

21 A Yes.

22 Q And so the investment closed ultimately on November 15th,  
23 2017?

24 A Yes, that's correct.

25 Q So it's fair to say that HarbourVest considered and

1 evaluated this transaction for over six months before  
2 investing its \$73 million, right?

3 A From the time of the initial conversations that we had  
4 with Highland, yes.

5 Q And one of the reasons that it took over six months to  
6 complete the investment is that HarbourVest performs due  
7 diligence before it makes an investment, correct?

8 A Correct.

9 Q And when you're performing due diligence -- well, first  
10 off, you would agree with me that that's a common practice  
11 amongst sophisticated investors such as HarbourVest, correct?

12 A To perform due diligence?

13 Q Yes.

14 A Yes.

15 Q And describe -- describe what HarbourVest does in a  
16 general sense when it performs its due diligence.

17 A Sure. So, we spend time with the manager -- in this  
18 case, Highland -- certainly around the investment thesis, the  
19 opportunity, receive materials around the underlying assets.  
20 We take that and perform our own independent due diligence  
21 around the value of those assets, perform due diligence on  
22 the manager itself, the go-forward opportunity. In many  
23 cases, and certainly in this case, engage with outside  
24 advisors to assist with that due diligence. It's a very  
25 robust and thorough process.

1 Q And by outside advisors, are you referring to the outside  
2 counsel that you testified about earlier?

3 A Yes. Both outside counsel and outside consultants.

4 Q Okay. And so did you say that it's typical to engage  
5 outside counsel when performing due diligence?

6 A Yes.

7 Q And which outside counsel did you retain with respect to  
8 this due diligence?

9 A Debevoise and Plimpton as well as Milbank.

10 Q And during the course of HarbourVest's due diligence, did  
11 it identify some items of concern?

12 A As with any investment, there are always items that are  
13 identified that require further diligence, risks that are  
14 identified that we look to mitigate through our due  
15 diligence, et cetera.

16 Q And if Harbour -- I'm sorry, did you say something else?

17 A No.

18 Q You were finished? Okay. Now, if HarbourVest identifies  
19 an item of concern, is it typical to request additional  
20 information regarding those items of concern?

21 A It is, yes.

22 Q And so that actually happened with respect to the HCLOF  
23 investment, correct?

24 A In certain cases, yes.

25 Q HarbourVest identified several litigation matters that it

1 had questions about, correct?

2 A Correct. As we would with any investment.

3 Q And it went back to Highland and asked them to explain  
4 their position on those litigation matters?

5 A Correct.

6 Q And one of those litigation matters was the Joshua Terry  
7 litigation, correct?

8 A Yes.

9 Q And at the time that HarbourVest was considering this  
10 investment, beginning in the second quarter and continuing  
11 through the summer, that Josh Terry litigation had not  
12 resulted in an award or a final judgment, correct?

13 A Correct.

14 Q And I think we looked earlier at a document that your  
15 counsel admitted as HarbourVest Exhibits 34 and 35. There  
16 was an email from a HarbourVest -- or, I'm sorry, from a  
17 Highland representative to a HarbourVest representative that  
18 was discussing Highland's position on the litigation,  
19 including the Terry litigation, correct?

20 A Are you referring to the document that we looked at  
21 earlier?

22 Q I am. And I can put it on the screen if we need to.

23 A No. Right, I recall that, and yes, that's correct.

24 Q Okay. And just to be clear, that document, which stated  
25 Highland's positions on the -- and summaries of the

1 litigation, was issued months before the arbitration award to  
2 Josh Terry, correct?

3 A I don't remember the exact timing, but it was certainly  
4 during our due diligence period and prior to the arbitration  
5 award, yes.

6 Q Well, it seems to me that that email that you -- your  
7 counsel admitted as an exhibit was issued in August of 2017.  
8 Does that sound right to you?

9 A If that's what the email said, yes.

10 Q And if the Terry arbitration award came out in October,  
11 then you would agree with me that that is several months  
12 prior to the -- or at least two months prior to the  
13 arbitration award?

14 A Yes.

15 Q And so when HarbourVest made requests of Highland to  
16 provide information regarding its items of concern, Highland  
17 complied with those requests, correct?

18 A It did, correct.

19 Q And was there ever a time when HarbourVest requested  
20 Highland to provide information and that information was not  
21 provided?

22 A Our requests for information, or at least, you know,  
23 responses or color to a question, were always met either  
24 with, you know, written or verbal communication back to us,  
25 yeah.

1 Q And you would agree with me that, in fact, HarbourVest  
2 delayed the closing of the investment by two weeks to  
3 continue its due diligence, correct?

4 A Correct, related to the structural changes that were made  
5 close to closing. That's right.

6 Q And after conducting that due diligence, HarbourVest  
7 satisfied itself that the investment was sound?

8 A That the legal structure that had been put in place in  
9 connection with those proposed changes by Highland was -- was  
10 legally sound, yes, and on the back of, again, statements and  
11 misrepresentations on the part of Highland around the nature  
12 and potential impact to their ongoing CLO business and HCLOF.

13 MR. WILSON: Well, I'm going to object to the latter  
14 part of your response as nonresponsive.

15 THE COURT: Sustained.

16 BY MR. WILSON:

17 Q Now, after you conducted the due diligence, HarbourVest  
18 made the investment of \$73 million on November 15th, 2017,  
19 correct?

20 A Correct.

21 Q And so I think you testified earlier that prior to that  
22 investment HarbourVest had become aware that that Josh Terry  
23 litigation had resulted in an arbitration award, correct?

24 A Yes.

25 Q But I think you've also testified that HarbourVest did

1 not request that Highland provide a copy of the arbitration  
2 award, correct?

3 A That's correct.

4 Q And you further testified that you were represented by  
5 outside counsel at the time, correct?

6 A Correct.

7 Q And as of Monday of this week, you had not reviewed that  
8 arbitration award; is that correct?

9 A That's correct.

10 Q Have you reviewed that arbitration award since Monday of  
11 this week?

12 A I have not.

13 Q But in any event, you testified that Highland told you  
14 about the award?

15 A Yes.

16 Q And they told you the amount of the award?

17 A Yes.

18 Q And then they told you that the award had been converted  
19 to a judgment?

20 A When you say the award had been converted to a judgment,  
21 can you be more specific?

22 Q Well, I don't know how familiar you are with the  
23 litigation process, but in this instance, that award was  
24 taken to a court and the court entered a judgment on the  
25 arbitration award. Did you -- were you aware of that?

1 A I don't recall the specific legal terms of judgment  
2 against it. I was award of the existence of the arbitration  
3 award and the -- and the obligation for Highland to comply  
4 with that arbitration award.

5 Q And HarbourVest did not make an appearance in the Acis  
6 bankruptcy, right?

7 A We did not.

8 Q But you were aware of the Acis bankruptcy, correct?

9 A Yes.

10 Q And you were kept apprised of the Acis bankruptcy by  
11 Highland individuals, correct?

12 A We had conversations with a couple of Highland  
13 individuals throughout the Acis bankruptcy process, yes.

14 Q Right. And in fact, you testified that you participated  
15 in regular conference calls with Highland regarding that  
16 bankruptcy?

17 A That's correct, yes.

18 Q And do you recall having been provided with over 40,000  
19 documents by Highland related to the Acis bankruptcy?

20 A I do not recall that, no.

21 Q Would those documents have been provided to your outside  
22 counsel, had you received them?

23 A I don't know the answer to that.

24 Q Did the outside counsel that represented you in the due  
25 diligence continue to represent you throughout the Acis

1 bankruptcy?

2 A They did. One of the counsels did, correct.

3 Q And which counsel was that?

4 A Debevoise.

5 Q So was your counsel actively involved with monitoring the  
6 Acis bankruptcy?

7 A They were, yes, particularly after we were ultimately  
8 accused of having something to do with the original structure  
9 and -- as a result of misstatements by Highland.

10 Q Did your counsel attend hearings in the Acis bankruptcy?

11 A I don't recall.

12 Q Are you familiar with the PACER system?

13 A I am not.

14 Q Now, I think that HarbourVest has been described as a  
15 passive investor. You recall that description of HarbourVest  
16 in this instance?

17 A Yes.

18 Q But, in fact, HarbourVest invested substantial assets  
19 such that it owned a 49.98 percent share of HCLOF. Would you  
20 agree with that?

21 A That's correct.

22 Q And in fact, the next largest investor was CLO Holdco,  
23 which owned 49.02 percent of the shares, correct?

24 A That sounds right.

25 Q And there was an advisory board that was created pursuant

1 to the formation documents of this investment, correct?

2 A That's correct.

3 Q And in fact, that advisory board only had two members,  
4 and one was a representative of HarbourVest and one was a  
5 representative of CLO Holdco, correct?

6 A Correct.

7 Q And the advisor -- I'm sorry, the portfolio manager was  
8 not allowed to disregard the recommendations of the advisory  
9 board, correct?

10 A With respect to the limited set of items that the  
11 advisory board could opine on, that is correct.

12 Q All right. I want to go over a couple of the  
13 misrepresentations that HarbourVest has identified in its  
14 filings related to its claim. The first one is -- and just  
15 for the record, I'm reading from Docket No. 1057 filed on  
16 September 11, 2020, HarbourVest Response to Debtor's First  
17 Omnibus Objection.

18 But the first misrepresentation identified in that  
19 document says that Highland never informed HarbourVest that  
20 Highland had no intention of paying the arbitration award.  
21 And was -- was Highland obligated to pay the Josh Terry  
22 arbitration award against Acis?

23 MR. MORRIS: Objection to the question to the extent  
24 it calls for a legal conclusion.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Join in that objection.

2 THE COURT: Sustained. I think --

3 BY MR. WILSON:

4 Q Your understanding was --

5 MR. WILSON: I'm sorry, Judge?

6 THE COURT: I sustained the objection as calling for  
7 a legal conclusion. So, next question.

8 MR. WILSON: Yes, I -- I heard that. Thank you, Your  
9 Honor.

10 BY MR. WILSON:

11 Q In your understanding, was Highland responsible for  
12 paying the arbitration award to Josh Terry?

13 A My understanding is on the account of the fact that Acis  
14 --

15 MS. WEISGERBER: Objection, Your Honor. Objection,  
16 Your Honor, same basis.

17 THE COURT: Sustained. It was essentially the same  
18 question.

19 MR. WILSON: Well, Your Honor, I didn't ask --

20 THE COURT: It was essentially the same question, Mr.  
21 Wilson. Move on.

22 MR. WILSON: Okay.

23 BY MR. WILSON:

24 Q The next misrepresentation identified by HarbourVest said  
25 that Highland did not inform HarbourVest that it undertook

1 the transfers to siphon assets away from Acis, LP and that  
2 such transfers would prevent Mr. Terry from collecting on the  
3 arbitration award. So the basis for that allegation would be  
4 that Highland was siphoning assets from Acis to avoid having  
5 Acis pay the arbitration award, correct?

6 A That -- that would be the implication, yes.

7 Q Okay. And then that misrepresentation continues on and  
8 says that Highland represented to HarbourVest that it was  
9 changing the portfolio manager because Acis was toxic. And  
10 do you recall that representation being made to you?

11 A Yes, I do.

12 Q And would you agree with me that whether or not Acis is  
13 toxic in the industry would be an opinion?

14 A I suppose it would be an opinion, but by the manager of  
15 the vehicle responsible for managing the HCLOF investment and  
16 the underlying CLOs. Yeah, we viewed the Acis name and the  
17 Highland name as synonymous, if you will. I mean, Acis was a  
18 subsidiary of Highland. For all intents and purposes, it was  
19 the same from our perspective as we made the investment into  
20 HCLOF.

21 Q So did HarbourVest have an independent understanding of  
22 whether or not the Acis name was toxic in the industry?

23 A We did not, no. We relied on Highland's views of that as  
24 manager of HCLOF.

25 MR. WILSON: Your Honor, just a brief housekeeping

1 item. Did you say that we need to be done at 1:00 o'clock?

2 THE COURT: Well, I said I really wanted you to be  
3 done by 1:00 o'clock because I have a 1:30 docket and a 2:00  
4 o'clock docket and I'd rather not have to hang up 70-  
5 something people and reconnect them again at 3:00 o'clock.  
6 How close are you to being finished?

7 MR. WILSON: Well, --

8 THE COURT: This is going at a very slow pace.

9 MR. WILSON: Well, I apologize for that, Your Honor.  
10 I think I've got at least ten more minutes, but -- but I know  
11 we also have closing remarks. And I was just going to ask if  
12 Your Honor had a preference of --

13 THE COURT: Keep going.

14 MR. WILSON: -- of breaking now --

15 THE COURT: Keep -- let's --

16 MR. WILSON: -- or keep going? Okay.

17 THE COURT: Let's talk fast and try to get through.  
18 You know, even if I'm sacrificing lunch today, I don't want  
19 to inconvenience 75 people this way. So we'll just probably  
20 start our 1:30 hearing a little late and inconvenience those  
21 people.

22 All right. Go ahead.

23 MR. WILSON: All right. Thank you, Your Honor.

24 BY MR. WILSON:

25 Q Did Acis form its -- I can't recall if you answered this

1 question, but did Acis form its own opinion on whether or not  
2 -- I'm sorry, strike that. Did HarbourVest form its own  
3 opinion on whether or not the Acis name was toxic in the  
4 industry?

5 MS. WEISGERBER: Objection, --

6 THE WITNESS: We did not. We didn't have a basis.

7 THE COURT: I'm sorry, did I have an objection?

8 BY MR. WILSON:

9 Q You did not --

10 THE COURT: Did I have an objection?

11 MS. WEISGERBER: Yeah. Objection. Yes. Objection,  
12 asked and answered, Your Honor.

13 THE COURT: Overruled. He can answer.

14 BY MR. WILSON:

15 Q Okay. But --

16 A We did not.

17 Q Did Highland have the ability to investigate the Acis  
18 name and make its own determination of whether that name was  
19 toxic? I'm sorry, I think I'm misspeaking. HarbourVest.

20 A HarbourVest had the ability to do that, yes.

21 Q I apologize I misspoke. I meant HarbourVest. Did  
22 HarbourVest have the ability to investigate that name and  
23 determine if it was toxic?

24 A It was irrelevant to our investment thesis. And as I  
25 said before, Acis was a subsidiary of Highland. We viewed

1 them as interchangeable in the context of our investment.

2 Q Okay. The next misrepresentation that you refer to says  
3 that Highland indicated to HarbourVest that the dispute with  
4 Mr. Terry would have no impact on its investment activities.  
5 Would you agree with me that that is also an opinion?

6 A It was a statement that --

7 MS. WEISGERBER: Your Honor, I'm going to object to  
8 the extent these questions are seeking a legal conclusion  
9 regarding, you know, if something's an opinion or not.

10 THE COURT: Okay. Overruled. He can answer.

11 THE WITNESS: It was -- it was a statement that was  
12 made to us by Highland and represented in multiple different  
13 formats as fact. And a representation that we relied on in  
14 connection with our investment.

15 BY MR. WILSON:

16 Q And finally, the misrepresentation, the last  
17 misrepresentation identified, is that Highland expressed  
18 confidence in the ability of HCLOF to reset or redeem the  
19 CLOs. Would you agree with me that that statement is an  
20 opinion?

21 A On the basis that it was the core investment thesis of  
22 the -- of the investment of HCLOF. Again, whether that's  
23 legally viewed as an opinion or a fact, it was -- it was  
24 certainly the investment thesis that we made the investment  
25 predicated upon.

1 Q And you just testified that you thought that Acis and  
2 Highland were interchangeable from the perspective of the  
3 investment opportunity, correct?

4 A Correct.

5 Q But you also accepted Highland's recommendation because  
6 HarbourVest agreed that the change in the -- to a Highland  
7 manager made commercial sense, correct?

8 A We took at face value what Highland recommended because  
9 this all had to do with the structuring of an entity that  
10 they fully managed with respect to multiple underlying  
11 subsidiaries that weren't managed by Highland.

12 Q But would you agree that, at the time, you -- HarbourVest  
13 thought that made commercial sense?

14 A It did not seem unreasonable to us based on the  
15 explanation we were given.

16 Q Okay.

17 MR. WILSON: I want to refer to HarbourVest Exhibit  
18 39.

19 (Pause.)

20 THE COURT: What are we waiting on? What are we  
21 waiting on?

22 MR. WILSON: I'm trying to get the document on the  
23 screen, Your Honor.

24 (Pause.)

25 THE COURT: We can't hear you. We can't hear you.

1 MR. WILSON: I'm sorry. I'm sorry, Your Honor. I'm  
2 speaking with my --

3 THE COURT: Okay.

4 MR. WILSON: -- co-counsel here.

5 THE COURT: All right.

6 (Pause.)

7 MS. WEISGERBER: Mr. Wilson, is it 39 or 38 that  
8 you're referring to?

9 MR. WILSON: 39. HarbourVest 9019 motion on the  
10 main -- on the Dondero file. And then there's the -- it's --  
11 it's John -- and then there's the HarbourVest, and then the  
12 exhibits are all in one file.

13 MS. WEISGERBER: Mr. Wilson, I'll just note that 39  
14 was subject to confidentiality based on HCLOF's request.  
15 HCLOF's counsel is present. I think they know it's an  
16 excerpt. But I'd just -- that for HCLOF's counsel.

17 MR. WILSON: Well, is there an objection to showing  
18 this document on the screen? Yes. All right. We're not  
19 going to put Document 39 on the screen.

20 A VOICE: Yes.

21 MR. WILSON: All right. Scroll down to the next  
22 page.

23 BY MR. WILSON:

24 Q This is a -- this is a document that was produced to us  
25 this week, the Highland production. It appears to be a

1 Highland CLO Funding, Ltd. Statement of Operations for the  
2 Year Ended 31 December 2017. Do you see at the top of that --  
3 at the top of that document where it says total investment  
4 income of \$26 million?

5 A I do, yes.

6 Q And total expenses were roughly \$1.8 million?

7 A Yes.

8 Q And then net change and unrealized depreciation on  
9 investments and net realized loss on investments was \$4.26  
10 million cumulative, resulting in a net increase in net assets  
11 resulting from operations of \$20.224 million. Do you agree  
12 with that?

13 A Yes.

14 Q Okay.

15 MR. WILSON: Go to the next one.

16 BY MR. WILSON:

17 Q And you understand that, in the course of the Acis  
18 bankruptcy, the portfolio managers for certain of the CLOs  
19 were changed by the Trustee, correct?

20 A Yes, around the underlying CLOs. That's -- that's my  
21 understanding, yes.

22 Q And, in fact, Mr. Seery testified earlier today that that  
23 occurred in the summer of 2018, correct?

24 MR. WILSON: Scroll.

25 THE WITNESS: I don't recall the timing, but that's

1 what he testified to.

2 BY MR. WILSON:

3 Q Well, this document is HarbourVest Exhibit 40, and this is  
4 the statement of operations for the financial year ended 31  
5 December 2018. Here, the total investment income is only  
6 \$11.1 million. Do you see that?

7 A I do.

8 Q And do you see where the expenses have increased to \$13.6  
9 million?

10 A I do, yes.

11 MR. WILSON: Okay. Scroll down some more.

12 BY MR. WILSON:

13 Q And do you see where it says net change and unrealized  
14 loss on investments of \$48.47 million?

15 A Yes.

16 Q And so after Acis and Brigade took over the managements of  
17 these CLOs, we had a net decrease in net assets resulting from  
18 operations of \$52.483 million in the year 2018, correct?

19 MS. WEISGERBER: Objection, Your Honor. Assumes a  
20 fact not in evidence.

21 THE COURT: Overruled. He --

22 MR. WILSON: Your Honor, --

23 THE COURT: We're just looking at this statement and  
24 testifying about it says, so I overrule the objection.

25 MR. WILSON: Thank you, Your Honor. Thank you, Your

1 Honor. I'm now going to turn to HarbourVest Exhibit 41. All  
2 right. I'll --

3 BY MR. WILSON:

4 Q Did you answer the question, Mr. Pugatch?

5 A No, I -- I would agree with the second part of your  
6 statement that for the year 2018 the -- the loss was \$52  
7 million. I don't -- I don't believe that jives with the first  
8 part of your statement that that was after Acis and Brigade  
9 took over. As I understand, that was in the middle of the  
10 year.

11 Q But in any event, Acis and Brigade had been managing this  
12 for at least six months of 2018 when that loss occurred,  
13 correct?

14 A They had been managing a portion of the underlying CLO  
15 portfolio held by Highland CLO Funding.

16 Q All right. We're now looking at Exhibit #41, which is the  
17 Draft Unaudited Statement of Comprehensive Income, 31 December  
18 2019. Total income has now dropped to \$4.664 million.

19 MR. WILSON: And scroll down.

20 BY MR. WILSON:

21 Q Expenditures are at \$3.645 million. And then it says  
22 investment gains and losses net out to \$11.493 million, a  
23 negative \$11.493 million. And --

24 MR. WILSON: Scroll down to the --

25 BY MR. WILSON:

1 Q And so would you agree with me that in the year 2019,  
2 HCLOF showed a net loss of \$10.476 million?

3 A Yes, that's what the financial statements say.

4 Q And in this year, the Acis CLOs were solely managed by  
5 Acis and Brigade, correct?

6 A The Acis CLOs were. Yes, correct.

7 Q All right.

8 MR. WILSON: Now, go to 42.

9 BY MR. WILSON:

10 Q Now, this is HarbourVest #42.

11 MR. WILSON: Go down to the next page.

12 BY MR. WILSON:

13 Q And this is the Highland CLO Funding, Ltd. Unaudited  
14 Condensed Statement of Operations for the Financial Period  
15 Ended 30 June 2020. And so this is just half a year of  
16 operations. And would you -- and this actually has a  
17 comparison between 2019 and 2020. But do you see where it  
18 says investment income has dropped from a million dollars in  
19 the first half of 2019 to \$381,000 in the first half of 2020?

20 A Yes.

21 MR. WILSON: Okay. Scroll down.

22 BY MR. WILSON:

23 Q And do you see where, in the first half of 2019, total  
24 expenses were \$1.85 million, and then in the first half of  
25 2020 total expenses were \$2.16 million? Do you see that?

1 A I do.

2 Q And if you go down below that, where it says Net Realized  
3 and Unrealized Gain/Loss on Investments, the first half of  
4 2019 HCLOF lost \$12 million, and in the first half of 2020 it  
5 lost \$39.472 million?

6 MR. MORRIS: Your Honor, I'm going to object. It's  
7 John Morris for the Debtor. I'm happy to stipulate. In fact,  
8 he can offer this document into evidence. There's no  
9 foundation that Mr. Pugatch has any particularized knowledge  
10 about any of the numbers behind this. All he's asking him to  
11 do is to confirm what the document says. It says what it  
12 says. But this -- I'll object on that basis, Your Honor.

13 THE COURT: All right. Mr. Wilson, what about it?  
14 You're just getting him to read numbers off of these exhibits.

15 MR. WILSON: Well, --

16 THE COURT: Shall we just --

17 MR. WILSON: -- I understood --

18 THE COURT: -- by stipulation get them into evidence?

19 MR. WILSON: Well, --

20 MR. MORRIS: No objection, Your Honor.

21 MS. WEISGERBER: No objection.

22 THE COURT: All right. So these are exhibits what?  
23 We've gone through 39, 41, and I don't know what else. 40,  
24 maybe?

25 MR. WILSON: It was Exhibits 39, 40, 41, and 42 that

1 were on the HarbourVest exhibit list.

2 THE COURT: All right. Those will be admitted, and  
3 we've already discussed what docket entry number they appear  
4 at.

5 (HarbourVest's Exhibits 39 through 42 are received into  
6 evidence.)

7 THE COURT: All right. Anything else? You told me  
8 you had 10 more minutes about 15 minutes ago.

9 MR. WILSON: Well, I'm sorry if I -- I think I had  
10 said I had at least ten more minutes, and I was looking at the  
11 -- it was 10:50 [sic] and you wanted to quit at 1:00. So I do  
12 have longer than that. I'm sorry, Your Honor.

13 THE COURT: Well, --

14 MR. WILSON: But --

15 THE COURT: -- I feel like I'm being --

16 MR. WILSON: -- I'll try to proffer --

17 THE COURT: Okay, Mr. Wilson, let me just tell you  
18 something. I feel like I'm being disrespected now, and the  
19 parties are. We really need to pick up the pace. I've told  
20 you I've got a 1:30 docket -- with four or five matters on it,  
21 by the way. I've got a 2:00 o'clock docket. I'm starting  
22 them late. No one advised my courtroom deputy that we were  
23 going to need all day today for this, okay? So you've got  
24 five more minutes to wrap it up, and then, of course, I have  
25 to go to Mr. Draper and see if he has cross. All right? So

1 please don't test my patience any more. Five minutes to  
2 finish.

3 MR. DRAPER: Judge, I have no questions.

4 THE COURT: I didn't hear you, Mr. Draper. What did  
5 you say?

6 MR. DRAPER: I have no questions.

7 THE COURT: All right. Very good.

8 MR. WILSON: I apologize, Your Honor. I was actually  
9 trying to be respectful of your time when I informed you that  
10 I had at least ten more minutes left at 12:50, but I will try  
11 to be as expedient as I can as I finish up.

12 BY MR. WILSON:

13 Q And I don't see you on my screen.

14 MR. WILSON: You can take that document down.

15 THE WITNESS: Here.

16 BY MR. WILSON:

17 Q Mr. Pugatch, do you have an opinion as to what caused  
18 these incredible losses of value at HCLOF?

19 MS. WEISGERBER: Objection to the extent it calls for  
20 a legal conclusion.

21 THE COURT: Overruled. He can answer.

22 THE WITNESS: I would say that there's no one cause  
23 for the decline in value. I can point to a number of  
24 different things, including the exorbitant fees that were  
25 charged to HCLOF, including the inability to be able to re --

1 refinance the CLOs on the part of HCLOF, all of which stems  
2 from the actions that Highland took prior to our investment in  
3 HCLOF.

4 BY MR. WILSON:

5 Q And you've -- I think it's been referenced several times  
6 in HarbourVest's arguments that -- that the reset was a  
7 fundamental -- the inability to get a reset was a fundamental  
8 cause of the loss in value. Is that -- is that HarbourVest's  
9 position?

10 A That -- that is a part of the -- the cause in the  
11 declining value of the CLOs, yes.

12 Q And you would agree with me that a reset is fundamentally  
13 a reset of interest rates, correct?

14 A Of the interest rates of the liabilities of the -- the  
15 timing for repayment of those liabilities, yes.

16 Q Now, just say with -- for the sake of a hypothetical  
17 example. If you had a home that was valued at \$5 million, or  
18 let's just say \$500,000, let's make it more realistic. If you  
19 had a \$500,000 home and you had a mortgage on that home at  
20 five percent interest, your inability to refinance that home  
21 at a lower interest rate would not affect the underlying value  
22 of that home, correct?

23 MS. WEISGERBER: Objection, Your Honor. Hypothetical.  
24 And objection to relevance as well.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Calls for speculation.

2 THE COURT: Sustained.

3 BY MR. WILSON:

4 Q Is there any reason to believe that the change in the  
5 interest rate would have prevented the massive losses of  
6 investment value that occurred in HCLOF?

7 MS. WEISGERBER: Object on the same grounds.

8 THE COURT: Sustained.

9 THE WITNESS: The short -- the short answer is yes,  
10 with a -- with the amount of leverage --

11 MS. WEISGERBER: I --

12 THE WITNESS: -- that exists. Oh, sorry.

13 MS. WEISGERBER: The objection was sustained.

14 THE COURT: Yeah, I sustained the objection. That  
15 means you don't answer.

16 THE WITNESS: I'm sorry, Your Honor.

17 BY MR. WILSON:

18 Q So, would you agree with me that if the expenses and the  
19 fees charged by the portfolio manager increased dramatically,  
20 that would -- that would impact the value of the investment,  
21 correct?

22 MS. WEISGERBER: Objection on the same grounds, and  
23 relevance. This is a 9019 hearing, Your Honor. We are not  
24 here to try every minutia. And in fact, we're trying to avoid  
25 a trial on the merits. And it feels like we're getting a bit

1 far afield now.

2 THE COURT: I sustain.

3 MR. WILSON: All right. I'll pass the witness.

4 THE COURT: All right. Mr. Draper said he had no  
5 cross. So, any redirect, Ms. Weisgerber?

6 MS. WEISGERBER: No, Your Honor.

7 THE COURT: All right. Mr. Morris, did you have any  
8 redirect?

9 MR. MORRIS: I do not, Your Honor. I have a very  
10 brief closing and then some additional remarks if -- if we  
11 finish.

12 THE COURT: All right. So, Mr. Pugatch, that  
13 concludes your testimony. Thank you. You're excused if you  
14 want to be.

15 All right. So, as I understood it, there would be no more  
16 evidence after this.

17 MR. WILSON: Well, Your Honor, along those lines, as  
18 a housekeeping measure, I think everything on my exhibit list  
19 is included on someone else's exhibit list, but just for belt  
20 and suspenders I would move to admit all of the exhibits on  
21 the -- on Mr. Dondero's exhibit list.

22 THE COURT: Well, is that agreed or not? Because we  
23 didn't have a witness to get them in.

24 MR. MORRIS: No objection, Your Honor.

25 THE COURT: Any objection? All right. If there's no

1 objection, I'll --

2 MR. MORRIS: Your Honor, --

3 THE COURT: I'm sorry. Was there an objection? I  
4 will admit Dondero Exhibits A through M, and those appear at  
5 Docket Entry 1721, correct, Mr. Wilson?

6 MR. WILSON: That is correct, Your Honor.

7 THE COURT: All right.

8 MR. WILSON: That is correct, Your Honor.

9 (James Dondero's Exhibits A through M are received into  
10 evidence.)

11 MR. WILSON: And one final matter is, during the  
12 examination of Mr. Seery, you at least partially admitted  
13 Dondero's Exhibit N, and I was wondering if we need to -- how  
14 we'd need to submit that for the record.

15 THE COURT: Okay. First, I'm confused. I think you  
16 said Mr. Terry's testimony. You --

17 MR. WILSON: I said Seery. I'm sorry.

18 THE COURT: Oh, Seery?

19 MR. WILSON: Or I may have said Terry, but I meant to  
20 say Seery.

21 THE COURT: Okay. Maybe you said it. Okay. During  
22 Mr. Seery's testimony -- oh, the email that I admitted a  
23 portion of?

24 MR. WILSON: That is -- that's correct, Your Honor.

25 THE COURT: What -- what are you asking? It's not in

1 your notebook. Are you asking do you need to separately  
2 submit it or what?

3 MR. WILSON: Yeah, I was just asking what the Court's  
4 preference on how we submit that for the -- put it in the  
5 record.

6 THE COURT: Okay. That was so garbled I didn't hear  
7 you. You need to file that on the docket as a supplemental  
8 exhibit that was admitted, okay?

9 MR. WILSON: Okay. Thank you, Your Honor.

10 THE COURT: All right. Closing arguments? Mr.  
11 Morris?

12 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

13 MR. MORRIS: Yes, very briefly, Your Honor. The  
14 Debtor easily meets the standard here. The settlement  
15 consideration relative to the claim establishes and reflects  
16 the likelihood of success on the merits.

17 You know, I've never -- I did hear Mr. Pugatch in the  
18 deposition the other day, but I otherwise haven't heard from  
19 him. I found him to be incredibly credible, Your Honor, and I  
20 regret the fact that he and HarbourVest are being blamed twice  
21 here. The fact that they got 40,000 documents or didn't read  
22 the arbitration award, it's just -- it's a shame that they're  
23 being dragged through this yet again.

24 The fact is, Your Honor, there is no evidence that they  
25 made the disclosures that HarbourVest claims -- complains

1 about. They just don't. The fraudulent transfers led to the  
2 bankruptcy, led to the appointment of a trustee, led to --  
3 right? So, so it's -- that's why -- but they're getting  
4 something for their claim.

5 It was a hard negotiation, Your Honor. There is no  
6 dispute that if we litigated this it would be complex. It  
7 would fact-intensive. The Debtor would be forced to rely upon  
8 witnesses who are no longer employed by it. That it would be  
9 expensive, for sure. There's no dispute about any of that.  
10 There's no dispute that the creditor body has spoken loudly  
11 here by unanimously refraining from objecting except for Mr.  
12 Dondero and the entities controlled by him.

13 And you heard Mr. Seery's testimony. I think he  
14 exhaustively informed the Court as to the process by which the  
15 transaction was analyzed and negotiated, and there's no  
16 evidence to the contrary that this was an arm's-length  
17 negotiation.

18 Unless Your Honor has any questions, we would request that  
19 the motion be granted.

20 THE COURT: Thank you. Ms. Weisgerber, your closing  
21 argument?

22 CLOSING ARGUMENT ON BEHALF OF HARBOURVEST

23 MS. WEISGERBER: Sure. Thank you, Your Honor. I'll  
24 also be brief. We again join in Mr. Morris's arguments and  
25 comments.

1           The Court has now heard testimony from Mr. Pugatch  
2 regarding the factual detail underlying HarbourVest's claims.  
3 The Court has also heard about the significant damages that  
4 HarbourVest stands to recover for those claims. And  
5 HarbourVest came to this Court ready to litigate. It would --  
6 it's ready to do so if needed. It believes it would prevail  
7 on its claims if it had to do so.

8           But the Court also heard from Mr. Seery about his  
9 understanding of HarbourVest's claims, his calculus, and his  
10 decision to settle them. And we submit that nothing further  
11 is needed by this Court in order to approve the settlement.  
12 This is a question of the Debtor's business judgment. We're  
13 not here to have a trial on the merits of HarbourVest's  
14 claims. The Objectors have made various arguments, including  
15 about the cause of HarbourVest's damages. But even the nature  
16 of the legal claims that HarbourVest is asserting, some do not  
17 require a loss causation. So we submit that's not even  
18 relevant to the merits of the claims.

19           The settlement is clearly in the best interest of the  
20 estate, and we respectfully request that the Court approve it.

21           THE COURT: Thank you. All right. Mr. Wilson, your  
22 closing argument?

23           MR. LYNN: Michael Lynn. I will give the closing  
24 argument, if that's satisfactory to the Court.

25           THE COURT: All right. Go ahead.

1 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

2 MR. LYNN: Good afternoon, Your Honor. I just want  
3 to make a few points, and I'll try to do it as quickly as  
4 possible.

5 First, I feel compelled to address the argument of the  
6 Debtor that Mr. Dondero is repeating his litigious behavior  
7 from the Acis case. I don't know about the Acis case. I  
8 wasn't involved except very, very peripherally. But with  
9 respect to this case, we have only taken positions in court  
10 that we believed -- that is, his lawyers -- believed were  
11 warranted by law, facts as we knew them, and that are  
12 consistent with professionalism. I'd be glad to explain any  
13 position we took.

14 Often, through the Debtor's very persuasive powers, we  
15 never had the chance to explain our position previously to the  
16 Court. In fact, for the most part, as today, we have been  
17 reactive rather than commencing proceedings. In fact, during  
18 the first seven months of this case, we only appeared in court  
19 a few times, when we felt we had to -- for example, when  
20 discovery was being sought by the Creditors' Committee that we  
21 feared might invade privilege. Then, much to the Debtor's  
22 fury, we opposed the Acis 9019. We did so because we thought  
23 it was too much.

24 Since, as the Court can see, the principal instigators of  
25 litigation have been the Debtor, and to a lesser extent, the

1 Committee.

2 Indeed, in an apparent effort to drown Mr. Dondero and his  
3 counsel in litigation, the Debtor has repeatedly sought court  
4 action on a very short fuse, claiming need for expedited  
5 hearing.

6 Perhaps the most startling example of this is the recent  
7 contempt motion, for which there is no good reason for a quick  
8 hearing. Resolution of that motion is not necessary to reach  
9 the confirmation hearing. The motion could be heard after the  
10 confirmation hearing. There is no need to put Mr. Dondero and  
11 his professionals in a position where they have to respond in  
12 a couple of days, two business days, and then will have two  
13 days to prepare for trial.

14 Second, Your Honor, Mr. Seery has repeatedly asserted,  
15 contrary to today's motion, that the HarbourVest claim was of  
16 no merit. That is why, when he came in to settle for tens of  
17 millions of dollars, we opposed this motion. It appears that  
18 the motion is occurring without any cross-party discovery.  
19 There is no consideration, apparently, of trying dispositive  
20 -- dispositive motions first. There is no consideration for  
21 junior classes of equity, which Mr. Seery has previously  
22 opined were in the money. This, even though there's no reason  
23 that this settlement is necessary pre-confirmation, unless Mr.  
24 Seery wants HarbourVest's vote.

25 Third, for whatever reason, that seems to be the driving

1 factor for settling. On its face, the vote seems to be a key  
2 factor of the settlement. About the longest provision of the  
3 settlement agreement relates to voting. The motion itself --  
4 in the motion itself, five of seven bullet points cited by the  
5 Debtor for approval of the settlement deal with and emphasize  
6 support of the plan or the vote that is to be cast for the  
7 plan.

8 If the settlement is a good deal, it didn't need to have  
9 as one of its parts the requirement that HarbourVest vote for  
10 the plan.

11 Your Honor, I'll stop there. I know Your Honor would like  
12 to get just a few minutes before your 1:30 docket. I've been  
13 there and I understand that, and I do apologize for taking the  
14 time we have, but I think that responsibility is shared with  
15 the Debtor and HarbourVest.

16 Thank you, Your Honor.

17 THE COURT: All right. Thank you for that.

18 Mr. Draper, any closing argument from you?

19 CLOSING ARGUMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

20 MR. DRAPER: Yes, I have three comments. The first  
21 is the claim -- the loss claim, absent the fraud claim, is, at  
22 best, \$7 million. I think Mr. Seery's argument that a hundred  
23 -- one hundred percent is attributable to there is just wrong.  
24 If he and I both invested in a company 50-50 and it goes  
25 broke, we only lost 50 cents each.

1           Number two, I think the Court heard the evidence. I think  
2 this is, at best, a subordinated claim under 5 -- under the  
3 Bankruptcy Code. It's really a "But for the  
4 misrepresentations, we wouldn't have invested."

5           And the last one is the -- Judge Lynn represented the  
6 voting, so I won't deal with that. But the one that troubles  
7 me the most is the fact that this asset that is ultimately  
8 being paid for in claim dollars that's being transferred over  
9 to the Debtor and being put it outside the estate, outside the  
10 purview of this Court, and placed in some subsidiary, this --  
11 this transaction, if it is approved, must -- should contain a  
12 provision that the asset that's being acquired come into the  
13 Debtor and be owned by the Debtor.

14           THE COURT: All right.

15           MR. DRAPER: I have nothing further, Your Honor.

16           THE COURT: Thank you, Mr. Draper.

17           Mr. Morris, you get the last word since it's your motion.

18           MR. MORRIS: Very quickly, Your Honor. The  
19 subordination argument doesn't hold water. This is not a  
20 claim against the Debtor for the security; it's a claim for  
21 fraud. Okay? So, so 510(b), if it was a claim against HCLOF,  
22 that might make sense, but this is a claim against the Debtor.  
23 And it's a Debtor -- it's a claim for fraud. That's number  
24 one.

25           Number two, we need to keep this exactly as it's been

1 structured in order to avoid litigation. Mr. Seery told the  
2 Court. I'm sure the Court can make its own assessment as to  
3 Mr. Seery's credibility as to whether or not the Debtor is  
4 intending to somehow get this asset beyond the Court.

5 But there are reasons why we've done this, Your Honor.  
6 They could have made an objection on that basis. In fact, if  
7 they did, it would be overruled, because there's no -- there's  
8 no basis for this Court to find that somehow the Debtor and  
9 Mr. Seery are doing something untoward to get assets away from  
10 this Court's jurisdiction.

11 You know, I don't know what to say about Mr. Lynn's  
12 commentary. Much of it had nothing to do with any evidence in  
13 the record.

14 The fact remains, Your Honor, that this settlement is  
15 fair. It's reasonable. It's in the best interest of the  
16 estate. And we would respectfully request that the Court  
17 grant the motion.

18 THE COURT: All right. Thank you. Well, I  
19 appreciate all the arguments and evidence I have heard today.  
20 I'm going to be brief in my ruling here, but I reserve the  
21 right to supplement in a more fulsome written order, which I'm  
22 going to instruct Mr. Morris to submit. I am approving the  
23 motion to compromise the HarbourVest claim today, and I guess  
24 subsumed in that is granting the motion to allow their claim  
25 for 3018 voting purposes.

1 I in all ways find this compromise to meet the required  
2 legal standard set forth in such cases as *TMT Trailer Ferry*,  
3 *AWECO*, and *Foster Mortgage*, numerous other Fifth Circuit  
4 cases.

5 First, I'm going to specifically say for the record that I  
6 found both witnesses today, Mr. Seery and Mr. Pugatch, to be  
7 very credible. Very credible testimony and meaningful  
8 testimony was provided to the Court today. And based on that  
9 testimony, I find, first, that this compromise was the product  
10 of arm's-length negotiations. It was a hard-fought  
11 negotiation, as far as I'm concerned. The Debtor objected to  
12 these numerous HarbourVest proofs of claim. The Debtor did  
13 not want to allow HarbourVest a significant claim for voting  
14 purposes. I duly note the statements made in the disclosure  
15 statement before this compromise was reached suggesting, you  
16 know, the Debtor didn't think HarbourVest should have a large  
17 claim.

18 That is consistent with everything I typically see in a  
19 bankruptcy case when there's a claim objection. The objector  
20 vehemently denies the claimant should have a proof of claim,  
21 and then people sit down and think about the risks and rewards  
22 of litigating things. And I believe very fervently that's  
23 what happened here. There were good-faith, arm's-length  
24 negotiations that resulted in this proposed compromise.

25 I find the compromise -- and I'll add to that point, on

1 the good-faith point, I find nothing sinister or improper  
2 about the fact that the compromise includes a commitment of  
3 HarbourVest to vote in favor of the plan. Again, we see this  
4 a lot. You know, there's even a buzz word that doesn't even  
5 exist in the Bankruptcy Code: "plan support agreement." You  
6 know, we see those a lot -- you know, oftentimes negotiated  
7 before the case, but sometimes after. You know, it may be  
8 improper in certain situations, but there was nothing here  
9 that troubles me about that component of the compromise.

10 I find the compromise to meet the paramount interest of  
11 creditors here. Notably, we have very large creditors in this  
12 case who have not objected. The *Foster Mortgage* case from the  
13 Fifth Circuit tells me I am supposed to consider support or  
14 opposition of creditors. No opposition of UBS. No opposition  
15 of the Redeemer Committee Crusader Fund. No opposition from  
16 Josh Terry or Acis. No opposition from Daugherty.

17 But moreover, when considering the paramount interest of  
18 creditors, I find this compromise to be in all ways fair and  
19 equitable and in the best interest of the estate, and  
20 certainly within the range of reasonableness. The evidence  
21 showed that HarbourVest asserted over \$300 million. Over \$300  
22 million. Granted, that was based on all kinds of legal  
23 theories that would be contested and expensive to litigate,  
24 but the evidence also showed that they invested over \$70  
25 million. You know, close to \$75 million. I forget the exact

1 number. \$75 or \$80 million, somewhere in that range. And now  
2 the credible evidence is that investment is worth about \$22  
3 million.

4 So, certainly, while the claim may not have, at the  
5 ultimate end of the day in litigation, resulted in a \$300  
6 million proof of claim, certainly, certainly there were strong  
7 arguments for a very sizeable claim, more than this compromise  
8 amount. So it's certainly fair and equitable and reasonable  
9 when considering the complexity and duration of further  
10 litigation, the risks and rewards, the expense, delay, and  
11 likely success.

12 A couple of last things I'm going to say are these. I  
13 understand, you know, there is vehement disagreement on the  
14 part of our Objectors to the notion that Highland might have  
15 caused a \$50 million loss to HarbourVest. But I will tell  
16 you, for what it's worth -- I want the record clear that this  
17 is part of my evaluation of the reasonableness of the  
18 settlement -- my reaction is that, indeed, Highland's  
19 litigation strategy in the Acis case caused HCLOF to lose a  
20 huge portion of its value, to the detriment of HarbourVest.  
21 You know, whether all evidence at the end of the day would  
22 convince me of that, I don't know, but that's -- that is  
23 definitely this judge's impression.

24 I'm very sympathetic to HarbourVest. It appears in all  
25 ways from the record, not just the record before me today, but

1 the record in the Acis case that I presided over, that  
2 Highland back then would have rather spent HarbourVest's  
3 investment for HCLOF legal fees than let Josh Terry get paid  
4 on his judgment. They were perfectly happy to direct the  
5 spending of other people's money, is what the record suggested  
6 to me.

7 And then, you know, I have alluded to this very recently,  
8 as recently as last Friday: I can still remember Mr.  
9 Ellington sitting on the witness stand over here to my left  
10 and telling the Court, telling the parties under oath, that  
11 HarbourVest -- he didn't use its name back then, okay? For  
12 the first phase of the Acis case, or most of the Acis case, we  
13 were told it was an investor from Boston. And at some point  
14 someone even said their name begins with H. I mean, it seemed  
15 almost humorous. But Mr. Ellington said it was they,  
16 HarbourVest, the undisclosed investor, who was insistent that  
17 the Acis name was toxic, and so that's what all of this had  
18 been about: the rebranding, the wanting to extract or move  
19 things away from Acis.

20 So, you know, I have heard for the -- well, at least the  
21 second time today, from Mr. Pugatch, what I perceive to be  
22 very credible testimony that that's just not the way it  
23 happened.

24 And I guess the last thing I want to say here today, and  
25 you know, I guess I have multiple reasons for saying this, not

1 just in connection with approving the settlement, you know,  
2 I've heard about how the Acis CLOs, the HCLOF CLOs have lost,  
3 you know, a crazy amount of value, that they underperform in  
4 the market, that, you know, during the Acis/Brigade tenure  
5 and, you know, they should have been reset. You know, I hope  
6 those who have not been around as long as some of us in this  
7 whole saga know that the -- Mr. Terry, Mr. Phelan, I think  
8 Brigade, they all desperately wanted to reset these things,  
9 but it was HCLOF, I believe directed by Highland, that wanted  
10 to redeem, wanted to liquidate, take the pot of money,  
11 warehouse it, and then do their own thing.

12 And there was, I think, from my vantage point, a  
13 monumental effort to try to get everyone to the table to do  
14 reasonable resets that would be good for the stakeholders at  
15 HCLOF and be good for the creditors of Acis, including Josh  
16 Terry. That was always the balancing act that most of us were  
17 focused on during the Acis bankruptcy. But Highland, I  
18 believe, directing HCLOF's strategy, just did not want the  
19 resets to happen.

20 So, again, part of me, I suppose, just wants to make the  
21 record clear on something that I fear not everyone is clear  
22 about. And I say that because the comment was made that the  
23 injunctions, the preliminary injunctions sought by the Acis  
24 trustee caused the plummet in value, and I think that's just  
25 not an accurate statement. I think litigation strategies are

1 what caused the plummet in value, and that's why I think  
2 ultimately HarbourVest would potentially have a meritorious  
3 claim here in a significant amount if this litigation were to  
4 go forward.

5 So, I approve this under 9019. And again, Mr. Morris,  
6 you'll upload an order.

7 It is now 1:41, so let's as quickly as possible hear the  
8 other motion that I don't think had any objections. Mr.  
9 Morris?

10 MR. MORRIS: Your Honor, just -- yes, just very  
11 quickly, just four things.

12 With respect to the order, I just want to make it clear  
13 that we are going to include a provision that specifically  
14 authorizes the Debtor to engage in -- to receive from  
15 HarbourVest the asset, you know, the HCLOF interest, and that  
16 that's consistent with its obligations under the agreement.

17 The objection has been withdrawn, I think the evidence is  
18 what it is, and we want to make sure that nobody thinks that  
19 they're going to go to a different court somehow to challenge  
20 the transfer. So I just want to put the Court on notice and  
21 everybody on notice that we are going to put in a specific  
22 finding as to that.

23 THE COURT: All right. Fair --

24 MR. MORRIS: Number two is --

25 THE COURT: Fair enough. I do specifically approve

1 that mechanism and find it is appropriate and supported by the  
2 underlying agreements.

3 And just so you know, I spent some time noodling this  
4 yesterday before I knew it was going to be settled, so I'm not  
5 just casually doing that. I think it's fine.

6 Okay. Next?

7 MR. MORRIS: Thank you very much, Your Honor. Number  
8 two, with respect to the motion to pay, there is no objection.  
9 If we can just submit an order. Or if Your Honor has other  
10 guidance for us, we're happy to take it.

11 THE COURT: Okay. Does anyone have anything they  
12 want to say about that motion?

13 Again, I looked at it. I didn't see any objections. I  
14 didn't see any problem with it. It's -- you know, you're  
15 going through this exercise because of the earlier protocol  
16 order.

17 MR. MORRIS: Correct.

18 THE COURT: All right. Well, if there's nothing,  
19 then, I will approve that, finding there is good cause to  
20 grant that motion.

21 MR. MORRIS: Okay.

22 THE COURT: All right. Is the only other  
23 housekeeping matter --

24 MR. MORRIS: I --

25 THE COURT: -- we have the contempt motion?

1 MR. MORRIS: It is, and I do -- I do have to point  
2 out how troubled the Debtor is to learn that Mr. Dondero was  
3 still receiving documents from Highland as late as this  
4 morning. It's got to be a violation of both the TRO -- I  
5 guess it's now the preliminary injunction.

6 I would respectfully request -- I know that time is what  
7 it is -- but maybe Mr. Dondero can answer now where he got the  
8 document, who he got the document from, what other documents  
9 he's gotten from the Debtor since Your Honor ordered him not  
10 to communicate with the Debtor's employees.

11 This is not saying hello in the hallway. I mean, this is  
12 just -- it is really troubling, Your Honor, and it's why we  
13 need the contempt motion heard as soon as possible.

14 THE COURT: Well, Mr. Wilson, do you want to address  
15 that? I think the words I heard were that you just got the  
16 document this morning, and you got it from Mr. Dondero, but we  
17 don't know where and when Mr. Dondero got it. Mr. Wilson, are  
18 you there?

19 MR. LYNN: I'm afraid I'm back, Your Honor.

20 THE COURT: Okay.

21 MR. LYNN: I am not sure whether Mr. Dondero had it  
22 in his files from some -- from back before he was asked not to  
23 communicate with members or with employees of the Debtor. I  
24 believe -- I believe he's with us, though I don't think he's  
25 available by video.

1 Are you there, Mr. Dondero?

2 THE COURT: We can't hear you, Mr. Dondero.

3 MR. DONDERO: Judge?

4 THE COURT: Oh, go ahead.

5 MR. DONDERO: Can you hear me now?

6 THE COURT: Yes.

7 MR. DONDERO: Yes, I -- I -- when I moved offices, I  
8 found it in a stack of paper, and --

9 MR. LYNN: I understand it shows that his microphone  
10 is working.

11 THE COURT: Okay. Go ahead.

12 MR. DONDERO: Can you hear me?

13 THE COURT: Yes, go ahead.

14 MR. DONDERO: Yeah, I -- I'm sitting in new offices.  
15 I've got everything in boxes. I was going through everything  
16 yesterday, and I found those emails in a stack of papers and I  
17 sent them over because I thought they would be relevant  
18 relative to Seery's initial impression.

19 THE COURT: Okay. Well, let's talk about the timing  
20 of this hearing. Mr. Morris, I'm going to -- I'm going to ask  
21 you why --

22 MR. LYNN: Michael Lynn, Your Honor. I don't want to  
23 waste the Court's time. We have not made available anything  
24 to the Court objecting to the expedited hearing on the  
25 contempt motion. We've been here.

1 I would say to Your Honor that if Mr. Dondero is indeed in  
2 contempt, or was in contempt toward the motion, which has  
3 nothing to do with the document that was presented as Dondero  
4 Exhibit N, there is no need to hear this on an expedited  
5 basis.

6 Every time we turn around, Your Honor, the Debtor is  
7 asking that something be heard on an expedited basis. And we  
8 have not opposed that. We have not fought that, to speak of,  
9 to date. But this is getting a little ridiculous. We're  
10 within days of confirmation of the Debtor's plan, and it is  
11 simply a means of causing pain and suffering to Mr. Dondero  
12 and those who are working with him and for him. And he does  
13 have employees at NexPoint who are assisting him.

14 So we most strongly object to being put on a schedule  
15 where we are expected to get a response to the contempt motion  
16 on file by Monday, today being Thursday, and a weekend  
17 intervening. And we strongly object to any setting of this  
18 contempt motion on Tuesday or Wednesday. It is absurd, and it  
19 is done solely, solely, Your Honor, to cause pain.

20 THE COURT: All right.

21 MR. MORRIS: Your Honor, if I may?

22 THE COURT: Please.

23 MR. MORRIS: Just very briefly, we had a hearing the  
24 other day. The evidence is the exact same. The evidence is  
25 crystal clear that the violations are meaningful, they're

1 substantial, and they are repeated.

2 After the TRO was entered into, Mr. Dondero and only Mr.  
3 Dondero chose to interfere with the Debtor's business. Mr.  
4 Dondero and only Mr. Dondero chose to communicate with the  
5 Debtor's employees, not about saying hello in the hallway but  
6 about coordinating a legal defense strategy against the  
7 Debtor.

8 The need is immediate, Your Honor, and I would  
9 respectfully request that the hearing be set for Tuesday or  
10 Wednesday. They've had this motion now since the 7th of  
11 January. They had a full evidentiary hearing, so they know  
12 most of the evidence that's going to be presented. They have  
13 a whole team of -- they have an army of lawyers, Your Honor,  
14 and half a dozen firms working on behalf of Mr. Dondero and  
15 his interests. For him to cry here, for him to cry that this  
16 is too much is really -- it's obscene. It just is.

17 THE COURT: All right. I'm going to say a couple --

18 MR. LYNN: That is absurd.

19 THE COURT: I'm going to say a couple of things. One  
20 is that I -- well, the one time I remember getting reversed  
21 for holding someone in contempt of court, the District Court  
22 felt like I had not given enough notice of that. The District  
23 Courts, what they think is reasonable notice, is sometimes  
24 very different from what the bankruptcy judges think. We're  
25 used to going very lickety-split fast in the bankruptcy

1 courts. And the Courts of Appeals, District Court, Courts of  
2 Appeals obviously, for good reason, are very concerned about  
3 due process in this kind of context. So I'm sensitive to  
4 that.

5 I'm also sensitive to the fact that it is monetary damages  
6 that are being sought here to purge the contempt. Okay? The  
7 shifting of attorneys' fees is basically what I understand is  
8 being sought at this point. You know, we have a preliminary  
9 injunction halting behavior at this point, and so I think  
10 that's another reason I'm hesitant to give an emergency  
11 hearing. I feel like monetary damages can wait and we can  
12 give 21-plus days' notice of the hearing.

13 But I'm going to throw this out there as well. If I do  
14 feel like there is a showing of contempt, if I do feel like  
15 the phone -- as I told you the other day, I'm very, very  
16 fixated on the phone that may have been destroyed or thrown  
17 away, maybe at Mr. Dondero's suggestion. I mean, the  
18 potential monetary sanction here may be very, very large if  
19 the evidence plays out in the way I fear it might play out.  
20 So I need to make sure everybody has adequate time to prepare  
21 for that hearing and make sure I get all the evidence I need  
22 to see. All right? Contempt of court is very, very, very,  
23 very serious, and I don't think anyone would deny that.

24 So, with that, it was filed what day? January 4th? Is  
25 that what I heard? Or --

1 MR. MORRIS: January 7th, I believe, Your Honor.

2 THE COURT: January 7th? All right. Well, Traci,  
3 are you there? Hopefully, you're not in a hunger coma at this  
4 point.

5 THE CLERK: I am here.

6 THE COURT: Okay. We have -- we're going to have to  
7 go to that first week of February, right? Because we've got  
8 the confirmation hearing that, you know, late in January, and  
9 then --

10 THE CLERK: Yes. Uh-huh.

11 THE COURT: Okay. Do you have an available date to  
12 give right now?

13 THE CLERK: How about -- if you're willing to hear  
14 them on Friday, February 5th.

15 THE COURT: Okay. I can do that. February 5th at  
16 9:30. Any -- anybody want to argue about that?

17 MR. MORRIS: Thank you, Your Honor. That's  
18 acceptable to the Debtor.

19 THE COURT: Okay. Mr. Lynn, is that good with you?

20 MR. LYNN: We'll do that, Your Honor. I would say,  
21 by the way, that I'll be happy to buy Mr. Seery, out of my own  
22 pocket, five cell phones, which ought to make up for the one  
23 that was lost, though I recognize that those cell phones will  
24 not have on them the privileged information, the conversations  
25 between his lawyers and Mr. Dondero that I imagine he was

1 looking forward to seeing.

2 THE COURT: Well, I wouldn't want him to see that  
3 information, but I do think he's entitled to any nonprivileged  
4 information, texting, or calls that are on that phone. So,  
5 again, I'm either going to hear good explanations for that or  
6 not, but it's something very concerning to me.

7 All right. So we have a game plan.

8 I'm going to ask, Did we have good-faith negotiations  
9 between Dondero and the Committee and anything positive to  
10 report? I'll ask Mr. Lynn and Mr. Clemente to weigh in.

11 MR. CLEMENTE: Yes, Your Honor. I'll go first, Your  
12 Honor. Mr. Lynn and I have exchanged several emails over the  
13 weekend, and the message that I sent to Mr. Lynn was very  
14 clear. There had been a term sheet that Mr. Seery had sent  
15 back to Mr. Dondero. I had asked Mr. Lynn to take a pencil  
16 out and be very specific as to what it was Mr. Dondero was  
17 prepared to do in connection with the pot plan. I instructed  
18 him that some of the issues that the Committee still has is  
19 obviously the overall value, along with the concept that's  
20 signing up to a promise from Mr. Dondero to comply with  
21 (indiscernible) as part of that value. As Your Honor may  
22 understand, the Committee is obviously very skeptical of Mr.  
23 Dondero's future performance under an agreement that he enters  
24 into.

25 Those are but a couple of issues, Your Honor, that I

1 advised Mr. Lynn were very concerning to the Committee. And I  
2 suggested to him that if he wanted to move things forward, the  
3 best way to do it would be to come to us with a fulsome term  
4 sheet that explained exactly what it was in clear and precise  
5 detail that Mr. Dondero was proposing, and that would be the  
6 best way to move the process forward, Your Honor.

7 THE COURT: All right. Mr. Lynn, anything to add to  
8 that?

9 MR. LYNN: Well, Your Honor, my experience in  
10 negotiations is that it is useful to agree on substantive  
11 terms, or at least be in the ballpark, before term sheets are  
12 exchanged. Long ago, a term sheet was prepared and presented  
13 to the Committee. Ultimately, I think it was rejected, though  
14 I don't know if we ever received a formal rejection.

15 I explained in my emails, which I'm happy to share with  
16 the Court if Your Honor wants to see them, why I was reluctant  
17 to try to put into a term sheet form the proposal that I  
18 suggested to Mr. Clemente. As I said, I'm more than happy to  
19 provide you with that email chain and let you form your own  
20 judgment, Your Honor, as to whether we're proceeding in good  
21 faith.

22 THE COURT: All right. Well I'm not going to ask --

23 MR. POMERANTZ: Your Honor? Your Honor, this is Jeff  
24 Pomerantz.

25 THE COURT: -- to see any of that. Mr. Pomerantz?

1 MR. POMERANTZ: May I just be heard real quickly?

2 THE COURT: Sure.

3 MR. POMERANTZ: Your Honor, we also took Your Honor's  
4 comments to heart. We, Mr. Seery and I, had an over-an-hour  
5 conversation with Mr. Lynn and with Mr. Bonds. We provided  
6 them with our thoughts as to what they needed to do in order  
7 to move forward. Of course, it's not really the Debtor to  
8 agree. It's the creditors to agree. But as Mr. Seery has  
9 testified many times before and as I have told the Court, we  
10 would support a plan that the Committee and Mr. Dondero could  
11 get behind.

12 So we again -- I'm not going to divulge the nature of  
13 those communications, but we suggested several things that Mr.  
14 Dondero could do in order to move the ball forward, and  
15 unfortunately, we have not seen any of those things done thus  
16 far. So we are, at this point, not optimistic that there will  
17 be a grand bargain plan.

18 THE COURT: All right.

19 MR. DONDERO: Your Honor, could I comment for a  
20 second? This is Mr. Dondero.

21 THE COURT: If you and your counsel want you to  
22 comment, you can comment.

23 MR. DONDERO: I'd love to do a pot plan. I would  
24 love to reach some kind of settlement and everybody move on  
25 with their lives. The estate started with \$360 million of

1 third-party assets and \$90 million of notes. The \$360 million  
2 of third-party assets are down to \$130 million.

3 MR. POMERANTZ: Again, Your Honor, I must interrupt.  
4 I did this at the last hearing, and it's not my practice to  
5 interrupt, but issues regarding what the value is or not, it's  
6 going to require a response, and that's not really before Your  
7 Honor. I think before Your Honor is --

8 MR. DONDERO: Okay.

9 MR. POMERANTZ: -- have there been negotiations?  
10 Have they been in good faith? If Mr. Dondero wanted to  
11 address that, that's fine, but I object to having any  
12 discussion at this point, especially with Mr. Dondero not even  
13 under oath, on what the nature of the value of the assets and  
14 why they have changed and what not.

15 THE COURT: Well, --

16 MR. POMERANTZ: It's just not appropriate.

17 THE COURT: I understand --

18 MR. DONDERO: Okay. Can I --

19 THE COURT: Stop.

20 MR. DONDERO: Can I -- can I finish?

21 THE COURT: Let me please respond to that. I  
22 understand your concern, but I've heard from Mr. Seery  
23 testimony many months ago about the value plummeting during  
24 the case. And I asked why, and I got some explanations. This  
25 is not evidence. This is just, you know, this is not going to

1 be binding in any way. Mr. Dondero can speak as to what he  
2 thinks, you know, the situation is.

3 Go ahead, Mr. Dondero.

4 MR. DONDERO: Okay. I'm not trying to fixate on the  
5 numbers. And as far as the third-party assets are, we would  
6 be willing to pay -- I would be willing to pay for those. I'd  
7 be willing to pay more, and even some value for the affiliate  
8 notes that were really part of compensation agreements  
9 throughout the history of Highland and avoid the POC  
10 arguments. I'd be willing to pay for the assets and I'd be  
11 willing to pay even more than that.

12 I have no transparency in terms of what the assets are,  
13 and there's no fulsome discussion in terms of, well, here are  
14 the assets, here are the notes, here's what we think the  
15 values are, can you get to this number? It's just a -- you --  
16 the -- it -- I don't view there is good-faith negotiations  
17 going on because it's always just a: You need to put a big  
18 number on a piece of paper; otherwise, you're going to get run  
19 over.

20 And there's no back and forth going on, but it's not due  
21 to a lack of willingness on my part. And maybe there needs to  
22 be a committee set up. Maybe there needs to be, I don't know,  
23 a mediator or an examiner or somebody to try and push through  
24 the pot plan, but there's nothing happening. People are not  
25 returning the judge's calls, I mean, Mr. Lynn's calls, or my

1 calls. They're -- there's -- despite efforts of our -- of my  
2 own and a willingness of my own, there's no negotiations of  
3 any sort going on at the moment.

4 THE COURT: All right. I don't want anyone to  
5 respond to that. I know people have different views of what's  
6 going on. But let me just say a couple of things, and then  
7 we're done.

8 We do have a Committee in this case. We have a Committee  
9 with very sophisticated members and very sophisticated  
10 professionals. Okay? That's who I wanted you to be talking  
11 to before the end of the day Tuesday.

12 We have had co-mediators in this case. Okay? And, you  
13 know, I identified very sophisticated human beings for that  
14 role. Okay? And in fact, there ended up being settlements  
15 that flowed out of the co-mediator process.

16 We're now 15 months into the case. There are major,  
17 significant compromises now: HarbourVest, UBS, Acis, Terry,  
18 and Redeemer Committee. I hate to use a worn-out metaphor,  
19 but the train is leaving the station. We've got confirmation.  
20 I've pushed out two weeks. I mean, you all are either going  
21 to get there in the next few days or we're just going to go  
22 forward with I think what everyone, you know, would rather be  
23 a pot plan, but if we can't get there, we're just going to  
24 have to consider the plan that's on the table now. Okay?

25 You know, the Committee, again, they're sophisticated.

1 They can compare apples to oranges and decide whether the plan  
2 on the table, with its risks of future litigation and  
3 recoveries, whether it's better or worse than whatever  
4 consideration you're offering, Mr. Dondero.

5 And you know, as we all know, there is distrust here,  
6 there, and everywhere among these parties. So I can totally  
7 understand them, you know, taking a hard line: We either get  
8 all cash or we're just not going to mess with it. We don't  
9 want to risk broken promises. We'd rather just do litigation.

10 So, anyway, that's as much as I'm going to say except I am  
11 going to further direct good-faith negotiations. It sounds  
12 like to me a written term sheet might be the appropriate next  
13 step, given where I've heard things are at the moment. But,  
14 you know, I guess we don't have any hearings between now and  
15 the 26th, right? No Highland hearings that I can think of  
16 between now and the 26th.

17 MR. POMERANTZ: I don't think so.

18 MR. MORRIS: I think that's correct, Your Honor.

19 THE COURT: So you have all this time --

20 MR. MORRIS: At the moment.

21 THE COURT: You have all this time to negotiate and  
22 simultaneously get ready for the confirmation hearing without  
23 any other battles. So I know you will use the time well.

24 All right. We're adjourned.

25 THE CLERK: All rise.

1 MR. BONDS: Thank you, Your Honor.

2 (Proceedings concluded at 2:04 p.m.)

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CERTIFICATE

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

23

**/s/ Kathy Rehling**

**01/16/2021**

24

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

\_\_\_\_\_  
Date

25

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLEE RECORD  
VOLUME 10**



**APPELLEE’S AMENDED SUPPLEMENTAL  
 DESIGNATION OF RECORD ON APPEAL**

Appellee Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its amended supplemental designation of the record in the appeal filed by The Dugaboy Investment Trust and Get Good Trust (together, the “Appellants”) from the *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788] entered by the United States Bankruptcy Court for the Northern District of Texas on January 21, 2021 in the above-captioned chapter 11 bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

**I. Supplemental Items Designated from the Docket in the Bankruptcy Case**

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellants:

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol. 10 002202	April 8, 2020	Proof of Claim No. 143	HarbourVest 2017 Global Fund L.P. Claim No. 143
002211	April 8, 2020	Proof of Claim No. 147	HarbourVest 2017 Global AIF L.P. Claim No. 147
002220	April 8, 2020	Proof of Claim No. 149	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149
002229	April 8, 2020	Proof of Claim No. 150	HarbourVest Dover Street IX Investment L.P. Claim No. 150
002238	April 8, 2020	Proof of Claim No. 153	HV International VIII Secondary L.P. Claim No. 153
002247	April 8, 2020	Proof of Claim No. 154	HarbourVest Skew Base AIF L.P. Claim No. 154

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol 10 002256	July 30, 2020	906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
002279 thru Vol. 12	September 11, 2020	1057	HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
Vol. 12 002896	October 18, 2020	1208	Declaration of Michael Pugatch
002900	October 18, 2020	1207	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan
			Highland CLO Funding Portfolio Management Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
			Highland CLO Funding Subscription and Transfer Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
Vol. 13 002919	November 24, 2020	1473	Liquidation Analysis
			All exhibits necessary for impeachment and/or rebuttal purposes

**II. Docket Items from Case 18-30264-sgj11**

003097	April 13, 2018	118	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264- sgj11, (Bankr. N.D. Tex. Apr. 13, 2018))
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Vol. 13

January 31, 2019

827

Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan (*In re Acis Capital Mgmt.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019))

003150

Appellee reserves the right to designate additional items depending on the arguments made by Appellants on appeal.

*[Remainder of Page Intentionally Left Blank]*

Dated: February 25, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for Highland Capital Management, L.P.*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HarbourVest 2017 Global Fund L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>HarbourVest 2017 Global Fund L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.	<u>See summary page</u>
	Contact phone <u>2129096000</u>	Contact phone <u>6173483773</u>
	Contact email <u>eweisgerber@debevoise.com</u>	Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

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9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harbo

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
**Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>HarbourVest 2017 Global AIF L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>HarbourVest 2017 Global AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.	<u>See summary page</u>
	Contact phone <u>2129096000</u>	Contact phone <u>6173483773</u>
	Contact email <u>eweisgerber@debevoise.com</u>	Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Partners L.P. on behalf of funds and accounts under management  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
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- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*

*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

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Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

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Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Dover Street IX Investment L.P.  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	See summary page

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 2129096000 Contact phone 6173483773  
Contact email eweisgerber@debevoise.com Contact email agoren@harbourvest.com

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HV International VIII Secondary L.P.  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HV International VIII Secondary L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_ \_\_\_ \_\_\_ \_\_\_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. **Amount necessary to cure any default as of the date of the petition.** \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
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<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_

Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>		<b>Amends Claim:</b> No <b>Acquired Claim:</b> No
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex		<b>Includes Interest or Charges:</b> None
<b>Has Priority Claim:</b> No		<b>Priority Under:</b>
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No		<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HV International VIII Secondary L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118].* As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827]* and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

**Fill in this information to identify the case:**

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

**Official Form 410  
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

1. **Who is the current creditor?** HarbourVest Skew Base AIF L.P.  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>HarbourVest Skew Base AIF L.P.</u> Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY 10022, U.S.A.  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	See summary page  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
\_\_\_\_\_

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_ \_ \_ \_

---

7. How much is the claim? \$ See Annex. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

---

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
 Limit disclosing information that is entitled to privacy, such as health care information.  
  
See Annex

---

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

---

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

---

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue  New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC  One Financial Center  Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b>  <b>Annual Interest Rate:</b>  <b>Arrearage Amount:</b>  <b>Basis for Perfection:</b>  <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv <b>Company:</b> Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), Dkt. No. 118]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), Dkt. No 827] and related filings

in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

PACHULSKI STANG ZIEHL & JONES LLP  
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Ira D. Kharasch (CA Bar No. 109084) (*admitted pro hac vice*)  
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10100 Santa Monica Blvd., 13th Floor  
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Dallas, Texas 75231  
Tel: (972) 755-7100  
Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

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

\_\_\_\_\_  
In re: )  
 ) Chapter 11  
 )  
HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup> ) Case No. 19-34054-sgj11  
 )  
 )  
Debtor. )  
 )  
\_\_\_\_\_

**DEBTOR’S FIRST OMNIBUS OBJECTION TO CERTAIN  
(A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS;  
(C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-  
LIABILITY CLAIMS; AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

**\*\*\*CLAIMANTS RECEIVING THIS OBJECTION SHOULD LOCATE THEIR  
NAMES AND CLAIMS IN THE SCHEDULES ATTACHED  
TO THE PROPOSED ORDER ON THIS OBJECTION\*\*\***

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

**A COPY OF YOUR CLAIM IS AVAILABLE ONLINE AT  
[HTTP://WWW.KCCLLC.NET/HCMLP/CREDITOR/SEARCH](http://www.kccllc.net/hcmlp/creditor/search)  
OR BY EMAIL REQUEST TO [JONEILL@PSZJLAW.COM](mailto:joneill@pszjlaw.com)**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON  
SEPTEMBER 10, 2020 AT 2:30 P.M. CENTRAL TIME.**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST  
RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED  
BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH  
THE CLERK OF THE UNITED STATES BANKRUPTCY COURT  
AT 1100 COMMERCE STREET, RM. 1254, DALLAS, TEXAS  
75242-1496 BEFORE CLOSE OF BUSINESS ON SEPTEMBER 1,  
2020 WHICH IS AT LEAST THIRTY-THREE (33) DAYS FROM  
THE DATE OF SERVICE HEREOF. YOU MUST SERVE A  
COPY OF YOUR RESPONSE ON THE PERSON WHO SENT  
YOU THIS NOTICE; OTHERWISE THE COURT MAY TREAT  
THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF  
REQUESTED.**

Highland Capital Management, L.P. (the “Debtor”), by and through its undersigned counsel, hereby files this omnibus objection (the “Objection”), seeking entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), (i) disallowing certain duplicate claims listed on **Schedule 1** to the Order (the “Duplicate Claims”), (ii) reducing and allowing certain overstated claims listed on **Schedule 2** (the “Overstated Claims”) in amounts which comport with the Debtor’s books and records, (iii) disallowing certain claims that were filed after the applicable bar date listed on **Schedule 3** to the Order (the “Late-Filed Claims”), (iv) disallowing certain claims that have already been satisfied listed on **Schedule 4** to the Order (the “Satisfied Claims”), (v) disallowing certain claims for which the Debtor’s books and records show no liability listed on **Schedules 5 and 6** to the Order (the “No-Liability Claims”), and (vi) disallowing claims which contain insufficient documentation listed on **Schedule 7** to the Order (the “Insufficient-Documentation Claims,” and together with the Duplicate Claims, the

Overstated Claims, the Late-Filed Claims, the Satisfied Claims, and the No-Liability Claims, the “Disputed Claims”). In support of this Objection, the Debtor respectfully represents as follows:

### **I. JURISDICTION**

1. The Court has jurisdiction to consider and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A), (B) and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 3007-1 and 3007-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

### **II. BACKGROUND**

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s bankruptcy case to this Court [Docket No. 186].<sup>2</sup>

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<sup>2</sup> All docket numbers refer to the docket maintained by this Court.

6. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

7. On March 2, 2020, the Court entered its *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 488] (the “Bar Date Order”). The Bar Date Order fixed April 8, 2020 at 5:00 p.m. (prevailing Central Time) as the deadline for any person or entity, other than Governmental Units (as such term is defined in section 101(27) of the Bankruptcy Code), to file proofs of claim against the Debtor (the “General Bar Date”). For Governmental Units, the Bar Date Order fixed the deadline to file proofs of claim as April 13, 2020 at 5:00 p.m. (prevailing Central Time). The Bar Date Order also set April 23, 2020 as the deadline to file claims for investors in funds managed by the Debtor (the “Fund Investor Bar Date”). The Debtor also sought and obtained the extended employee bar date of May 26, 2020 per the *Order Granting Debtor's Emergency Motion and Extending Bar Date Deadline for Employees to File Claims* [Docket No. 560].

8. On March 3, 2020, the Debtor filed the *Notice of Bar Dates for Filing Claims* [Docket No. 498] (the “Bar Date Notice”). The Bar Date Notice was mailed to all known creditors and equity holders on March 5, 2020. *See* Certificate of Service [Docket No. 530].

9. The Debtor caused the Bar Date Notice to be published on two occasions each in *The New York Times* and *The Dallas Morning News*—once on March 12, 2020, and once on March 13, 2020. *See Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The New York Times* [Docket No. 533] and *Debtor's Notice of Affidavit of Publication of the Notice of Bar Dates for Filing Claims in The Dallas Morning News* [Docket No. 534].

### **The Claims Resolution Process**

10. In the ordinary course of business, the Debtor maintains books and records (the “Books and Records”) that reflect, *inter alia*, the Debtor’s liabilities and the amounts owed to its creditors.

11. The Debtor’s register of claims (the “Claims Register”), prepared and maintained by Kurtzman Carson Consultants LLC (“KCC”)—the court-appointed notice and claims agent in this case—reflects that, as of the date of this Objection, 194 proofs of claim have been filed in the Debtor’s chapter 11 case.

12. The Debtor and its professionals have been reviewing and analyzing claims. This process includes identifying categories of claims that may be targeted for disallowance and expungement, reduction, and/or reclassification.

### **III. RELIEF REQUESTED**

13. The Debtor seeks entry of an order, pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3007, (i) disallowing the Duplicate Claims listed on Schedule 1 to the Order, (ii) reducing and allowing the Overstated Claims listed on Schedule 2 to the Order in amounts which comport with the Books and Records; (iii) disallowing the Late-Filed Claims listed on Schedule 3 to the Order, (iv) disallowing the Satisfied Claims listed on Schedule 4 to the Order, (v) disallowing the No-Liability Claims listed on Schedules 5 and 6 to the Order, and (vi) disallowing the Insufficient-Documentation Claims listed on Schedule 7 to the Order.

### **IV. OBJECTIONS**

14. Section 502(a) of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). A chapter 11 debtor has the duty to object to the allowance of any

claim that is improper. 11 U.S.C. §§ 704(a)(5), 1106(a)(1), 1107(a); *see also Int'l Yacht & Tennis, Inc. v. Wasserman Tennis, Inc. (In re Int'l Yacht & Tennis, Inc.)*, 922 F.2d 659, 661-62 (11th Cir. 1991).

15. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under section 502(a) of the Bankruptcy Code. *See In re O'Connor*, 153 F.3d 258, 260 (5th Cir. 1998); *In re Texas Rangers Baseball Partners*, 10-43400 (DML), 2012 WL 4464550, at \*2 (Bankr. N.D. Tex. Sept. 25, 2012). To receive the benefit of *prima facie* validity, however, “[i]t is elemental that a proof of claim must assert facts or allegations . . . which would entitle the claimant to a recovery.” *In re Heritage Org., L.L.C.*, 04-35574 (BJH), 2006 WL 6508477, at \*8 (Bankr. N.D. Tex. Jan. 27, 2006), *aff'd sub nom., Wilferth v. Faulkner*, 3:06 CV 510 K, 2006 WL 2913456 (N.D. Tex. Oct 11, 2006). Additionally, a claimant’s proof of claim is entitled to the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) only until an objecting party refutes “at least one of the allegations that is essential to the claim’s legal sufficiency.” *In re Am. Reit, Inc.*, 07-40308, 2008 WL 1771914, at \*3 (Bankr. E.D. Tex. Apr. 15, 2008); *In re Starnes*, 231 B.R. 903, 912 (N.D. Tex. May 14, 2008). “The ultimate burden of proof always lies with the claimant.” *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006).

16. Section 502(b)(1) of the Bankruptcy Code requires disallowance of a claim if “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . .” 11 U.S.C. § 502(b)(1).

**The Disputed Claims Should Be Disallowed and Expunged or Reduced**

17. For the reasons set forth below, the Disputed Claims are not enforceable and should be disallowed, expunged, or reduced as set forth herein.

A. Duplicate Claims

18. The Debtor has identified 3 proofs of claim—listed on Schedule 1 to the Order—where each claimant filed multiple proofs of claim representing a single obligation of the Debtor. The Debtor is requesting that the listed Duplicate Claims be disallowed such that only the surviving claims listed on Schedule 1 remain, subject to any other objection the Debtor may bring in the future. Disallowing and expunging these claims will prevent the claimants from receiving multiple recoveries for a single claim.

B. Claims to be Reduced and Allowed

19. The Debtor has examined the 4 proofs of claim listed on Schedule 2 to the Order and has determined that the amounts listed on the claims exceed the liability listed for each claimant on the Debtor's Books and Records. The Debtor is requesting that the amount of each claim be reduced so that it correctly reflects the amount of the Debtor's books and records.

C. Late-Filed Claims

20. The Debtor has identified 1 proof of claim listed on Schedule 3 to the Order that was filed after the passage of the applicable Bar Date.

D. Satisfied Claims

21. The Debtor has identified 11 proofs of claim listed on Schedule 4 to the Order that, according to the Debtor's books and records, were fully satisfied in the ordinary course of business. Disallowing and expunging such claims, therefore, will prevent the claimants from obtaining double-recovery on account of their claims.

E. No-Liability Claims

22. The Debtor has identified 63 proofs of claim listed on Schedules 5 and 6 to the Order that can be characterized as "No-Liability Claims"—*i.e.*, claims that erroneously assert a

liability that is not reflected in the Debtor's books and records. Certain claims listed on Schedule 5 to the Order appear to be protective claims for claimants asserting claims related to agreements with the Debtor. No amount is asserted on these claims and, although the claimants have indicated they would supplement the claims within ninety (90) days, that time has passed and no amendment or supplement has been filed and no additional documentation has been provided to support the claims. Each claim listed on Schedule 6 to the Order erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor. The Debtor has reviewed each No-Liability Claim listed on Schedules 5 and 6 to the Order and all supporting information and documentation provided therewith, made reasonable efforts to research each No-Liability Claim, and determined that the Debtor is not liable for such No-Liability Claims. Accordingly, the Debtor requests that each No-Liability Claim be disallowed and expunged.

F. Insufficient-Documentation Claims

23. The Debtor was not able to determine the validity of the 10 claims listed on Schedule 7 to the Order because such claims were not filed with sufficient accompanying documentation and provided no explanation for the bases of the claims. Additionally, no liability for these claims appears on the Debtor's books and records. Accordingly, the Debtor requests that the Insufficient-Documentation Claims be disallowed and expunged because the claimants have failed to carry their burden to support their claims.

V. RESPONSES TO OBJECTIONS

24. To contest an objection, a claimant must file and serve a written response to this Objection (each, a "Response") so that it is received no later than **September 1, 2020 at 5:00 p.m. (Central Time)** (the "Response Deadline"). Every Response must be filed with the Office

of the Clerk of the United States Bankruptcy Court for the Northern District of Texas (Dallas Division), Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, TX 75242-1496 and served upon the following entities, so that the Response is received no later than the Response Deadline, at the following addresses:

**Pachulski Stang Ziehl & Jones LLP**  
Jeffrey N. Pomerantz  
Ira D. Kharasch  
Gregory V. Demo  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)  
[ikharasch@pszjlaw.com](mailto:ikharasch@pszjlaw.com)  
[gdemo@pszjlaw.com](mailto:gdemo@pszjlaw.com)  
[joneill@pszjlaw.com](mailto:joneill@pszjlaw.com)

-and-

**Hayward & Associates PLLC**  
Melissa S. Hayward  
Zachery Z. Annable  
10501 N. Central Expy, Ste. 106  
Dallas, TX 75231  
[mhayward@haywardfirm.com](mailto:mhayward@haywardfirm.com)  
[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)

25. Every Response to this Objection must contain, at a minimum, the following information:

- i. a caption setting forth the name of the Court, the name of the Debtor, the case number, and the title of the objection to which the Response is directed;
- ii. the name of the claimant, his/her/its claim number, and a description of the basis for the amount of the claim;
- iii. the specific factual basis and supporting legal argument upon which the party will rely in opposing this Objection;
- iv. any supporting documentation (to the extent it was not included with the proof of claim previously filed with the clerk of the Court or KCC) upon which the party will rely to support the basis for and amounts asserted in the proof of claim; and

- v. the name, address, telephone number, email address, and fax number of the person(s) (which may be the claimant or the claimant's legal representative) with whom counsel for the Debtor should communicate with respect to the claim or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the disputed claim on behalf of the claimant.

26. If a claimant fails to file and serve a timely Response by the Response Deadline, the Debtor will present to the Court an appropriate order disallowing such claimant's claim, as set forth in **Exhibit A**, without further notice to the claimant.

#### **VI. REPLIES TO RESPONSES**

27. Consistent with Local Rules, the Debtor may, at its option, file and serve a reply to a Response by no later than 5:00 p.m. (prevailing Central Time) three (3) days prior to the hearing to consider the Objection.

#### **VII. SEPARATE CONTESTED MATTERS**

28. To the extent that a Response is filed regarding any claim listed in this Objection and the Debtor is unable to resolve the Response, the objection by the Debtor to each such claim asserted herein shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in the Objection shall be deemed a separate order with respect to each claim.

#### **VIII. RESERVATION OF RIGHTS**

29. The Debtor hereby reserves the right to object in the future to any of the claims that are the subject of this Objection on any ground, including, but not limited to, 11 U.S.C. § 502(d), and to amend, modify, and/or supplement this Objection, including, without limitation, to object to amended or newly filed claims.

30. Notwithstanding anything contained in this Objection or the attached exhibits, nothing herein shall be construed as a waiver of any rights that the Debtor may have to exercise rights of setoff against the holders of such claims.

**IX. NOTICE**

31. Notice of this Objection shall be provided to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) each of the claimants whose claim is subject to this Objection; and (iii) all entities requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is required.

**X. COMPLIANCE WITH LOCAL RULES**

32. This Objection includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Objection. The Debtor objects to no more than 100 proofs of claim herein. The Debtor has served notice of this Objection on those persons whose names appear in the signature blocks on the proofs of claim and in accordance with Bankruptcy Rule 7004. Moreover, the Debtor has notified claimants that a copy of their claim may be obtained from the Debtor upon request. Accordingly, the Debtor submits that this Objection satisfies Local Rule 3007-2.

WHEREFORE, the Debtor respectfully requests the entry of the proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested and granting such other and further relief as the Court deems just and proper.

*[Remainder of Page Intentionally Blank]*

Dated: July 30, 2020

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No.143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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-and-

**HAYWARD & ASSOCIATES PLLC**

*/s/ Zachery Z. Annable*

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Fax: (972) 755-7110

*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT A**  
**(Proposed Order)**



parties-in-interest. Accordingly, the Court finds and concludes that there is good and sufficient cause to grant the relief set forth in this Order. It is therefore **ORDERED THAT:**

1. The Objection is **SUSTAINED** as set forth herein.
2. Each of the claims listed as a Duplicative Claim on **Schedule 1** hereto is disallowed and expunged in its entirety.
3. Each of the claims listed as an Overstated Claim on **Schedule 2** hereto is reduced and allowed in the amount as stated on Schedule 2.
4. The claim listed as a Late-Filed Claim on **Schedule 3** hereto is disallowed and expunged in its entirety.
5. Each of the claims listed as a Satisfied Claim on **Schedule 4** hereto is disallowed and expunged in its entirety.
6. Each of the claims listed as a No-Liability Claim on **Schedule 5** and **Schedule 6** hereto is disallowed and expunged in its entirety.
7. Each of the claims listed as an Insufficient-Documentation Claim on **Schedule 7** hereto is disallowed and expunged in its entirety.
8. The official claims register in the Debtor's chapter 11 case shall be modified in accordance with this Order.
9. The Debtor's rights to amend, modify, or supplement the Objection, to file additional objections to the Disputed Claims and any other claims (filed or not) which may be asserted against the Debtor, and to seek further reduction of any claim to the extent such claim has been paid, are preserved. Additionally, should one or more of the grounds of objection stated in the Objection be overruled, the Debtor's rights to object on other stated grounds or any other grounds that the Debtor may discover are further preserved.
10. Each claim and the objections by the Debtor to such claim, as addressed in the Objection and set forth on **Schedule 1** through **Schedule 7** attached hereto, shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. This Order shall be deemed a separate Order with respect to each claim. Any stay of this Order pending appeal by any claimant whose claims are subject to this Order shall only apply to the contested matter which involves such claimant and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters listed in the Objection or this Order.

11. The Debtor is authorized and empowered to take any action necessary to implement and effectuate the terms of this Order.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

**###END OF ORDER###**

*Highland Capital Management, L.P.*  
*Case No. 19-34054-sgj11*  
*Schedule 1 - Duplicate Claims*

Sequence No.	Claimant's Name	Claim No. to be Disallowed	Date Filed	Claim Amount	Surviving Claim No.	Objection Page No. Reference
1	Daniel Sheehan and Associates, PLLC	40	3/10/2020	\$ 32,433.75	Claim 47	7
2	Dun & Bradstreet	18	12/27/2019	\$ 5,746.40	Claim 25	7
3	Eastern Point Trust Company, Inc.	21	12/23/2019	\$ 34,875.91	Claim 52	7

002272

Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 2 - Overstated Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Proposed Amount	Objection Page No. Reference
1	Collin County Tax Assessor/Collector	34	2/24/2020	\$ 524,24	Claim #34 includes an estimated fee of \$300.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 224,24	7
2	Collin County Tax Assessor/Collector	35	2/24/2020	\$ 2,391.91	Claim #34 includes an estimated fee of \$400.00 for year 2020 property tax. In the ordinary course, the property tax for year 2020 would be due and payable in the calendar year 2021.	\$ 1,991.91	7
3	Dallas County	6	11/6/2019	\$ 62,694.94	Claim #6 includes tax statements for Highland Capital (5 Center Ave, Little Falls, NJ 07242). The Debtor is not affiliated with that party.	\$ 60,592.37	7
4	Opus 2 International Inc	10	11/21/2019	\$ 51,156.88	Claim #10 includes \$11,943 of interest charges. Interest charges are not defined in The Amendment To Opus 2 Internationals Work Order signed on 9/19/2013 between an employee of the Debtor and Opus 2 International, Inc.	\$ 39,214.00	7

002273

**Highland Capital Management, L.P.**  
**Case No. 19-34054-sgj11**  
**Schedule 3 - Late Filed Claims**

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Parmentier, Andrew	181	5/13/2020	\$ 150,000.00	Claim #181 was filed past the April 8, 2020 bar date.	7

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Highland Capital Management, L.P.  
 Case No. 19-34054-sgj11  
 Schedule 4 - Satisfied Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	4CAST Inc	12	11/26/2019	\$ 16,500.00	Paid via wire on 2/14/2020	7
2	Advent Software Inc	29	12/30/2019	\$ 8,378.68	Paid via wire on 3/20/2020	7
3	ConvergeOne, Inc.	61	03/24/2020	\$ 23,518.15	Paid via wire on 5/19/2020	7
4	Denton County	Scheduled	12/13/2019	\$ 557.14	Paid online on 2/5/2020	7
5	Internal Revenue Service	179	04/27/2020	\$ 10,386.87	IRS assessed a late tax deposit penalty for the claim amount; Payroll provider Paylocity informed Debtor the penalty was removed.	7
6	Kaufman County	9	11/06/2019	\$ 12,081.17	Paid online on 2/4/2020	7
7	Maples and Calder	Scheduled	12/13/2019	\$ 25,800.11	Paid via wire on 5/29/2020	7
8	McLagen Partners, Inc.	74	04/06/2020	\$ 16,400.00	Paid via wire on 4/22/2020	7
9	Microsoft Corporation and Microsoft Licensing GP, a Subsidiary of Microsoft Corporation	76	04/03/2020	\$ 7,436.56	Paid by NexBank via check	7
10	Moody's Analytics, Inc.	91	04/08/2020	\$ 5,728.05	Paid on 6/8/20 - Reference # 1259769	7
11	Quintairos, Prieto Wood & Boyer	Scheduled	12/13/2019	\$ 8,608.17	Paid via wire on 5/13/2020	7

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Highland Capital Management, L.P.  
 Case No. 19-34054-sgjl1  
 Schedule 5 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Advisors Equity Group, LLC	111	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
2	Eagle Equity Advisors, LLC	110	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
3	HCRE Partner, LLC	146	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
4	Highland Capital Management Fund Advisors,	95	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
5	Highland Capital Management Fund Advisors,	119	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
6	Highland Capital Management Services, Inc.	175	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
7	Highland Capital Management Services, Inc.	176	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
8	Highland Energy MLP Fund	102	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
9	Highland Fixed Income Fund	109	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
10	Highland Floating Rate Fund	125	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
11	Highland Funds I	106	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
12	Highland Funds II	114	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
13	Highland Global Allocation Fund	98	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
14	Highland Healthcare Opportunities Fund	116	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
15	Highland iBoxx Senior Loan ETF	122	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
16	Highland Income Fund HFRO	105	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
17	Highland Long/Short Equity Fund	112	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
18	Highland Merger Arbitrage Fund	132	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
19	Highland Opportunistic Credit Fund	100	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
20	Highland Small-Cap Equity Fund	127	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
21	Highland Socially Responsible Equity Fund	115	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
22	Highland Tax-Exempt Fund	101	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
23	Highland Total Return Fund	126	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
24	NexBank SSB	178	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
25	NexPoint Advisors, L.P.	104	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
26	NexPoint Advisors, L.P.	108	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
27	NexPoint Capital, Inc.	107	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
28	NexPoint Capital, Inc.	140	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
29	NexPoint Discount Strategies Fund	117	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
30	NexPoint Energy and Material Opportunities	124	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
31	NexPoint Event-Driven Fund	123	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
32	NexPoint Healthcare Opportunities Fund	121	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
33	NexPoint Latin America Opportunities Fund	130	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
34	NexPoint Real Estate Strategies Fund	118	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
35	NexPoint Strategic Opportunities Fund	103	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
36	The Dugaboy Investment Trust	131	04/08/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8
37	The Dugaboy Investment Trust	177	04/23/20	Unliquidated	No liability on the Debtor's books and records; no amount is asserted with respect to this claim	7/8

Highland Capital Management, L.P.  
Case No. 19-34054-sgj11  
Schedule 6 - No Liability Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Callan, Bentley	157	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim is for a stock appreciation unit related to a Non-Debtor party	7/8
2	City of Garland	19	12/16/2019	\$ 254,58	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
3	Clay Callan	162	04/08/2020	\$ 55,125.60	No liability on the Debtor's books and records	7/8
4	Eastern Point Trust Company, Inc.	52	03/18/2020	\$ 34,875.91	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
5	Garland Independent School District	20	12/16/2019	\$ 459.81	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
6	Grayson County	3	11/06/2019	\$ 1,882.01	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
7	HarbourVest 2017 Global Fund L.P.	143	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
8	HarbourVest 2017 Global AIF L.P.	147	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
9	HarbourVest Partners L.P. on behalf of funds and accounts under management	149	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
10	HarbourVest Dover Street IX Investment L.P.	150	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
11	HarbourVest Skew Base AIF L.P.	154	04/08/2020	Unliquidated	No liability on the Debtor's books and records	7/8
12	Hartman Wanzor LLP	42	03/10/2020	\$ 701.25	No liability on the Debtor's books and records; claim appears to be filed against Non-Debtor estate	7/8
13	Irving, ISD	5	11/06/2019	\$ 827.96	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
14	John Morris	60	03/23/2020	\$ 500,000.00	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
15	John R. Watkins	89	04/07/2020	\$ 322,701.12	No liability on the Debtor's books and records; Never an employee of the Debtor and not an obligation of the Debtor	7/8
16	Linear Technologies, Inc.	4	11/06/2019	\$ 489.94	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
17	Mass. Dept. of Revenue	45	03/13/2020	\$ 1,352.46	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
18	Mediant Communications Inc.	15	12/02/2019	\$ 1,755.57	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
19	Oklahoma Tax Commission	28	02/03/2020	\$ 2,706.93	No liability on the Debtor's books and records; claim appears to be filed against Debtor affiliate, but not a Debtor obligation	7/8
20	Park, Jun	73	04/06/2020	\$ 32,676.61	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
21	Paul N. Adkins	65	03/30/2020	\$ 23,957.95	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
22	Paul N. Adkins	66	03/31/2020	\$ 249,230.48	No liability on the Debtor's books and records; claimant is an employee of a subsidiary of the Debtor	7/8
23	Tarrant County	2	11/06/2019	\$ 8,267.52	No liability on the Debtor's books and records; claim is filed against an entity with a similar name to Debtor, but not a Debtor party	7/8
24	Theodore N. Dameris	85	04/07/2020	Unliquidated	No liability on the Debtor's books and records; claimant does not list an proceeding that they are named as a deponent, witness, party, or any other type of participant in a proceeding.	7/8
25	Theodore N. Dameris	174	04/08/2020	Unliquidated	No liability on the Debtor's books and records; claim related to pension and should be asserted against pension, not the Debtor	7/8
26	Zang, Weijun	170	04/09/2020	\$ 25,000.00	No liability on the Debtor's books and records; individual not employed at time of bonus payout and not entitled to receive bonus	7/8

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*Highland Capital Management, L.P.*  
Case No. 19-34054-sgj11  
Schedule 7 - Insufficient Documentation Claims

Sequence No.	Claimant's Name	Claim No.	Date Filed	Claim Amount	Notes	Objection Page No. Reference
1	Anish Tailor	56	03/20/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
2	Boyce-Field, Mollie	43	03/12/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
3	Charles Byrne	44	03/13/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
4	Donald Salvino	41	03/10/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
5	Garcia, Ericka	71	04/03/2020	\$ 2,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
6	Garman Turner Gordon	161	04/08/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
7	Joe Kingsley	171	04/10/2020	BLANK	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
8	Mason, Frederic	63	03/25/2020	Unliquidated	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
9	TDA Associates, Inc.	55	03/20/2020	\$ 7,000.00	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8
10	Wilkinson Center	54	03/20/2020	\$ -	No supporting documentation or explanation of the basis of the claim was provided. No liability for this claimant on the Debtor's books and records.	8

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

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	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	:
	:
	:
-----	X

**HARBOURVEST RESPONSE TO DEBTOR’S FIRST OMNIBUS OBJECTION TO  
CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS; (C) LATE-FILED  
CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS; AND  
(F) INSUFFICIENT-DOCUMENTATION CLAIMS**

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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) file this Response (the “**Response**”) to the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**”), filed by Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”), and respectfully state as follows:

### Overview

1. HarbourVest’s claims against Highland arise out of its November 15, 2017 investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s actions preceding and following the Investment caused serious injury to HarbourVest, leading to damages well in excess of \$100 million. On April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”).

2. After HarbourVest filed its Proofs of Claim, Highland filed the Claim Objection—an omnibus objection to 92 claims. Despite being a bare-bones, omnibus objection, the Claim Objection ostensibly contains substantive (though paper-thin) objections to dozens of claims, including HarbourVest’s, tucked in among procedural and technical objections to other claims.

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not objected to by Highland, but is included herein out of an abundance of caution.

3. The Claim Objection states that “each claim listed on Schedule 6 to the Order [including the HarbourVest Claims] erroneously asserts a claim against the Debtor which has no basis in the Books and Records and is not an obligation of the Debtor.” Claim Obj. ¶ 22.<sup>2</sup> Schedule 6 further lists the HarbourVest Claims as purportedly having “[n]o liability on the Debtor’s books and records.” Claim Obj. Sched. 6. That is the entirety of Highland’s objection with respect to the HarbourVest Claims. Highland makes no attempt to rebut *any* of the factual or legal bases of the well-founded HarbourVest Claims, and indeed filed the Claim Objection before even meaningfully engaging with HarbourVest regarding the HarbourVest Claims.<sup>3</sup>

4. In addition to being deficient on its face and procedurally improper, the Claim Objection is simply inaccurate. As described below, the HarbourVest Claims are indeed obligations of Highland, and Highland is well aware of the factual bases for them—namely, the misrepresentations, omissions, and other misconduct of Highland both prior to and during HarbourVest’s Investment. Highland’s failure to book a liability associated with the damages its fraud and misconduct caused is no defense to the liability itself.

5. The Claim Objection does not rebut HarbourVest’s *prima facie* case for its Claims and fails on its face. For the avoidance of doubt, however, this Response provides additional details regarding the HarbourVest Claims<sup>4</sup>—details of which Highland is well aware, clearly establishing HarbourVest’s right to significant damages from Highland’s misconduct and fraudulent inducement of HarbourVest’s Investment in a fund that has merely served as a pawn

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<sup>2</sup> All citations herein to “A\_\_” refer to Appendix A, filed concurrently herewith. Due to their length, certain documents contained in the Appendix have been provided in excerpted form only. Full copies are available upon request.

<sup>3</sup> To the extent that Highland raises any substantive objections in a reply to this Response, HarbourVest expressly reserves its rights to move to strike and/or submit additional briefing as appropriate.

<sup>4</sup> HarbourVest is supplementing its Proofs of Claim with these additional details.

in Highland's feud with a former employee (who Highland also defrauded). The Claim Objection should be overruled, and the HarbourVest Claims should be allowed.

### **Factual Background**

6. The events giving rise to HarbourVest's claims begin in June 2016, when Highland terminated the employment of Joshua Terry ("**Terry**"), the employee who managed Highland's CLO business and served as CLO manager for Acis Capital Management L.P. ("**Acis LP**").<sup>5</sup> Litigation ensued between Terry and Highland in or around September 2016, with Terry claiming his termination was unlawful. 4/13/2018 Involuntary Ruling at 4.

7. Around that time, on October 7, 2016, Acis LP sold Highland a participation interest in its expected future cash flow in CLO Collateral Management Agreements for \$666,655 plus a \$12,666,446 note payable from Highland to Acis LP (the "**Highland Note**"). *Id.* at 17. On May 31, 2017, a \$3,370,694 payment was made on the Highland Note. *Id.*

8. By summer 2017, HarbourVest was engaged in preliminary discussions with Highland regarding the Investment. On September 8, 2017, Highland sent HarbourVest a draft term sheet, which identified the target fund as "Acis Loan Funding, Ltd." and the fund's portfolio manager as Acis LP. As described below, during the course of negotiations, Highland unilaterally changed the name of the target fund (referred to herein as HCLOF) from "Acis Loan Funding, Ltd." to "Highland CLO Funding, Ltd." and swapped out Acis LP for Highland HCF Advisor, Ltd. ("**Highland HCF**") as portfolio manager, under false pretenses.

9. On October 20, 2017, Terry won an arbitration award of \$7,949,749.15 plus post-award interest against Acis (the "**Arbitration Award**"). 4/13/2018 Involuntary Ruling, at 4.

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<sup>5</sup> Findings of Fact & Conclusions of L. in Supp. of Ord. for Relief Issued After Trial on Contested Involuntary Bankr. Pets. at 3-4, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. Apr. 13, 2018), ECF No. 118 (hereinafter the "4/13/2018 Involuntary Ruling").

HarbourVest did not become aware of many of the facts described herein until long after their occurrence. HarbourVest's investigation of its claims and the surrounding factual circumstances is continuing.

Shortly thereafter, Highland orchestrated several transfers (the “**Transfers**”) that siphoned assets away from Acis.

10. On October 24, 2017, HCLOF acquired HCLOF shares owned by Acis LP for \$991,180.13. *Id.* at 17–18. As this Court previously described: “[n]o credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was ‘toxic’ in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.” *Id.* at 18.

11. Thereafter, on October 27, 2017, Acis’s portfolio management rights for HCLOF were transferred to Highland HCF. *Id.* at 19. Highland HCF entered into a Portfolio Management Agreement with HCLOF that superseded and replaced the HCLOF portfolio management agreements with Acis. *Id.* at 19. On November 3, 2017, Acis LP transferred its interest in the Highland Note to Highland CLO Management, Ltd. *Id.* at 19–20. The balance owing on the Note was over \$9 million, but Acis received no consideration for the transfer. 1/31/2019 Confirmation Ruling, at 20–21, n.37.

12. During diligence and negotiations preceding HarbourVest’s Investment, Highland hid from HarbourVest its effort to strip Acis of assets. When Highland changed HCLOF’s portfolio manager from an Acis-branded entity to a Highland-branded entity, in addition to other structural changes, Highland stated that its reason for doing so was “reputational harm” to Acis LP from the Terry Arbitration Award.

13. Further concealing its true motive—denuding Acis of value—Highland informed HarbourVest that, in lieu of redemptions, resetting the CLOs was necessary and that it would be easier to reset under the “Highland” CLO brand than the Acis CLO brand. Through November

2017, Highland continued its misrepresentations and omissions regarding the Arbitration Award and structural changes to the HCLOF investment to conceal the true purpose of these maneuvers and their implications for the Investment. In reliance on these misrepresentations, HarbourVest finalized the Investment on November 15, 2017.

14. Highland’s misrepresentations continued after the initial Investment was made. On November 27, 2017, in an email to HarbourVest attaching a Wall Street Journal article regarding the Terry Arbitration Award, Highland again assuaged HarbourVest’s concerns regarding the dispute with Terry, claiming it “has no impact on our investment activities.”

15. On December 18, 2017, a final judgment confirming the Terry Arbitration Award was entered in state court. 4/13/2018 Involuntary Ruling, at 4. On the same day, Mark Okada (a Highland founder) and Dugaboy Investment Trust (a family trust of Highland founder Jim Dondero) conveyed their limited partnership interests in Acis LP, 25% and 74.9%, respectively, to Neutra, Ltd. (“**Neutra**”), a company controlled by Highland.<sup>6</sup>

16. On December 19, 2017, Acis LP and Highland CLO Holdings Ltd. (“**Highland Holdings**”) entered into 2017-7 Assignment and Transfer Agreement, which transferred to Highland Holdings all of Acis LP’s interest in the Master Sub-Advisory Agreement and Staff and Services Agreement to manage Acis CLO 2017-7’s portfolio to Highland Holdings. 4/13/2018 Involuntary Ruling, at 21. The agreement also transferred to Highland Holdings all of Acis LP’s indirect equity interests in Acis CLO Management, allegedly for forgiveness of \$2.8 million owed by Acis LP to Highland under the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. *Id.*

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<sup>6</sup> Bench Ruling & Mem. Of L. in Supp. of: (A) Final Approval of Disclosure Statement; & (B) Confirmation of Ch. 11 Tr.’s Third Am. Joint Plan at 16, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019), ECF No. 827 (hereinafter “1/31/2019 Confirmation Ruling”); 4/13/2018 Involuntary Ruling at 22.

17. On January 24, 2018, after Mr. Terry became aware of the Transfers involving Acis LP and HCLOF, he requested a temporary restraining order from the Texas state court that confirmed his arbitration award. Plaintiff’s Application for TRO, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A156. The state court ordered, with the agreement of Acis, that no CLO management contracts or money would be transferred away from Acis for a period of time. Transcript of Hearing held on January 24, 2018 at 42-43, *Terry v. Acis Capital Mgmt, L.P.*, No. 17-15244 (Dist. Ct. Tex. Jan. 24, 2018), A225–26.

18. On January 30, 2018, Terry filed involuntary bankruptcy petitions (together, the “**Acis Bankruptcy**”) against Acis LP and its general partner, Acis Capital Management G.P. LLC (“**Acis GP**”), stating that the ongoing transfers and restructuring efforts were part of an “orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value.” 4/13/2018 Involuntary Ruling, at 23. On April 13, 2018, this Court issued a ruling in the Acis Bankruptcy concluding that the involuntary bankruptcy case was appropriately filed and that a “chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP” *Id.*, at 53. On May 14, 2018, Robin Phelan was appointed as trustee (the “**Acis Trustee**”) to oversee the Acis Bankruptcy.<sup>7</sup>

19. Finally called to account for the Transfers, Highland again defaulted to its *modus operandi*: deception. Highland made numerous fraudulent statements, including to this Court, accusing HarbourVest of causing the Transfers that denuded Acis LP, including the following:

- **Prior to the appointment of the Acis Trustee, Highland-controlled Acis falsely claimed that HarbourVest invested in HCLOF only on the condition that Acis would not have anything to do with the CLOs going forward, and that HarbourVest would demand its money back if a reset transaction was done with Acis:**

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<sup>7</sup> Chapter 11 Notice of Appointment of Tr. and of Amount of Bond, *In re Acis Capital Mgmt.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. May 14, 2018), ECF No. 213, A230.

- “In May 2017, a private equity firm expressed an interest in making a \$150 million investment in [HCLOF]. [HCLOF] was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by [HarbourVest] in making its investment was that [HCLOF] would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. [HCLOF] issued this instruction requested by [HarbourVest] on October 6, 2017 (two weeks *prior* to the arbitration award).”<sup>8</sup>
- **Highland witnesses claimed that HarbourVest said, with absolute certainty, that it had no interest in doing business with Acis because the Acis brand was toxic, including:**
  - Highland General Counsel Scott Ellington testified that HarbourVest had communicated to Highland that the Acis brand was “so toxic that it’s impossible to sell the bonds with Acis as the manager,” that “nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO” and that they said “categorically, with absolute certainty, if there’s any relation to Acis, the Acis brand, the Acis structure, we have no interest in doing business with you at all.”<sup>9</sup>
  - Mr. Ellington further testified that HarbourVest had “demanded” that Highland “call the deal and terminate the [collateral management agreements] or transfer the [collateral management agreements]” and that “their only directive was call and get rid of Acis or get rid of Acis or we’re not doing the deal through a reset.”<sup>10</sup>
  - Highland CEO Jim Dondero claimed that the “Boston investor” deal was “all dependent upon getting as far away from Acis as possible and a new collateral manager.”<sup>11</sup>
- **Highland witnesses claimed that HarbourVest had the ability to control and dictate the terms of any reset transactions, including:**

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<sup>8</sup> Joint Obj. of Alleged Debtors to Emergency Mot. of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(F), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C. § 363 at ¶ 31, *In re Acis Capital Mgmt, L.P.* No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 5, 2018), ECF No. 16 (emphasis in original), A247.

<sup>9</sup> Transcript of Hearing held on February 7, 2018, at 55–57, No. 18-30264-sgj11 (Bankr. N.D. Tex. Feb. 12, 2018), ECF No. 28 (hereinafter “2/7/2018 Acis Bankruptcy Transcript”) (Testimony of Highland General Counsel Scott Ellington), A271–73.

<sup>10</sup> 2/7/2018 Acis Bankruptcy Transcript at 202–04, A276–78.

<sup>11</sup> Transcript of Hearing held on March 23, 2018 at 143–44, No. 18-30264-sgj11 (Bankr. N.D. Tex. Mar. 27, 2018), ECF No. 99 (Testimony of Highland CEO Jim Dondero), A288–89; *see also* 1/31/2019 Confirmation Ruling at 27, n. 56.

- Mr. Ellington testified that because HarbourVest “would be putting in additional capital in connection with any reset CLOs, it had the ability to ‘start calling the shots’ and dictate the terms of any reset transactions.” 2/7/2018 Acis Bankruptcy Transcript at 226, A281.

20. These and other statements led the Acis Trustee to investigate HarbourVest as the alleged perpetrator of the Transfers. Ultimately, the Acis Trustee served HarbourVest with broad Rule 2004 discovery requests seeking extensive information related to the Investment and a deposition of a corporate representative. HarbourVest complied with the Acis Trustee’s requests, producing significant documentation and sitting for a deposition in the Acis Bankruptcy.

21. The HarbourVest investigation was not the only expensive sideshow that Highland’s litigious behavior caused in the Acis Bankruptcy. At each step of the case, Highland and a veritable parade of its affiliates (Neutra, HCLOF, Highland HCF, CLO Holdco) filed objections and motions impeding the orderly progress of Acis’s chapter 11 proceedings. To make matters worse, HarbourVest was effectively forced to foot the bill: many of the legal fees incurred by Highland and its affiliates were funded from the coffers of HCLOF, depleting the value of HarbourVest’s Investment.

22. Despite Highland’s assurance that the Terry Arbitration Award and related restructuring efforts would have no impact on Highland’s investment activities or HarbourVest’s Investment, Highland’s misconduct and fraudulent Transfers necessitated a variety of injunctions that significantly impaired both the ability of HCLOF to operate as expected and the value of HarbourVest’s investment. The below timeline details some of the constraints on HCLOF caused by Highland’s misconduct and the additional litigation generated by it:

- a. On April 30, 2018, HCLOF sent five notices requesting optional redemption, ordering a liquidation of the CLOs.<sup>12</sup>
- b. On May 22, 2018, the Acis Trustee warned that HCLOF's attempted optional redemption notices violated the automatic stay.<sup>13</sup>
- c. On May 30, 2018, Highland and HCLOF initiated adversary proceedings alleging that the Acis Trustee breached the applicable portfolio management agreements by failing to effectuate optional redemptions pursuant to the notices.<sup>14</sup>
- d. On May 31, 2018, this Court issued a *sue sponte* temporary restraining order in the Acis Bankruptcy preventing any action in furtherance of the optional redemptions or other liquidation of the Acis CLOs.<sup>15</sup>
- e. On June 14, 2018, HCLOF withdrew the optional redemption notices.<sup>16</sup>
- f. On June 15, 2018, the TRO expired and HCLOF gave notice to the Acis Trustee that it was requesting an optional redemption. *Id.* at 3-4. However, the request was ultimately withdrawn on July 6, 2018.<sup>17</sup>
- g. On June 21, 2018, the Acis Trustee filed an adversary proceeding against Highland seeking an injunction preventing Highland/HCLOF from taking steps towards a redemption.<sup>18</sup>
- h. On July 10, 2018, this Court issued an injunction preventing optional redemptions while the Acis Trustee attempted to confirm a plan or otherwise resolve the Acis Bankruptcy.<sup>19</sup>
- i. On August 30, 2018, this Court denied confirmation of the First Amended Joint Plan for the Debtors and ruled that the preliminary injunction must stay in place.

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<sup>12</sup> Verified Original Compl. & Application for TRO & Prelim. Inj. at 14, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. June 21, 2018) (hereinafter "Acis Trustee Complaint"), A304.

<sup>13</sup> *Id.* at 14, 33.

<sup>14</sup> *Highland Capital Mgmt, L.P. v. Phelan*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex.).

<sup>15</sup> Status Conference, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. May 31, 2018) ("Court issued Section 105 extraordinary TRO"); see also Temporary Restraining Order, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11, (Bankr. N.D. Tex. June 6, 2018), ECF No. 256, A330.

<sup>16</sup> Acis Trustee Complaint at 3, A293.

<sup>17</sup> Highland CLO Funding, Ltd.'s Mot. to Dissolve Prelim. Inj. & Lift Automatic Stay at 5, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. Oct. 11, 2018), A344.

<sup>18</sup> *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex.).

<sup>19</sup> Prelim. Inj. Order at 10, *Phelan v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03212-sgj (Bankr. N.D. Tex. July 10, 2018), ECF No. 21, A376.

- j. On March 20, 2019, following confirmation, HCLOF sent a letter to Acis LP stating that it is “neither interested in pursuing, nor able to pursue, a reset transaction.”<sup>20</sup>

Highland’s fraudulent scheme resulted in severe constraints on the HCLOF investment, including on its ability to redeem, refinance or reset the applicable CLOs, which is and was a critical element of maintaining and growing the value of the Investment. Rather than attempt to mitigate losses, Highland doubled down, further entrenching itself in its litigation positions.

23. Highland concealed its Transfer scheme from HarbourVest before the Investment through a series of fraudulent actions, omissions, and misrepresentations, concealing the truth to lock HarbourVest into a long-term, illiquid investment that was—as a result of Highland’s improper behavior—destined to fail. Had HarbourVest been properly informed of the full extent of behind-the-scenes transfers occurring involving Acis and HCLOF, and the true reasons they were made, it would never have made the Investment, and therefore would have avoided the severe price of being tangled up in Highland’s web.

24. One need look no farther than the rulings and filings in the Acis Bankruptcy to reach the conclusion that Highland’s behavior was improper, illegal, and indeed, fraudulent:

- April 13, 2018: The Court ruled that Joshua Terry filed involuntary bankruptcy petitions against Acis LP and Acis GP due to a good faith belief that these transfers were part of an “*orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value.*” 4/13/2018 Involuntary Ruling, at 23.
- July 2, 2018: The Acis Trustee filed counterclaims against Highland, HCLOF, Highland HCF, Highland CLO Management, Ltd., and Highland Holdings *alleging they orchestrated a systematic transfer of value away from Acis to other Highland entities* after Terry’s termination in 2016 through the period when the Terry Arbitration Award was issued to make Acis judgment-proof.<sup>21</sup>

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<sup>20</sup> Letter from M Maloney, King & Spalding LLP, to B. Shaw, Rogge Dunn Group (Mar. 20, 2019), A383.

<sup>21</sup> Def.’s Answer, Affirmative Defenses, Counterclaims, & Third Party Claims at 17-18, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. July 2, 2018), ECF No. 23, A403–04.

- Aug. 30, 2018: Judge Jernigan ruled that preliminary injunction must stay in place because the “*evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value.*” 8/30/2018 Plan Ruling at 6.
- January 31, 2019: This Court confirmed Acis’s Third Amended Plan and concluded that: “The record contains substantial evidence of both *intentional and constructive fraudulent transfers* with regard to the Equity/ALF PMA and other assets. The *numerous prepetition transfers* that occurred around the time of and after the Terry Arbitration Award *appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors’ creditors.* Highland’s only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis’s brand was toxic in the market place. However, *these business justifications were not supported (and, in fact, were contradicted) by the evidence.*” 1/31/2019 Confirmation Ruling, at 27.
- June 20, 2019: The Acis Trustee filed an amended complaint asserting among other things, *claims for intentional and constructive fraudulent transfer based on the prepetition transfers involving Acis.*<sup>22</sup>

25. On October 16, 2019, Highland itself filed for bankruptcy in Delaware, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del.), and on December 4, 2019, on motion of the Official Committee of Unsecured Creditors, its case was transferred to this Court.<sup>23</sup>

26. On April 8, 2020, due to its damages sustained from the misconduct described above, HarbourVest filed its Proofs of Claim against Highland.

### Basis for Relief

#### The Claim Objection Is Improper and Should Be Denied

27. HarbourVest’s Proofs of Claim have *prima facie* validity, and the Debtor must produce evidence sufficient to overcome this presumption. *See* 11 U.S.C. §§ 501, 502 (2020); Fed. R. Bankr. P. 3001(f) (2020) (“A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim”); *see also*

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<sup>22</sup> Second Am. Compl. at 42-84, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157, A466–508.

<sup>23</sup> Order Transferring Venue of this Case to the United States Bankruptcy Court for the Northern District of Texas, *In Re Highland Capital Mgmt, L.P.*, No. 19-12239-css (Bankr. D. Del. Dec. 4, 2019), ECF No. 184, A534.

*Matter of Fid. Holding Co.*, 837 F.2d 696 (5th Cir. 1988) (“a correctly-filed proof of claim establishes a *prima facie* case against the debtor’s assets”); *In re Armstrong*, 320 B.R. 97, 102 (Bankr. N.D. Tex. 2005) (same). “Conclusory statements are insufficient to rebut [Rule] 3001(f)’s presumption.” *In re Today's Destiny, Inc.*, No. 05-90080, 2008 WL 5479109, at \*4 (Bankr. S.D. Tex. Nov. 26, 2008). Instead, the objecting party must put forth “evidence at least equal in probative force to that offered by the proof of claim.” *Id.* (citations omitted).

28. Highland’s Claim Objection fails to put forward any evidence regarding the HarbourVest Claims. It is a mere denial of the validity of the HarbourVest Claims, based on Highland’s own say-so. It fails to refute—or even address—the legal sufficiency of the HarbourVest Claims. Highland cannot evade substantial claims by one of its largest creditors based on its illegal conduct with a one-sentence, unsupported, and blanket denial. The Claim Objection should be overruled as to HarbourVest’s Proofs of Claim as failing to satisfy even the most minimal legal requirements to object to a claim.

29. The Claim Objection is also procedurally improper. While styled as an “omnibus” objection pursuant to Bankruptcy Rule 3007(d), Highland’s “no liability” objection has no basis at all in the rule.<sup>24</sup> This is not just a procedural nicety. Highland’s attempt to style its conclusory-but-substantive denial of liability as a procedural objection buried in an omnibus objection underscores Highland’s lack of substantive defenses on the merits of the claims in addition to its disregard for the bankruptcy process.

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<sup>24</sup> Federal Rule of Bankruptcy Procedure 3007(d) provides that “objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because: (1) they duplicate other claims; (2) they have been filed in the wrong case; (3) they have been amended by subsequently filed proofs of claim; (4) they were not timely filed; (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order; (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance; (7) they are interests, rather than claims; or (8) they assert priority in an amount that exceeds the maximum amount under §507 of the Code.”

**The HarbourVest Claims Are Valid and Should Be Allowed**

30. Highland has failed to carry its burden to rebut the *prima facie* case for the HarbourVest Claims. Accordingly, the HarbourVest Claims should be allowed in full. For clarity of the record, the HarbourVest Claims are described in detail below.

31. In general, the HarbourVest Claims result from (i) Highland's material misrepresentations and omissions relating to the Investment, including the existence and purpose of Highland's scheme to denude Acis and avoid payment of the Arbitration Award; (ii) Highland's gross mismanagement of the HCLOF Investment; (iii) Highland's misuse of fund assets and improper charges to HCLOF; and (iv) Highland's continued fraudulent conduct and misrepresentations during the Acis bankruptcy. Specifically, based on the above-described facts, HarbourVest has claims for, among other things: Fraud, Fraudulent Concealment, Fraudulent Inducement, Fraudulent Misrepresentation, Negligent Misrepresentation; Breach of Fiduciary Duties; Misuse of Fund Assets; U.S. State and Federal Securities Law Claims; Violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("**RICO**"); and Unfair Prejudice under the Guernsey Companies Law.

**A. Fraud, Fraudulent Inducement, Fraudulent Concealment, Fraudulent Misrepresentation, and Negligent Misrepresentation**

32. A plaintiff pleading common law *fraud* must show (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. 41 Tex. Jur. 3d Fraud & Deceit § 8 (Aug. 2020); *see also JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). *Fraudulent inducement* occurs

when, through fraud, a defendant induces another to enter into a contract through the use of fraudulent misrepresentations. 41 Tex. Jur. 3d Fraud & Deceit § 8; *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018).

33. Similarly, claims for ***fraudulent concealment*** or ***fraud by omission*** will lie where (1) the defendant concealed from or failed to disclose material facts to the plaintiff that the defendant had a duty to disclose; (2) the defendant knew the plaintiff was ignorant of the facts and the plaintiff did not have an equal opportunity to discover the facts; (3) the defendant was deliberately silent when the defendant had a duty to speak; (4) by failing to disclose the facts, the defendant intended to induce the plaintiff to take some action or refrain from acting; (5) the plaintiff relied on the defendant's nondisclosure; and (6) the plaintiff was injured as a result of acting without the undisclosed facts. 41 Tex. Jur. 3d Fraud & Deceit § 16.

34. Similarly, under Guernsey law, a plaintiff may have a claim for ***fraudulent misrepresentation*** against a defendant that makes statements that he knows to be (or is reckless as to whether they are) false with the intent that they shall be acted on by another, who suffers damages as a result of reliance on those statements. *Derry v. Peek* (1889) 14 AC (HL) 337 (appeal taken from Eng.), A14. Damages extend to the loss actually suffered by the person as a result of the misrepresentation. *Doyle v. Olby (Ironmongers) Ltd.* (1969) 2 W.L.R. 673, A59.

35. ***Negligent misrepresentation*** is established when (1) the defendant made a representation in the course of the defendant's business; (2) the defendant supplied false information for the guidance of others in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffered pecuniary loss by justifiably relying on the representation. 41 Tex. Jur. 3d Fraud & Deceit § 10. Liability for negligent misstatements may also be asserted under Guernsey

law where shareholders suffer financial loss as a result of acquiring shares in reliance on any misstatements made carelessly, if the defendant owes the shareholder a duty of care.<sup>25</sup> *Hall v. Cable & Wireless Plc* (2009) EWHC 1793 (Comm), A75.

36. Highland's conduct prior to the Investment presents a textbook case of fraud, fraudulent inducement, and fraudulent concealment and fraud by omission. As Highland and HarbourVest were negotiating the terms of the Investment, Highland both concealed and misrepresented the nature of the Transfers undertaken to deprive Acis of assets and Highland's true intentions with respect to the Terry dispute and Arbitration Award. These facts were material: indeed, HarbourVest expressed concern and requested further information regarding the Transfers, the Arbitration Award, and their implications for HCLOF and the Investment's closing date was delayed. The nature and intent behind the Transfers, and Highland's plan to use HCLOF to fund its feud with Terry, were material facts misrepresented and concealed from HarbourVest in order to induce HarbourVest to invest with HCLOF.

37. Highland's multiple, purposeful, knowing, reckless, and/or negligent misrepresentations and omissions include:

- Highland never informed HarbourVest that Highland had no intention of paying the Arbitration Award and was undertaking steps to ensure that Mr. Terry could not collect on his judgment;
- Highland did not inform HarbourVest that it undertook the Transfers to siphon assets away from Acis LP and that such transfers would prevent Mr. Terry from collecting on the Arbitration Award. Instead, Highland simply did not inform HarbourVest and represented to HarbourVest that the reason for changing the portfolio manager for HCLOF was because Acis was "toxic" in the industry and alleged reputational issues relating to Acis would detrimentally affect the HCLOF investment;

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<sup>25</sup> As discussed below, during the course of the Investment, Highland owed fiduciary duties to HarbourVest as a "shadow director" or "de facto" director of HCLOF.

- Highland indicated to HarbourVest that the dispute with Mr. Terry (which appeared on a litigation schedule presented to HarbourVest during diligence) would have no impact on investment activities;
- Highland expressed confidence in the ability of HCLOF to reset or redeem the CLOs, notwithstanding that Highland was using HCLOF as part of its scheme to avoid paying the Arbitration Award.

38. Even assuming Highland's statements did not rise to the level of fraud (though they do), such statements were at minimum made negligently by Highland.

39. In reliance on Highland's misrepresentations and omissions, HarbourVest invested in HCLOF. Had these misrepresentations and omissions not occurred, HarbourVest would not have made the Investment.

40. HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution. This enormous decline can be traced directly back to the fraudulent Transfer scheme that Highland hid from HarbourVest behind a smokescreen of misstatements and omissions, and Highland's subsequent conduct in connection therewith. The situation has been further compounded by HCLOF's use to fund Highland's litigation and HarbourVest incurring its own out-of-pocket fees and expenses from the fallout.

#### **B. Breach of Fiduciary Duties and Misuse of Fund Assets**

41. Under Guernsey law, Highland constituted both a "shadow director" and a de facto director of HCLOF. A shadow director is a person in accordance with whose directions or instructions the directors of the company are accustomed to act. Companies (Guernsey) Law 2008 § 132(1). A "de facto" director is a person or entity that similarly has practical decision-making control over a company under Guernsey law. *Carlyle Capital Corporation Ltd. v. Conway & Others*, Royal Court of Guernsey, 4 September 2017, Judgment 38/2017, A2. As a

shadow director and/or de facto director, Highland owed fiduciary duties to HarbourVest, which it breached by the conduct described herein.

42. At all times, Highland exercised complete control over HCLOF and over its Guernsey directors. Highland directed HCLOF's nominal directors, who acted in accordance with Highland's instructions, and Highland itself acted on behalf of HCLOF. Indeed, this Court has previously recognized evidence demonstrating that HCLOF operated at the behest of Highland, not its nominal directors:

- “It was enormously clear to the court. . . that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere ‘figureheads’ for HCLOF Guernsey and they defer to Highland entirely to tell them what to do, what to say, and when.” 1/31/2019 Confirmation Ruling, at 14.
- HCLOF Guernsey was “absolutely, beyond any reasonable doubt, controlled by Highland.” 1/31/2019 Confirmation Ruling, at 17.
- The evidence was overwhelming that “(a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey’s behalf. . . [Bill Scott] confirmed that all investment decisions were made by Highland.” 1/31/2019 Confirmation Ruling, at 46.
- Ms. Bestwick “testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey) or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey). She reiterated that she only talks to Highland employees. . . . She testified that she learned of the Terry Arbitration Award in mid-April 2018 (some six months after the fact) and ‘[y]ou’d have to ask Highland’ why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were ‘heavily reliant on our service providers, and that means Highland.’ With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.” 1/31/2019 Confirmation Ruling, at 43–44.
- Highland’s expert, “Mr. Castro, testified that the ‘actual humans’ who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF). Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the

HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.” 1/31/2019 Confirmation Ruling, at 23.

43. Highland’s complete control of HCLOF is further confirmed by the deposition testimony of HCLOF’s nominal directors. In a deposition in the Acis Bankruptcy, HCLOF’s then-Director Heather Bestwick testified that:

- She first learned about the Terry arbitration award from Highland in April 2018 and did not need to do any further independent verification because the directors relied on Highland to keep them updated.<sup>26</sup>
- She was unable to remember a time she disagreed with Mr. Scott or Highland. *Id.* at 48:10–49:12, A539.
- Highland is involved in any substantive conversation about HCLOF, and Bestwick relied on Highland’s advice and judgment as to what was in the best interest of investors. *Id.* 50:10–24, 58:12–59:20, 67:13–68:7, 138:4–21 & 172:9–173:6, A540, 542, 544, 552 & 560.
- She lacked a command of the fees that Acis and Highland were receiving from HCLOF, and did not know whether Highland Capital might have differing interests from Highland HCF. *Id.* at 99:10–100:11 & 155:13–20, A547, 556.
- Conversations with Highland were the extent of the due diligence done with respect to a new portfolio manager. *Id.* 200:14–201:20, A562.

44. Similarly, HCLOF then-Director William Scott testified that:

- The directors had “no knowledge” of litigation with Terry or the arbitration award until 2018; the litigation did not cause him to second-guess his relationship with Highland.<sup>27</sup>
- The directors went with the counsel selected by Highland to represent HCLOF. *Id.* at 91:25–94:25, A566–67.
- Investment decisions for HCLOF are formulated by Highland; the role of the directors is just to “police” the performance of the service providers, and he has never disagreed with Ms. Bestwick or Highland on HCLOF matters. *Id.* at 102:16–104:1, 105:22–107:17, A570–71.

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<sup>26</sup> Bestwick Dep. Tr. 60:18–61:19, 130:14–131:12, 133:4–133:21, 135:21–136:2, 136:17–137:5, 138:17–21, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A542–43, 550–52.

<sup>27</sup> W. Scott Dep. Tr. 135:9–136:24, *In re Acis Capital Mgmt., L.P.*, No. 18-30264-sgj11 (Bankr. N.D. Tex. Dec. 3, 2018), A574.

- He did not take any steps to investigate the Terry situation; he got all information he knows about it from Highland. *Id.* at 140:13–145:5, A575–76.
- Highland has not made key information available to the directors of HCLOF. *Id.* at 263:20–265:23, A584. Scott himself lacked information about the various Transfers in 2017 that were conducted by Highland. *Id.* at 214:19–216:14, 220:6–221:11, A579–80.

45. As a “shadow director” or “de facto” director of HCLOF, Highland breached several duties, including its duty of care, its duty to exercise powers for a proper purpose, its duty to avoid/mitigate conflicts of interest, and its duty to act in good faith and in the best interests of the company. Highland breached its fiduciary duties as a shadow/ de facto director as set out below.

46. Highland is liable for breach of fiduciary duty for its continued misrepresentations and omissions relating to the Arbitration Award and the Transfers, including following HarbourVest’s Investment, its conduct of litigation relating to Mr. Terry and the Acis Bankruptcy, and its mismanagement of HCLOF following the Investment.

47. This includes the massive legal fees that were charged to HCLOF by Highland and Highland-related entities in furtherance of Highland’s scheme. Since at least 2018, immense and unwarranted legal fees were borne by HCLOF’s investors for Highland’s scorched-earth litigation relating to Terry and the Acis Bankruptcy, including significant litigation costs that were not in the interests of HCLOF.

48. As this Court noted, the Acis Bankruptcy proceedings “have been astonishingly contentious,” with Highland, HCLOF, and Neutra “in ‘lockstep’ with one another in objecting to virtually every position taken by the Chapter 11 Trustee,” and the Highland entities “have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.” 1/31/2019 Confirmation Ruling, at 3, 11. This extensive litigation has spanned multiple jurisdictions (United States and Guernsey) and venues (state

court, federal bankruptcy court, federal district and appellate courts), and included appeals of nearly every substantive ruling during the Acis Bankruptcy. HCLOF's investors—including HarbourVest—bore millions of dollars of legal fees incurred by numerous parties, including attorneys' fees for (i) HCLOF, (ii) Highland, (iii) Acis, (iv) Highland HCF and (v) various affiliated persons, entities and experts.

49. No justifiable basis existed for Highland to cause HCLOF to pay Highland-related parties' expenses and fees arising from the Acis Bankruptcy. Those fees were grossly inappropriate, excessive, and unreasonable, caused by Highland's own malfeasance, and they are not covered under the HCLOF governing documents.

50. On this point, it is worth underscoring that, to HarbourVest's knowledge, HCLOF has, to date, incurred more than **\$15 million** in legal fees since 2018, much of which appears to be related to fighting an **\$8 million** Arbitration Award. Even if such fees could appropriately be charged to HCLOF (and they cannot), the amount of legal fees incurred is grossly unreasonable. Highland's use of HCLOF assets to pay these astounding legal fees creates liability for its misuse of fund assets in gross breach of its duties as a sub-advisor and as a shadow / de facto director.

51. In addition to the improper legal expenses, Highland's gross mismanagement of HCLOF includes Highland (i) directing the Trustee to sell numerous loans during the Acis Bankruptcy and (ii) failing to reset the CLOs and or consider alternatives in light of the court-ordered injunction on resets.<sup>28</sup>

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<sup>28</sup> See, e.g., Acis Trustee Complaint at 29, n. 46 (“Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a ‘refinance’ or ‘reset’ transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption.”), A319; Second Am. Compl. at 24–28, *Acis Capital Mgmt GP, L.L.C. v. Highland Capital Mgmt, L.P.*, Adv. No. 18-03078-sgj (Bankr. N.D. Tex. June 20, 2019), ECF No. 157 (Highland Capital “grossly mismanaged the CLOs” when it “failed to purchase a single loan for the CLOs . . . [and] in an apparent tactical move to accumulate cash in the CLOs . . . ordered that the Trustee sell numerous loans.” When the Trustee found new parties to perform services under the Sub Agreements, Highland Capital “offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that

**C. Securities Claims**

52. HarbourVest also has state and federal securities fraud claims against Highland.

53. Under the Texas Securities Act (the “**TSA**”), “[a] person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, is liable to the person buying the security from him, who may sue either at law or in equity for rescission, or for damages if the buyer no longer owns the security.” Tex. Rev. Civ. Stat. Ann. art. 581-33(A)(2) (West). Hence, “to recover under the TSA, a buyer of a security must prove that the security was sold by means of (1) an untrue statement of material fact or (2) an omission to state a material fact that is necessary in order to make the statements made not misleading.” *Kubbernus v. ECAL Partners, Ltd.*, 574 S.W.3d 444, 480 (Tex. App. 2018). A plaintiff need not show reliance, loss causation, or damages under the TSA. *See id.*; *In re Skyport Glob. Commc'ns, Inc.*, No. 08-36737, 2011 WL 111427, at \*47 (Bankr. S.D. Tex. Jan. 13, 2011). In addition to primary violators, “[a] person who directly or indirectly controls a seller, buyer, or issuer of a security” or “who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security,” is liable under the TSA “jointly and severally with the seller, buyer, or issuer and to the same extent as if he were the seller, buyer, or issuer.” Tex. Rev. Civ. Stat. Ann. art. 581-33 (F) (West).

54. Section 10(b) of the Securities Exchange Act makes it unlawful for any person “[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative

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Highland had grossly overcharged Acis.”), A448–52; 1/31/19 Confirmation Ruling at 29–30 (“[I]n this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan. Mr. Scott, a director of HCLOF Guernsey, testified that HCLOF Guernsey can sell its interest in the subordinated notes in the market.”); 1/31/19 Confirmation Ruling at 20 (“[A]fter Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level.”).

or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.” 15 U.S.C. § 78j(b). And Rule 10b-5, promulgated by the SEC under the authority of Section 10(b), makes it unlawful for “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” to “employ any device, scheme, or artifice to defraud”; “make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading”; or “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.” 17 C.F.R. § 240.10b-5.

55. The Supreme Court has recognized an implied private cause of action to enforce Section 10(b) and its implementing regulation, Rule 10b-5. *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 37 (2011). To state a claim under Section 10(b) and Rule 10b-5 based on an alleged misrepresentation or omission, a plaintiff must show “(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Id.* (citations omitted). Joint and several liability for violations of Section 10(b) and Rule 10b-5 extends to “[e]very person who, directly or indirectly, controls any person liable under” Section 10(b) and Rule 10b-5 “to the same extent as such controlled person.” 15 U.S.C. § 78t(a).

56. Here, Highland, in connection with its sale of HCLOF shares to HarbourVest, made material misrepresentations and omitted material facts, as detailed above. That is sufficient to state a claim under the TSA. Those material misrepresentations and omitted

material facts likewise state a claim under federal law for the recovery of damages caused by Highland's fraud, because they were made with the intent to deceive HarbourVest, were relied upon by HarbourVest, and caused substantial losses to HarbourVest's investment.

**D. RICO Claims**

57. RICO makes it unlawful, among other things, for a person associated with an enterprise to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. *See* 18 U.S.C. § 1962(c). Under RICO, any person injured in his business or property by reason of such a violation may recover treble damages and reasonable attorney's fees. *See* 18 U.S.C. § 1964(c).

58. Here, Highland engaged in a pattern of racketeering activity involving numerous predicate acts over multiple years, including mail, wire, and bankruptcy fraud, as part of a scheme to defraud Terry, obstruct the enforcement of his judgment, and obtain investor funding to further finance the scheme. Highland committed these violations through its control of and conduct of the affairs of multiple enterprises, including Acis.

59. In furtherance of that scheme, Highland committed further predicate acts of fraud and bankruptcy fraud as described at length herein, including when, prior to the appointment of the Acis Trustee, Highland caused Acis to make false statements with respect to HarbourVest in the Acis bankruptcy proceedings. *See* 18 U.S.C. § 152(2), (3). Highland's statements were made with knowledge of their falsity and caused HarbourVest significant damages as detailed above, including significant and unwarranted fees and expenses from the Acis Trustee's investigation, and Highland is liable for its pattern of deceptive and fraudulent behavior.

**E. Unfair Prejudice**

60. HarbourVest also has claims against Highland for unfair prejudice under Guernsey law. Under Section 349 of the Companies (Guernsey) Law 2008, shareholders may

apply for relief where the affairs of a company have been conducted in a manner that is unfairly prejudicial to the applicant. § 349(1)(a). To succeed on such an application, the applicant need show only that: (1) the acts or omissions of which he complains of were acts of the Company, including acts taken by the board or a shadow director; (2) the conduct of those affairs has caused prejudice to the applicant's interests as a member of the Company, and (3) the prejudice is unfair. *Prodefin Trading Ltd. v. Midland Res. Holding Ltd.*, Royal Court of Guernsey, 14 February 2017, Judgment 7/2017, A91.

61. The court's remedial powers for an unfair prejudice claim are broad. Section 350 of the Guernsey Companies Law provides: "[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of." Such relief may include ordering a buyout of the applicant's interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; see also *Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523, A117. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420, A140.

62. HarbourVest has been unfairly prejudiced by the full range of Highland's actions and behavior described above, including (i) the fraudulent Transfers immediately preceding and following the Investment, as well as misrepresentations and omissions regarding those Transfers and the Arbitration Award; (ii) breaches of fiduciary duty by Highland as shadow or de facto director of the Company; (iii) misuse of fund assets and legal fee charges to HCLOF; (iv) mismanagement of the HCLOF investment by Highland; and (v) Highland's false statements about HarbourVest, including to this Court, accusing HarbourVest of perpetrating the Transfers.

Such actions warrant relief based upon what the value of HarbourVest's interests in HCLOF *would have been* had Highland not engaged in such misconduct—a value that far exceeds the Investment's current value.

**Prayer for Relief**

63. HarbourVest respectfully requests: (i) this Court deny and overrule the Claim Objection with respect to HarbourVest's Proof of Claim, (ii) sustain and allow HarbourVest's Proofs of Claim, and (iii) grant HarbourVest such other and further relief to which it may be justly entitled, both at law and in equity.

Dated: Dallas, Texas  
September 11, 2020

/s/ Vickie L. Driver  
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	:
	:
	:
-----	x

**APPENDIX TO HARBOURVEST RESPONSE TO DEBTOR'S FIRST OMNIBUS  
OBJECTION TO CERTAIN (A) DUPLICATE CLAIMS; (B) OVERSTATED CLAIMS;  
(C) LATE-FILED CLAIMS; (D) SATISFIED CLAIMS; (E) NO-LIABILITY CLAIMS;  
AND (F) INSUFFICIENT-DOCUMENTATION CLAIMS**

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**Appendix to HarbourVest Response to Debtor’s First Omnibus Objection to  
 Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D)  
 Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation  
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**EXHIBIT A**

(7) **The Entity Defendants as Directors**

713. The first seven Defendants are individuals who were formally appointed directors of CCC, as its first directors, in accordance with its Articles of Association. The Plaintiffs' claims are made against them as such. The Entity Defendants were not appointed directors of CCC. The Plaintiffs nonetheless claim that, on the facts of this case, they each can and should be held liable as if they had been validly appointed directors of CCC, on the basis that they were, in Guernsey law, either *de facto* directors of CCC or "shadow" directors of CCC, and that they therefore owed to CCC the same duties as if they had been duly appointed directors. There is little or no Guernsey law on this topic, but there is a large body at least of English law on the requirements for making out either qualification.

(a) ***De facto* directors**

714. The term "*de facto* director" does not appear in Guernsey company legislation. The material Law in this case is the 1994 Companies Law, as amended in 1996. This was the Law in force at the time of the events complained of; the 2008 Companies Law did not come into effect until 1<sup>st</sup> July 2008.

Section 117 of the 1994 Companies Law provides that

*"In this Law unless the context otherwise requires,*

*.... 'director' means a person occupying the position of director, by whatever name called".*

715. This is slightly different from s.131 of the 2008 Companies Law, and indeed from all the recent English Acts at the time – the Companies Act 1948 s 455(1), Companies Act 1985 s 741(1) and Companies Act 2006, s 250. In all of these the definition is inclusive, rather than exhaustive, as exemplified by s. 131 of the 2008 Companies Law, which reads:

*"In this Law "director" includes an alternate director and any person occupying the position of director, by whatever name called."* (emphasis added).

716. On a straightforward reading, s. 117 therefore deals only with nomenclature, making it clear that a company officer is to be treated as a "director" if he functions as such, even if he has a different official title. It does not refer to persons acting with no official position or title at all. However, since the thrust of s. 117 is that liability in the eyes of the law arises from "*occupying the position of 'director'*" (ie carrying out the functions of a director) an appropriately purposive construction suggests that the definition covers persons acting as a director but with no title at all, ie no formal appointment to any office. I would so read it, and I therefore conclude that the minor difference in wording between s. 117 of the 1994 Companies Law and s 131 of the 2008 Companies Law is not of significance for this case, and neither, here, is the fact that the 1994 Companies Law, though modelled on the English statute, used this slightly different wording. In particular, I am satisfied that English authority provides useful assistance as to the scope of *de facto* directorship under the 1994 Companies Law.

717. The concept of a *de facto* director in English law was first recognised, in the 19<sup>th</sup> century, in the case of a person who had acted as a company director, but whose appointment was defective. Such a person could not escape responsibility as a director of the company by relying on the invalidity of his appointment. He had acted as a director *de facto*.

718. The first English case to extend the concept beyond this, to a person who had never even purportedly been appointed as a director of the company, appears to have been *Re Lo-Line Electric Motors Ltd* [1988] Ch 477. The defendant there had never been formally appointed,

but was found to have been held out by the *de iure* directors of the company as being a director, and he had behaved as such. He was held to be a *de facto* director. This led Millett J (as he then was) in *Re Hydrodan (Corby) Limited* [1994] 2 BCLC 180, to explain the concept in the following terms:

*“...a de facto director is a person who assumes to act as a director. He is held out as a director by the company, and claims and purports to be a director although never actually or validly appointed as such. To establish that a person was a de facto director of a company it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director. It is not sufficient to show that he was concerned in the management of the company’s affairs or undertook tasks in relation to its business which can properly be performed by a manager below board level.”* (emphasis added).

719. The concept was later extended yet again to include persons who were not even held out by the company as directors but who purported to act as directors of the company with no authority at all. It thus extends to those who “interfere” in the company’s affairs.
720. All this shows, though, that the focus is on the defendant’s acts. The reason for imposing liability is that those who in fact act as company directors should be held responsible as such. However, the extension simply to those who meddle brings a need to define and delimit the factual basis which does import liability. Thus, in the passage of Millett J’s judgment cited above, the passage emphasised is of central importance. The principle is that liability as a director is incurred by a defendant for doing acts, in relation to the company, which could be properly done only by a director. It is therefore necessary to decide if that condition is made out by identifying what acts can only be done by a director in the particular company. This requires investigating and identifying the corporate governance structure of the company, so as to see whether the relevant acts of the defendant are “directorial” (as I shall now refer to them) in that context.
721. Jumping slightly ahead, the most recent English case in which the authorities with regard to *de facto* directorship have been reviewed is *Smithton Ltd v Naggar* [2014] EWCA Civ 939, relied on by the Plaintiffs. Arden LJ there synthesised the cases, concluding that:

*“where a person had never been even invalidly appointed a director, it was necessary to examine the governance system of the company in order to assess whether he acted as a director”*.

At [35] – [42] she set out a series of practical points material to determining whether a person was a *de facto* director. I distil those which are material to this case, as follows;

- (i) A party may be a *de facto* director even if there is no invalid appointment; the question is whether he carried out the function, and thus assumed responsibility to act as, a director;
- (ii) To answer that question, the court may have to determine in what capacity the alleged director was acting;
- (iii) The court will in general also have to determine the corporate governance structure of the company, (which can and will vary from company to company), so as to decide whether, in relation to the company’s business the defendant’s acts were “directorial” in nature; it is important that a first instance judge make findings in this regard;
- (iv) The court is required to look at what the party actually did and not any job title he had;

- (v) The test is objective; neither the party's intention, nor his belief that he was or was not acting as a director, is of any relevance;
  - (vi) The test is fact and circumstance dependent. It may be appropriate to look at the party's actions "in the round" but equally, in an exceptional case even a single act may be taken to constitute a person a *de facto* director; and
  - (vii) Whether the company held the party out as being a director would be a relevant factor; whether third parties regarded him as being a director may be material evidence.
722. I will adopt and apply these principles. I also add my own comments and emphasis to them, being points which I derive from looking at the authorities generally.
723. First, and as to (iii) above, in *Holland v HMRC* [2010] UKSC 51, Lord Collins observed at [91] that
- "it is just as difficult to define "corporate governance" as it is to identify those activities which are essentially the sole responsibility of a director or board of directors"*.
724. It seems to me that these are two ways of stating what is really the same test. Once one finds "directorial" acts, then whether one describes these as rendering the actor part of the corporate governance structure of the company, or whether one simply says that he must be taken to have assumed the functions of a director by so acting, is simply a matter of language.
725. Also as to (iii), the qualification noted by Millett J in *Hydrodan* remains; the test requires the finding of actual "directorial" acts on the part of the defendant and merely being involved in the management of the company, or exercising a degree of influence over its decision making, is not in itself enough, although in the former case it may become enough if there is no other person involved in the management of the company in practice. That, however, is not this case.
726. Next, because liability as a *de facto* director is brought upon a defendant as the legal consequence of his own acts and their being found to be "directorial acts", it is imposed only in respect of such directorial acts; a "*de facto* director" does not automatically become responsible for the totality of the company's acts or activities.
727. Identifying what are or are not "directorial" acts in any particular case may not be easy. At the company's inception, all its powers to act are vested in its directors (by whatever name called) as a result of company legislation and the particular company's articles of association. Subsequently, such powers can be delegated, to a greater or lesser degree. In the case of a small and simple company, authority to act for the company and deal with its assets may well remain with its directors, both at the high level of strategic decision-making and the low level of everyday decisions and acts of implementation. In the case of companies with large enterprises, employees, advisers and agents will be engaged to carry out the more everyday work, and where the nature of the business is complex or requires expertise, others may be involved in high level decision-making or activities. The structure will vary with the particular needs of the company and the particular skills of the directors. Insofar as the directors delegate active functions, their involvement will then, quite properly, become more supervisory than operational, although a residue of supervisory function will always remain at the core and be non-delegable. Therefore, whilst decisions within the retained area(s) of control remaining with the directors will certainly be "directorial" in nature, how far, within the spectrum of possible structures, actual delegation of power to act may have gone can differ from company to company, and will be fact-specific. Whilst the authorities acknowledge the difficulty of generally identifying what are or are not "directorial" acts in

respect of a company, it seems to me that, in practice and like the proverbial elephant, one is likely to be able to recognise such an act in context, even if one cannot easily define it.

728. Thus far, however, the cases have been concerned only with holding a natural person to be a *de facto* director of a company. What is here alleged is that another corporate entity should be held to have been a *de facto* director of a company, and this adds yet another dimension to the concept of a *de facto* director.
729. The important case of *Holland v HMRC* [2010] UKSC 51 illustrates the analytical issues which have to be grappled with when the factual situation extends to corporate entities. In simple terms, in *Holland*, the subject company (S) was owned by another company (H) which was in turn owned by Mr Holland with his wife, and Mr Holland was the sole director of company H. The sole director of company S was company H. The issue was whether, through being the sole director of Company H which was the corporate director of Company S, and carrying out acts on behalf of Company S, Mr Holland had been a *de facto* director of Company S, so as to incur personal liability for an undoubted misapplication of Company S's funds. It was held by the majority of the Supreme Court (led by Lord Collins) that Mr Holland was not a *de facto* director of Company S, even though every decision of Company S was actually taken by him and implemented by him. This was because he was to be taken to have done those acts as the appropriate organ of, or agent for, Company H, the *de iure* corporate director. His acts were therefore the acts of Company H.
730. This decision was driven by respect for the distinction between the legal personality of a company and its owners, and a reluctance to pierce the corporate veil, (see [25]), influenced by the fact that company legislation permitted one company to be a director of another company. The dissenting minority, (led by Lord Hope) agreed that merely being a director of a corporate director (H) of a company (S) did not *ipso facto* render that person a *de facto* director of company S, and that something "more" (compare *Hydrodan* (above) at p 184B) was required. However, they considered that the extensive nature of the acts actually performed by Mr Holland in regard to Company S did amount to that something "more", and they would have found him to be a *de facto* director.
731. On any basis, though, the entire Supreme Court plainly felt it right to reject, as an acceptable basis for the imposition of liability, an impressionistic "broad brush" argument that Mr Holland was "really" a director of the subject company, in the sense that he was its directing mind in a generalised way. All members tested the position by a principled legal analysis of the corporate structures which had been set up, and the position, authority and pertinent acts of the defendant which were claimed to have made him a *de facto* director. (It is to be borne in mind that no argument as to Mr Holland's being a *shadow* director of Company S arose in this case.)
732. I do not overlook that the reasoning in the *Holland* case may well have been influenced by the particular development of English law as regards the use of corporate directors. English company law had expressly provided that a corporation could be the director of a company in the Companies Act 1985, but it had intervened again in the Companies Act 2006 (s.155(1)) to decree that a company must have at least one natural person as a director. This was to avoid the unacceptable consequence that a company might have no natural person who could be held accountable for misapplication of its assets.
733. No such developments have featured in Guernsey law, at any rate at the time with which I am concerned. Corporate directors were (and still are) permitted, by the combined effects of s 117 of the 1994 Companies Law quoted above and the Interpretation (Guernsey) Law 1948, which enacts that unless the context otherwise requires, a reference in any enactment to a "person" means either a natural or a legal person. It follows that the actual decision in *Holland*, which would not be binding on this court, might be inappropriate in a Guernsey law

context. I can see that it also might be thought that there was some force in the minority approach in that case.

734. However, this is not a point which arises for decision here. The actual decision in *Holland* is not directly material to this case, because there the claim was to hold an individual liable as a *de facto* director because of his own personal acts, whereas here the claim is the reverse; it is to hold another company liable as a *de facto* director because of the acts of individuals associated with that company.
735. What is to be derived from *Holland*, and other cases such as *Kuwait Asia Bank EC v National Mutual Life Nominees Ltd* [1991] 1 AC 187 (which decides that a party with the power to appoint a director to a company does not thereby become liable for the acts of such director, whether vicariously as his employer, or at all), is the importance of the capacity in which a natural person is acting, for the purpose of the correct legal analysis of the overall situation.
736. It is material in at least two different ways. The first is the requirement already noted that the relevant act within the subject company must be an act required to be done by someone with the capacity of a director. If the defendant could have carried out the acts in question in some other capacity, either because they were not acts which only a director could carry out (*Hydrodan*) or because the defendant enjoyed some other capacity in which he could properly do them (*Holland*), then the defendant is not a *de facto* director.
737. The second is that, since a corporate entity can only act through a natural person, where it is sought to make a corporate entity liable as a *de facto* director, one must find not only directorial acts done by the relevant natural person on behalf of the subject company, but also that that natural person was carrying out those acts as agent of the corporate entity sought to be made liable as its *de facto* director. Not only that, but it seems to me that, analysing the authorities, he must be found to be doing so only in such capacity.
738. It follows, in my judgment, that it will be well-nigh impossible to fix a corporate entity with liability as a *de facto* director of another company through the acts of any individual who was a *de iure* director of that other company at the time. That individual will obviously be carrying out “directorial acts” in his capacity as a director of the company, and not as agent for the targeted defendant.

**(b) Shadow directors**

739. The term “shadow director” is found in the 1994 Companies Law only through having been introduced by amendment in 1996. It was introduced, though, only for the purpose of the new section 67C, which relates to wrongful trading:-

“67C ....(7) *In this section “director” includes a shadow director, which means a person in accordance with whose directions or instructions the directors of the company are accustomed to act*” (emphasis added).

740. It follows that the Plaintiffs can certainly invoke the doctrine of shadow directorship against the Entity Defendants with regard to their wrongful trading claims. The question whether they can do so with regard to their claims based on the general fiduciary duties or duties of skill and care owed by a director to his company is not so clear.
741. The concept of the “shadow director” was enacted into Guernsey law more broadly in the 2008 Companies Law (see s. 132), but that was, of course, only as from 1<sup>st</sup> July 2008, and even then the enactment did not extend the term “director” as used in the Companies Law generally to include a “shadow director” as there defined. Rather, it enacted that where the term “shadow director” was itself used in the 2008 Companies Law, this meant a “*person in accordance with whose directions or instructions the directors of the company are*”

*accustomed to act*”, and in s 132(3) it specifically extended the meaning of the word “director” in particular sections of the Law (ss 160 and 162-4, which have no relevance here) to include a “shadow director”, as so defined.

742. Thus, in both the 1994 Law and the 2008 Law, the operation of the defined concept of a “shadow director” is confined to the two situations, first where that term is actually used in the Law itself, and second where it is specifically directed to be treated as if it had been used. These situations do not include the operation of the company director’s fiduciary duties or duties of skill and care, neither of which is actually laid down in the Companies Laws at all. Neither Law enacted that wherever the term “director” was being used or applied in the Law, it included a shadow director.
743. The significance of this is that liability as a *de facto* director of a company applies because the office of a “director” in company law has been held, by judicial interpretation of that term (in English law but with Guernsey law reasonably following suit), to extend to a person who acts as a director of a company in actual fact, even though not as of right. However, liability as a shadow director is not the result of judicial interpretation, but of legislative enactment. It is therefore confined to the cases stipulated by the enactment.
744. It consequently seems to me, that it is only if the concept of *de facto* directorship itself could be extended to include the shadow directorship situation that this would enable a finding of liability for breach of fiduciary duty or of duty of skill and care to be made against a shadow director. This would be a perfectly reasonable interpretation. The basis for imposing liability on persons as *de facto* directors of companies is that of imposing duties and responsibilities to the company on those who are in practice taking the operative decisions on its behalf. This principle can be applied just as readily to the shadow director situation as it does to the conventional *de facto* director situation.
745. If it were open to me to do so, I would readily construe the Guernsey Companies Laws to the effect that a person could “occupy the position of director” of a company by issuing directions or instructions to its *de iure* directors which those directors were accustomed to act upon, and thus that person would be a director of the company, in any material respect according to the facts.
746. However, albeit with reluctance and on balance, I do not think that doing so is open to me. It seems to me that the terms of the Companies Laws - and it is even more clear in the 2008 Law - treat the concept of shadow directorship and the situation giving rise to it as being a separate and distinct concept in its own right. The legislature has then prescribed the situations in which the situation of a person falling within that concept is to be taken to impose director’s liabilities or duties, initially on a very limited basis in 1996, and subsequently in a wider range of situations in 2008. That being the case, it seems to me that the legislature has to be taken to have intended those situations to be exhaustive with regard to shadow directorship, and that in enacting those express provisions it was implicitly ruling that the term “director” did not, itself, extend to them. The consequence is that the legislation seems to me to have ruled out any permissible judicial extension of the principles of *de facto* directorship to include shadow directorship.
747. It would follow that liability as a shadow director in Guernsey law applies only where the applicable Companies Law directly stipulates. I would hold, therefore, that the allegation of shadow directorship against the Entity Defendants is available only in respect of the Plaintiffs’ claim for wrongful trading. However, I have to consider the legal principles regarding a shadow director for the purpose of the wrongful trading claim in any event. I therefore do so generally and what I say below are my findings on the scope of the concept of shadow directorship in Guernsey law, whether its application is limited as just discussed or not.

748. First, a minor point of construction. Under the 2008 Companies Law, the definition of a shadow director was extended by adding the further qualification that a person was

*“not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity” (s. 132(2)).*

749. I do not think this makes any substantive difference to the meaning of the concept under s 67 of the 1994 Companies Law as amended. In my judgment, this qualification is really implicit in the original wording, not least because “advice” and “directions or instructions” are different things. I accept that “advice” could conceivably be rendered in such a way that it could fairly be characterised as either “directions” or “instructions”. However, that would be a matter of fact to be proved, and does not mean that advice generally is to be taken as falling naturally within such a description.

750. I do not think that I was urged by Advocate Wessels to infer, from the introduction of this qualification on 1<sup>st</sup> July 2008, that prior to that time a professional adviser in Guernsey on whose advice directors of a company would generally act was to be taken to be a shadow director of the company, but I would in any event decline to do so. To do so would, in my judgment, be attributing far too much inferential weight to amendments to companies legislation which were probably inserted for the avoidance of doubt, and would in fact be contrary to what I have indicated I would regard as the natural meaning of the words in context, according to their obvious policy intention.

751. I approach the matter, therefore, on the basis that the court is looking for “directions” or “instructions”, even though it would not be precluded from finding, on appropriate facts, that communications which were termed “advice” nonetheless fell into those categories in substance.

752. Once again, the English case of *Re Hydrodan (Corby) Ltd* (above) provides a useful starting point for formulating the appropriate test. Millett J, at p 183 c-e, and having emphasised the contrast with a *de facto* director, (in that the former openly acts as a director, whereas the latter claims not to be a director at all), determined that the statutory definition required proof of

*“(1) who are the directors of the company, whether de facto or de jure; (2), that the defendant directed those directors how to act in relation to the company or that he was one of the persons who did so; (3) that those directors acted in accordance with such directions; and (4) that they were accustomed so to act. What is needed is first, a board of directors claiming and purporting to act as such; and secondly, a pattern of behaviour in which the board did not exercise any discretion or judgment of its own, but acted in accordance with the directions of others.”*

753. Later English authority has established that it is not necessary for all the directors to act in accordance with the relevant directions or instructions; a governing majority will suffice: see *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 at [1272]. It is also not necessary that an alleged shadow director should control all the decisions of the directors, or all the company’s field of activities: *Secretary of State for Industry v Deverell* [2001] Ch 340 per Morritt LJ. There must, though, be actual “acts” by the Board which are being controlled in the manner described, because this is what is stated in the statutory definition. There must also be a pre-existing pattern of such allegedly controlled acting. This is necessary in order to satisfy the requirement of “being accustomed”: see *Ultraframe* (above) at [1277-8].

754. The essence of this concept is that the alleged shadow director is, in reality, the actual director or the “directing mind” of the company in the relevant respects, (ie the offending acts of the *de jure* – or it could even be: *de facto* - directors), because those who are actually carrying out the particular offending acts are merely the conduits of his wishes and decisions.

755. Lewison J in *Ultraframe* expressed some reservations as to the extent of fiduciary duties properly imposed on shadow directors, since they would usually be incurring liability precisely because they would be operating with a conflict of interest as regards another person or entity (at [1290]). I would decline to follow that dictum on any basis, though, for being what I would regard as an unguarded comment, since the whole point of imposing liability for shadow directorship is precisely to hold liable the persons who are in fact directing a company's affairs contrary to what would otherwise be its directors' duties. Fortunately, in *Vivendi SA v Richards*, [2013]EWHC 3006, Newey J clarified the position sensibly, concluding that shadow directors did owe fiduciary duties to the company, and that

*"A shadow director can, I think reasonably be expected to act in the company's interests rather than his own separate interests when giving such [sc. such as the directors will be accustomed to act upon] directions and instructions."* [143].

756. Once again, though, discussion of this topic shows the need for careful analysis of what is actually going on in substance, especially as regards defendants with a potential conflict of interest. This is highlighted by some of the examples considered in *Ultraframe*, which discuss (see [1266-9]) the position of funders, lenders, suppliers, etc, who may be able to dictate the actions of the company to its board because of the strength of their commercial negotiating position. Lewison J accepted and endorsed the view that doing so would not make that counterparty a shadow director of the company. He also accepted that a creditor of the company is entitled to protect his own interests as creditor without necessarily becoming a shadow director of the company. This is a realistic approach and, on a more general plane, it underlines that the courts will be careful, in making judgments in the context of commercial matters, to give appropriate recognition to the realities of the business world. Such recognition, together with the exception of trusted professional advisers from liability, emphasises both the focus of the policy that imposes liabilities on shadow directors, and that any finding is dependent on facts.

757. Advocate Wessels took me to *Secretary of State for Industry v Deverell* (above) as his principal authority and as epitomising the test for shadow directorship. Morritt LJ summarised his conclusions at [35] in five propositions:

*"... (1) The definition of a shadow director is to be construed in the normal way.....it should not be strictly construed....."*

*"(2) The purpose of the legislation is to identify those, other than professional advisers, with real influence in the corporate affairs of the company. But it is not necessary that such influence should be exercised over the whole field of its corporate activities....."*

*"(3) Whether any particular communication from the alleged shadow director, whether by words or conduct, is to be classified as a direction or instruction must be objectively ascertained by the court in the light of all the evidence. In that connection I do not accept that it is necessary to prove the understanding or expectation of either giver or receiver. In many, if not most, cases it will suffice to prove the communication and its consequence. Evidence of such understanding or expectation may be relevant but it cannot be conclusive. Certainly the label attached by either or both parties then or thereafter cannot be more than a factor in considering whether the communication came within the statutory description of direction or instruction."*

*"(4) Non-professional advice may come within that statutory description. The proviso excepting advice given in a professional capacity appears to assume that advice generally is or may be included. Moreover the concepts of "direction" and*

*“instruction” do not exclude the concept of “advice” for all three share the common feature of “guidance”.*

*“(5) It will, no doubt, be sufficient to show that in the face of “directions or instructions” from the alleged shadow director the properly appointed directors or some of them cast themselves in a subservient role or surrendered their respective discretions. But I do not consider that it is necessary to do so in all cases. Such a requirement would be to put a gloss on the statutory requirement that the board are “accustomed to act” “in accordance with” such directions or instructions.....a qualification beyond that justified by the statutory language.”*

758. I would broadly accept these propositions but with the following qualification.
759. First, I do not think that Mr Wessels sought to argue that the “real influence” referred to in proposition (2) can be viewed as either an accurate paraphrase for, or an alternative expression of, the qualifying test for being a shadow director contained in the statutory definition itself. i.e. the requirement of there being “directions or instructions.” If he did, so, then I reject that argument. In my judgment, it is not available, certainly not insofar as it is inconsistent with the actual words of the statute. A test of “real influence” is not only not the statutory requirement, but is both so vague as to be unworkable, and departs too far from the essence of the concept, which is that a “shadow” director is a person who is, in reality, running the company in the relevant respect, albeit doing so through the actions of others who compliantly do his will. It may be possible that a person who has serious influence on the affairs of the company because his views or advice are habitually sought and acted on out of deference could fall within the definition of shadow director, but that would depend on whether the circumstances justified the relevant findings of fact as to the communications amounting to “directions or instructions”.
760. Second, I do not understand Morritt LJ to be saying, in proposition (3), that “directions or instructions” can arise without the intention and objective of, at least, the alleged giver of the instructions being that the Board should act in accordance with his expressed wishes. If he is so saying, then I respectfully disagree. There is a difference of quality between advice, even if forcefully expressed, and a direction or instruction, and that difference is that the maker of the communication is doing so with the intention of procuring a result for his own ends. Of course, that state of mind may be capable of being inferred from indirect evidence in the usual way, but it does not seem to me that the statute authorises dispensing with such a finding. The statute requires a finding that the *de iure* directors were accustomed to act in accordance with the “directions or instructions” of the alleged shadow director and not merely in accordance with his presumed wishes or interests.
761. Third, I note, and Mr Wessels accepted, that the requirement to find “directions or instructions” requires the finding of actual communications, from the alleged shadow director to the Board Members, which constitute “directions or instructions”. This is plain from Morritt LJ’s proposition No (3). Such a finding is, of course, a matter of evidence and subject to the usual processes of pleading and proof. Again, though, it cannot simply be glossed over or assumed as part of some postulated bigger picture. Any inference that there were “directions or instructions” must be made as a finding of actual fact, justified, on balance of probability by evidence.
762. Fourth, it is clear from the cases such as *Kuwait Asia Bank*, (above) that the element of influence or even control over a company’s affairs which arises from either holding its shares, or having control over the employment position of its directors, is not sufficient on its own to constitute a party – generally there a company, - a shadow director. This underlines, again, the need for proof of the factual situation which constitutes shadow directorship, and that mere allegation of a relationship of influence, or similar, is not enough.

763. Fifth, and at the risk of stating the obvious, if it is sought to make a corporate entity liable as a shadow director, then it is necessary to find directions or instructions in the form of communications issued by that entity. Since a corporate entity can only act by human agency, then even if actual communications by a human being can be pointed to, issues of the capacity in which those communications were made will still need to be examined, to decide whether the communication was actually that of the corporate entity. In other words, any “directions or instructions” will have to be established to be *those of the corporate entity*, and this also requires affirmative proof on the evidence. This is not surprising, as the actual director of the company will already be liable, and fixing a shadow director with liability is an extension of liabilities arising out of the corporate structure.
764. Finally I make some general observations. There has been dispute in the English cases as to whether the concepts of *de facto* and shadow directorships are or are not mutually exclusive. In my judgment, and for the reasons given by Millet J in *Re Hydrodan* (above), logic dictates that they have to be, certainly now that statute has intervened to delimit the concept and application of the liability of shadow directors as discussed at the beginning of this section. In this situation, it may be possible to be a shadow director and a *de facto* director at the same time, but not in respect of the same acts, because the test for each basis of liability is materially different. A *de facto* director is fixed with liability because of what he does. A shadow director is fixed with liability because of what he procures. Fortunately this seems more of an academic dispute than one of real consequence. I have indicated above the extent to which I am concerned with it here.
765. Again, and although not bearing directly on the facts of *de facto* or shadow directorships, it is helpful context, in my judgment, to keep in mind that a party which is entitled to appoint a director to the board of another company does not *ipso facto* become either a shadow, or a *de facto*, director of the company. Whether he (or it) does so has to be judged on the basis of the actual facts; for example, he is plainly more likely to do so if he is in fact able to appoint a majority of the Board. However, the position in law is that by appointing another person as a director of a company, the appointor is taken to authorise the appointee to perform conscientiously the duties of such a director, and therefore to exercise his own judgement and to act in what he perceives to be the best interests of the company, rather than those of his appointor. The appointee becomes agent of the company and not of his appointor.
766. As mentioned in relation to *de facto* directors, if a company which is entitled to appoint a director to the Board of another company appoints one of its own employees, then even though the employee carries out his directorial functions as part of his employment duties, the employer is not vicariously liable *ipso facto* for the acts of the employee as such director: see *Kuwait Asia Bank EC v National Mutual Life Nominees Ltd* [1991] 1 AC 187 (PC) – an instructive and useful case on the position of nominee directors and the proper scope of duties thereby owed. Once again, this principle recognises that the office of director imposes freestanding personal and independent liabilities on the party holding that office, regardless of the origins of his appointment. Of course, if the actual facts demonstrated that the employee director had been following instructions issued to him by his employer, then the situation would be different.
767. Insofar as the foregoing points are not of direct relevance to this case, I find them to provide helpful guidance as to the proper approach to the concept of shadow directorship as it does come to be applied in this case. To distil the essential points for the present case:-
- (i) To fix any of the Entity Defendants with liability as a shadow director of CCC the Plaintiffs need to prove that the actual directors (*de iure* or possibly *de facto* if already found) were accustomed to act in accordance with “directions or instructions” given by that corporate entity. This requires proof, on the evidence in the usual way, of actual directions or instructions.

- (ii) “The directors” would include a relevant voting majority of the board of directors.
- (iii) It is insufficient to establish one instance only of obedience to such direction or instruction; there has to be a series of such acts so as to prove the requirement of being “accustomed” so to act. However, that does not necessarily have to be on the same subject matter, and in an appropriate case, relatively minimal evidence of previous biddability might well suffice.

**6. The issues to be determined**

768. Having now determined the law which I will be applying, it is convenient to marshal the issues which, in consequence, arise for determination, before turning to the evidence and the witnesses.
769. Turning to the allegations in the case, the Defendants say that they have identified 187 separate allegations of breach of duty pleaded against them in the Cause, although I confess that I have not counted them. They appear (from the Defendants’ comments on the unagreed “Concise List of Issues” referred to below) to be the total number of sub-paragraph allegations contained in Paragraphs 263C-263H, 308D-308J, 339B-339G, 367D-367I, 369T-369Y, 390B-390G, and finally 417, 418B-E, 418I-418L, 419, 422 and 424B-424E of the Amended Cause.
770. There are ten defendants. The Plaintiffs’ claims are purportedly made against them jointly and severally, but since the obligations (apart perhaps from wrongful trading) are individual, the liability of each Defendant has to be considered separately as already mentioned. The 187 breaches of duty are not, I think, all alleged against all ten Defendants, but neither are they the sum of allegations against individual Defendants, because there is a pattern of pleading breaches in the Cause against groups of Defendants, comprising either the four “Carlyle Directors”, the three “Independent Directors” or the three Entity Defendants. The total number of individual breaches pleaded, with which I could theoretically be concerned, is therefore well into the 100s.
771. If all the pleaded breaches of duty had identifiable pleaded consequences which might afford the Plaintiffs a remedy at law, then I might have felt obliged to deal with them individually, but as already mentioned, they do not. The relief sought by the Plaintiffs is simply financial relief, being either for compensatory damages claimed for breach of fiduciary duty or for negligence, or for “contribution” on the grounds of wrongful trading (the measure of which is compensatory in nature), or for the “restitution” of unjustifiable fees and expenditure. The last claim is discrete and is straightforward in nature. All the other claims depend on proving wrongful acts or omissions by a relevant Defendant which can be shown to have caused a loss to CCC. In essence, what has been ultimately claimed (the Cause is still somewhat vague in this regard) is the difference between CCC’s net asset value taken at an appropriate date (depending on the findings of fact constituting liability) some time between 26th July 2007 and 27<sup>th</sup> February 2008, adjusted insofar as necessary to take account of assumed sales which should have been made on the one side, and what was actually realised upon CCC’s liquidation in March 2008 on the other.
772. To try to identify the issues which did require decision within the essential scope of the action, and to provide a working framework for covering these, I directed the parties to try to agree a “Concise List of Issues”. Unfortunately, they were not even able to agree on that. Their attempts appear to have foundered (from the footnotes by each side to a travelling draft which has been shown to me) because any attempt by the Defendants to identify the common thread of the Plaintiffs’ allegations and express the issues in such focused terms has been rebuffed by the Plaintiffs as a “partial and incomplete summary” of their case, as to which they insist on incorporating reference to the minutiae of individual allegations in their pleaded Cause.

**EXHIBIT B**

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[HOUSE OF LORDS.]

WILLIAM DERRY, J. C. WAKEFIELD,  
M. M. MOORE, J. PETHICK, AND S. J. } APPELLANTS;  
WILDE . . . . . }

H. L. (E.)

1889

July 1.

AND

SIR HENRY WILLIAM PEEK, BARONET. RESPONDENT.

*Action of Deceit—False Representation—Fraud—“Legal Fraud”—Company—Misrepresentation in Prospectus.*

In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shewn that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit.

A special Act incorporating a tramway company provided that the carriages might be moved by animal power, and, with the consent of the Board of Trade, by steam power. The directors issued a prospectus containing a statement that by their special Act the company had the right to use steam power instead of horses. The plaintiff took shares on the faith of this statement. The Board of Trade afterwards refused their consent to the use of steam power and the company was wound up. The plaintiff having brought an action of deceit against the directors founded upon the false statement:—

*Held*, reversing the decision of the Court of Appeal and restoring the decision of Stirling J. (37 Ch. D. 541), that the defendants were not liable, the statement as to steam power having been made by them in the honest belief that it was true.

**APPEAL** from a decision of the Court of Appeal. The facts are set out at length in the report of the decisions below (1). For the present report the following summary will suffice:—

By a special Act (45 & 46 Vict. c. clix.) the Plymouth, Devonport and District Tramways Company was authorized to make certain tramways.

(1) 37 Ch. D. 541.

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By sect. 35 the carriages used on the tramways might be moved by animal power and, with the consent of the Board of Trade, by steam or any mechanical power for fixed periods and subject to the regulations of the Board.

By sect. 34 of the Tramways Act 1870 (33 & 34 Vict. c. 78), which section was incorporated in the special Act, "all carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only."

In February 1883 the appellants as directors of the company issued a prospectus containing the following paragraph:—

"One great feature of this undertaking, to which considerable importance should be attached, is, that by the special Act of Parliament obtained, the company has the right to use steam or mechanical motive power, instead of horses, and it is fully expected that by means of this a considerable saving will result in the working expenses of the line as compared with other tramways worked by horses."

Soon after the issue of the prospectus the respondent, relying, as he alleged, upon the representations in this paragraph and believing that the company had an absolute right to use steam and other mechanical power, applied for and obtained shares in the company.

The company proceeded to make tramways, but the Board of Trade refused to consent to the use of steam or mechanical power except on certain portions of the tramways.

In the result the company was wound up, and the respondent in 1885 brought an action of deceit against the appellants claiming damages for the fraudulent misrepresentations of the defendants whereby the plaintiff was induced to take shares in the company.

At the trial before Stirling J. the plaintiff and defendants were called as witnesses. The effect given to their evidence in this House will appear from the judgments of noble and learned Lords.

Stirling J. dismissed the action; but that decision was reversed by the Court of Appeal (Cotton L.J., Sir J. Hannen, and Lopes L.J.) who held that the defendants were liable to make good to the plaintiff the loss sustained by his taking the shares,

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and ordered an inquiry (1). Against this decision the defendants appealed.

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March 28, 29; April 5, 9, 11. Sir *Horace Davey* Q.C. and *Moulton* Q.C. (*M. Muir Mackenzie* with them) for the appellants:—

The law as laid down by the Court of Appeal goes much further than any previous decision and is unsound. To support an action of deceit it always was necessary at common law and still is both there and in Chancery to prove fraud, i.e., that the thing was done fraudulently. Fraud never has been and never will be exhaustively defined, the forms which deceit may take being so many and various. There is a negative characteristic: it must be something which an honest man would not do; not merely what a logical or clear-headed man would not do. However unbusinesslike a man may be he is not fraudulent if he acts honestly. The natural consequences of words or acts must be taken to have been intended, but not so as to impute fraud to honesty. No honest mistake, no mistake not prompted by a dishonest intention, is fraud. The shape of the mistake does not make it more or less a fraud if it is a mistake. Once establish that a man honestly intended to do his duty, the consequences cannot turn his words or acts into a fraud. There may be an obligation to see that no untrue statement is made, but the failure to meet that obligation is not fraud, if there is no dishonest intention. The statement may be inaccurate, yet if the defendants honestly—though mistakenly—believed that it substantially represented the truth, there is no fraud, and an action of deceit will not lie. The decision of the Court of Appeal is that to such a statement the law attaches a meaning which makes it fraudulent. A material misstatement may be a ground for rescinding the contract, but the consequences of fraud and of breach of contract are widely different. In an action for breach of contract the defendant must make good his words. In an action founded on fraud he must bear the whole of the consequences which have been induced by the fraudulent statement, which may be very extensive. The essence of fraud is the tricking a person into the bargain. If the fact that the consent of the Board of Trade

(1) 37 Ch. D. 541, 591.

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 1889 make the bait more alluring there was fraud. The issue then  
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 DERRY is one of fact, was there an intention to make the bait more  
 v. alluring? It is not the carelessness leading to an untrue state-  
 PEEK. ment which makes fraud; it is the carelessness whether the state-  
 ——— ment is untrue or not. It is in this sense that the authorities  
 have held defendants liable for fraud when they have made untrue  
 statements "recklessly." The above propositions are the result  
 of the authorities. The law laid down in the earlier cases is well  
 exemplified by *Taylor v. Ashton* (1), where, however, the head-  
 note does not truly represent the effect of the decision, and *Joliffe*  
*v. Baker* (2). In *Polhill v. Walter* (3)—which may be relied on  
 by the respondent—the Court considered that the misrepresenta-  
 tion was made by the defendant *knowing it to be untrue*. The  
 idea that something less than fraud was necessary to found an  
 action of deceit crept in first in Lord Chelmsford's observations  
 in *Western Bank of Scotland v. Addie* (4), and was extended by  
 Cotton L.J. in *Weir v. Bell* (5), where he treats "recklessly" as  
 if it meant "negligently," whereas it means "indifferent whether  
 the statement be true or false." This confusion has arisen mainly  
 since the Judicature Act, actions of deceit being tried in Chancery  
 by judges who, sitting without juries, have confounded issues of  
 fact with issues of law. Here the Court of Appeal held that an  
 action of deceit lies if the defendant makes an untrue statement,  
 without reasonable ground for believing it to be true, though he  
 did in fact honestly believe it to be true. If that be the law a  
 negligent, improvident, or wrong-headed man is a fraudulent  
 man. A want of reasonable ground may be evidence of fraud,  
 but it is not the same thing as fraud.

As to the facts, Stirling J. found that the defendants believed  
 the misstatement to be true, and that finding ought to be conclu-  
 sive. The Court of Appeal do not contradict that finding.

The misstatement complained of really meant that the company  
 had obtained the necessary statutory authority to use steam  
 power, without which authority no consents could have given

(1) 11 M. &amp; W. 401.

(3) 3 B. &amp; Ad. 114.

(2) 11 Q. B. D. 255.

(4) Law Rep. 1 H. L. (Sc.) 145, 162.

(5) 3 Ex. D. at p. 242.

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authority, because by the Tramways Act 1870 (33 & 34 Vict. c. 78 s. 34) steam power is prohibited except where the special Act authorizes steam power. It may be that the defendants knew the statement was not strictly accurate, but if so they honestly thought that the statement conveyed a substantially accurate representation of the fact, either because they thought it not worth while to encumber the prospectus with the qualifications, or because those qualifications were not present to their minds when they made the statement. In the prospectus reference is made to the special Act, so that any one who consulted the Act could see for himself what the authority was.

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—

Lastly, the plaintiff was no doubt in some degree influenced by the misstatement, but there was no evidence that he would not have taken the shares if the statement had contained the full truth as to the necessary consents being obtained.

*Bompas Q.C.*, and *Byrne Q.C.* (*Patullo* with them) for the respondent:—

The decision of the Court of Appeal is right and for the reasons there given. Directors are liable not only for a false statement which they know to be false, but for a false statement which they ought to have known to be false. This proposition is supported by the obiter dictum of Lord Westbury in *New Brunswick &c. Co. v. Conybeare* (1), and by the obiter dicta of the Lords in *Peek v. Gurney* (2) as to what the liability of the defendants would have been to original shareholders, and by the judgment of Jessel M.R. in *Smith v. Chadwick* (3).

It is not necessary that there should be carelessness whether the statement is true or not: it is enough if there be carelessness or negligence in making the statement. Making an untrue statement without reasonable ground is negligence which will support an action of deceit. In support of the respondent's contention the following authorities are relied on: *Slim v. Croucher* (4); *Evans v. Bicknell* (5); *Brownlie v. Campbell* (6); *Polhill v. Walter* (7); *Milne v. Marwood* (8); *Denton v. Great*

(1) 9 H. L. C. 725, 726.

(5) 6 Ves. at p. 183.

(2) Law Rep. 6 H. L. 377.

(6) 5 App. Cas. 925, 935, 950.

(3) 20 Ch. D. 44.

(7) 3 B. & Ad. 114.

(4) 1 D. F. & J. 518, 523.

(8) 15 C. B. 778, 781.

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 1889  
 DERRY *Mathias v. Yetts* (6); *Smith v. Chadwick* (7); *Pasley v. Freeman* (8); *Chandelor v. Lopus* (9). [LORD HALSBURY L.C. referred to *Haycraft v. Cressy* (10).]  
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But it is not necessary to go the full length of the propositions contended for. Even if the fourth proposition of Lopes L.J. is not law, the appellants are nevertheless liable; for the evidence shews that the statements were made either with the knowledge that they were untrue or with no belief on the subject.

It was stated that it was fully expected that a considerable saving would be effected by the use of steam. In fact the directors had not considered the matter, and when they did so afterwards there was a majority of one only in favour of steam. The effect of the evidence is not the same as to all the directors. As to Derry, the inference is that he never took the trouble to consider whether the statement was true or false. Wakefield and Wilde had complete knowledge but made statements which they knew not to be true at the time, thinking the requisite consents would be given. Pethick's evidence is inconsistent with itself. At one moment he says that he thought the Board of Trade had no right to refuse consent if its reasonable requirements were met, at another that he thought they had an absolute right to refuse. Moore, it must be admitted, stands in a different position, and can only be held liable under the fourth proposition of Lopes L.J.

The respondents are entitled to judgment on the grounds accepted by Lord Cranworth in *Western Bank of Scotland v. Addie* (11) and by the Earl of Selborne in *Smith v. Chadwick* (12): The belief which would justify the appellants must be one founded on an exercise of judgment. Grounds which would be sufficient in some cases would not be so in others, where *uberrima fides* is required, e.g. in statements made to an intending partner. As

(1) 25 L. J. (Q.B.) 129.

(2) 8 Ex. 725.

(3) 10 M. & W. 1, 10.

(4) 3 D. & J. 304, 312.

(5) Law Rep. 3 Ch. 467.

(6) 46 L. T. (N.S.) 497, 502.

(7) 20 Ch. D. 27, 44.

(8) 2 Sm. L. C., 9th ed. p. 74.

(9) 1 Ibid. p. 186.

(10) 2 East, 92.

(11) Law Rep. 1 H. L. (Sc.) 145, 164.

(12) 9 App. Cas. 187, 190.

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to the duty of a director to persons about to take shares in a company, see *New Brunswick and Canada Railway Company v. Mugeridge* (1) and *Henderson v. Lacon* (2).

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The House took time for consideration, LORD HALSBURY L.C. saying that notice would be given to the appellants if their Lordships desired to hear a reply.

July 1. LORD HALSBURY L.C. :—

My Lords, I have so recently expressed an opinion in the Court of Appeal on the subject of actions of this character that I do not think it necessary to do more than say that I adhere to what I there said (3). To quote the language now some centuries old in dealing with actions of this character, “fraud without damage or damage without fraud” does not give rise to such actions. I have had also the opportunity of reading the judgment of my noble and learned friend Lord Herschell, and I could desire to add nothing to his exhaustive and lucid treatment of the authorities.

My Lords, when I turn to the question of fact I confess I am not altogether satisfied. In the first place I think the statement in the prospectus was untrue,—untrue in fact, and to the minds of such persons as were likely to take shares I think well calculated to mislead. I think such persons would have no idea of the technical division between tramways that had rights to use mechanical means and tramways that had not. What I think they would understand would be that this particular tramway was in an exceptionally advantageous position,—that the statement was of a present existing fact, that it had at the time of the invited subscription for shares the right to use steam. And I think such a statement if wilfully made with the consciousness of its inaccuracy would give rise to an action for deceit, provided that damage had been sustained if a person had acted upon a belief induced by such a prospectus.

But upon the question whether these statements were made with a consciousness of their misleading character, I cannot but

(1) 1 Dr. & S. 363, 381.

(2) Law Rep. 5 Eq. 249.

(3) See *Arnison v. Smith*, 41 Ch. D. 348, 367.

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H. L. (E.) be influenced by the opinions entertained by so many of your  
1889 Lordships that they are consistent with the directors' innocence  
DERBY of any intention to deceive.

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Lord Halsbury,  
L.C.

The learned judge who saw and heard the witnesses acquitted the defendants of intentional deceit, and although the Court of Appeal held them liable, overruling the decision of the learned judge below, they appear to me to have justified their decision upon grounds which I do not think tenable, namely, that they, the directors, were liable because they had no reasonable ground for the belief which nevertheless it is assumed they sincerely entertained.

My Lords, I think it would have been satisfactory to have had a more minute and exact account of how this prospectus was framed, the actual evidence of the draftsman of it, and the discussions which took place upon the alteration in form; which alteration gave such marked and peculiar prominence to the special feature of this particular tramway, in respect of the possession of power to use steam. Nevertheless, if, as I have said, the facts are reconcilable with the innocence of the directors, and with the absence of the mens rea which I consider an essential condition of an action for deceit, the mere fact of the inaccuracy of the statement ought not to be pressed into constituting a liability which appears to me not to exist according to the law of England.

As to the question whether Sir Henry Peek was induced to take his shares by reliance on the misleading statement, I admit that I have very considerable doubt. On the one hand I do not believe that any one can so far analyse his mental impressions as to be able to say what particular fact in a prospectus induced him to subscribe. On the other hand the description of Sir Henry Peek, even now that the question has been pointedly raised and brought to his mind, of what did or did not induce him to take his shares is hardly reconcilable with his having been substantially induced by the statement in question to take them.

On the whole I acquiesce in the judgment which one of your Lordships is about to move, namely, that the judgment appealed from be reversed.

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LORD WATSON:—

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My Lords, I agree with Stirling J. that, as matter of fact, the appellants did honestly believe in the truth of the representation upon which this action of deceit is based. It is by no means clear that the learned judges of the Court of Appeal meant to differ from that conclusion; but they seem to have held that a man who makes a representation with the view of its being acted upon, in the honest belief that it is true, commits a fraud in the eye of the law, if the court or a jury shall be of opinion that he had not reasonable grounds for his belief. I have no hesitation in rejecting that doctrine, for which I can find no warrant in the law of England. But I shall not trouble your Lordships with any observations of mine, because I accept without reserve the opinion about to be delivered by my noble and learned friend upon my left (Lord Herschell).

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LORD BRAMWELL:—

My Lords, I am of opinion that this judgment should be reversed. I am glad to come to this conclusion; for, as far as my judgment goes, it exonerates five men of good character and conduct from a charge of fraud, which, with all submission, I think wholly unfounded, a charge supported on such materials as to make all character precarious. I hope this will not be misunderstood; that promoters of companies will not suppose that they can safely make inaccurate statements with no responsibility. I should much regret any such notion; for the general public is so at the mercy of company promoters, sometimes dishonest, sometimes over sanguine, that it requires all the protection that the law can give it. Particularly should I regret if it was supposed that I did not entirely disapprove of the conduct of those directors who accepted their qualification from the contractor or intended contractor. It is wonderful to me that honest men of ordinary intelligence cannot see the impropriety of this. It is obvious that the contractor can only give this qualification because he means to get it back in the price given for the work he is to do. That price is to be fixed by the directors who have taken his money. They are paid by him to give

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him a good price, as high a price as they can, while their duty to their shareholders is to give him one as low as they can.

But there is another thing. The public, seeing these names, may well say, "These are respectable and intelligent men who think well enough of this scheme to adventure their money in it; we will do the same," little knowing that those thus trusted had made themselves safe against loss if the thing turned out ill, while they might gain if it was successful. I am glad to think that Mr. Wilde, a member of my old profession, was not one of those so bribed. The only shade of doubt I have in the case is, that this safety from loss in the directors may have made them less careful in judging of the truth of any statements they have made.

There is another matter I wish to dispose of before going into the particular facts of the case. I think we need not trouble ourselves about "legal fraud," nor whether it is a good or bad expression; because I hold that actual fraud must be proved in this case to make the defendants liable, and, as I understand, there is never any occasion to use the phrase "legal fraud" except when actual fraud cannot be established. "Legal fraud" is only used when some vague ground of action is to be resorted to, or, generally speaking, when the person using it will not take the trouble to find, or cannot find, what duty has been violated or right infringed, but thinks a claim is somehow made out. With the most sincere respect for Sir J. Hannen I cannot think the expression "convenient." I do not think it is "an explanation which very clearly conveys an idea;" at least, I am certain it does not to my mind. I think it a mischievous phrase, and one which has contributed to what I must consider the erroneous decision in this case. But, with these remarks, I have done with it, and will proceed to consider whether the law is not that actual fraud must be proved, and whether that has been done.

Now, I really am reluctant to cite authorities to shew that actual fraud must be established in such a case as this. It is one of the first things one learned, and one has never heard it doubted until recently. I am very glad to think that my noble and learned friend (Lord Herschell) has taken the trouble to go into the authorities fully; but to some extent I deprecate it,

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because it seems to me somewhat to come within the principle *Qui s'excuse s'accuse*. When a man makes a contract with another he is bound by it; and, in making it, he is bound not to bring it about by fraud. *Warrantizando vendidit* gives a cause of action if the warranty is broken. Knowingly and fraudulently stating a material untruth which brings about, wholly or partly, the contract, also gives a cause of action. To this may now be added the equitable rule (which is not in question here), that a material misrepresentation, though not fraudulent, may give a right to avoid or rescind a contract where capable of such rescission. To found an action for damages there must be a contract and breach, or fraud. The statement of claim in this case states fraud. Of course that need not be proved merely because it is stated. But no one ever heard of or saw a statement of claim or declaration for deceit without it. There is not an authority at common law, or by a common law lawyer, to the contrary; none has been cited, though there may be some incautious, hesitating, expressions which point that way. Every case from the earliest in *Comyns' Digest* to the present day alleges it. Further, the learned judges of the Court of Appeal hardly deny it. There is indeed an opinion to the contrary of the late Master of the Rolls, but it must be remembered that his knowledge of actions of deceit was small, if any. I did not think, then, that it was necessary to cite cases to shew that to maintain this action fraud in the defendant must be shewn, though I am glad it has been done.

Now, as to the evidence. The plaintiff's case is that the defendants made an untrue statement, which they knew to be untrue, and likely to influence persons reading it; therefore they were fraudulent. It is not necessary to consider whether a *prima facie* case was made out by the plaintiff. We have all the evidence before us, and must judge on the whole. The alleged untrue statement is that, "The company has the right to use steam or mechanical power instead of horses," and that a saving would be thereby effected. Now, this is certainly untrue, because it is stated as an absolute right, when in truth it was conditional on the approval of the Board of Trade, and the sanction or consent of two local boards; and a conditional right is

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 1889 defendants knew what the truth was, and therefore knew that  
 DEURY what they said was untrue. But it does not follow that the  
 v. statement was fraudulently made. There are various kinds of  
 PEEK. untruth. There is an absolute untruth, an untruth in itself,  
 Lord Bramwell. that no addition or qualification can make true; as, if a man says  
 a thing he saw was black, when it was white, as he remembers  
 and knows. So, as to *knowing* the truth. A man may know it,  
 and yet it may not be present to his mind at the moment of  
 speaking; or, if the fact is present to his mind, it may not occur  
 to him to be of any use to mention it. For example, suppose a  
 man was asked whether a writing was necessary in a contract for  
 the making and purchase of goods, he might well say "Yes,"  
 without adding that payment on receipt of the goods, or part,  
 would suffice. He might well think that the question he was  
 asked was whether a contract for goods to be made required a  
 writing like a contract for goods in existence. If he was writing  
 on the subject he would, of course, state the exception or quali-  
 fication.

Now, consider the case here. These directors naturally trust  
 to their solicitors to prepare their prospectus. It is prepared and  
 laid before them. They find the statement of their power to use  
 steam without qualification. It does not occur to them to alter  
 it. They swear they had no fraudulent intention. At the very  
 last they cannot see the fraud. There is their oath, their previous  
 character unimpeached, and there is to my mind this further  
 consideration: the truth would have served their purpose as well.  
 "We have power to use steam, etc., of course with the usual con-  
 ditions of the approval of the Board of Trade and the consent  
 of the local authorities, but we may make sure of these being  
 granted, as the Board of Trade has already allowed the power to  
 be inserted in the Act, and the local authorities have expressed  
 their approbation of the scheme." (See plaintiff's answer, 313 (1),  
 which shews that he would have been content with that state-  
 ment.)

During the argument I said I am not sure that I should  
 not have passed the prospectus. I will not say so now, because

(1) The references are to the Appendix printed for the House.

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certainly I would not pass it now after knowing the unfortunate use made of the statement, and no one can tell what would have been the state of his mind if one of the factors influencing it was wanting. But I firmly believe it might have been, and was, honestly done by these defendants. Stirling J. saw and heard them, and was of that opinion. It is difficult to say that the plaintiff was not. The report of the 6th of November 1884 shewed that the consent of the Board of Trade was necessary, shewed also that the corporation of Devonport would not consent, shewed therefore the "untruth" and the defendants' knowledge of it, and yet the plaintiff "had every confidence in the directors;" and see his answers to questions 53 and 365.

I now proceed to consider the judgments that have been delivered. It is not necessary to declare my great respect for those who have delivered them. Stirling J. refuses to say whether actual fraud must be shewn, and deals with the case on the footing that the question is whether the defendants had reasonable grounds for making the statement they did. He holds, as I do, that they thought the company had the right, as put in the prospectus, to use steam. Then he says he must "come to the conclusion that they had reasonable grounds for their belief; at all events, that their grounds were not so unreasonable as to justify me in charging them with being guilty of fraud." It is singular that the learned judge seems to consider that unreasonableness must be proved to such an extent as to shew fraud. He then proceeds, for what seem to me unanswerable reasons, to shew that they did every one believe that they had the right stated in the prospectus. He refers to what he saw of them in the box. He says he cannot come to the conclusion that their belief was so unreasonable and so unfounded, and their proceedings so reckless or careless that they ought to be fixed with the consequences of deceit. He makes an excellent remark, that "mercantile men dealing with matters of business would be the first to cry out if I extended the notion of deceit into what is honestly done in the belief that these things would come about, and when they did not come about, make them liable in an action of fraud." My only variation of this would be that it may be that the objection did not, and naturally did not, occur to them. It has

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H. L. (E.) not been argued, and I will say no more on the question, whether  
 1889 had the plaintiff known the contents of the Act he would or  
 DERRY would not have applied for the shares, than that I agree with  
 v. Stirling J.  
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Lord Bramwell.

Cotton L.J. says the law is "that where a man makes a statement to be acted on by others which is false, and which is known by him to be false, or is made by him recklessly, or without care whether it is true or false, that is without any reasonable ground for believing it to be true," he is liable to an action for deceit. Well, I agree to all before the "that is" and I agree to what comes after if it is taken as equivalent to what goes before, viz., "recklessly or without care whether it is true or false," understanding "recklessly" as explained by "without care whether it is true or false." For a man who makes a statement without care and regard for its truth or falsity commits a fraud. He is a rogue. For every man who makes a statement says "the truth is so and so, and I know it or believe it." I say I agree to this as I understand it.

It seems to me, with great respect, that the learned Lord Justice lost sight of his own definition, and glided into a different opinion. He says (p. 451, F.), "There is a duty cast upon a director who makes that statement to take care that there are no statements in it which in fact are false; to take care that he has reasonable ground for the material statements which are contained in that document (prospectus), which he intends to be acted on by others. And although in my opinion it is not necessary there should be what I should call fraud, there must be a departure from duty, . . . and he has violated the right which those who receive the statement have to have true statements only made to them." This seems to be a most formidable matter. I agree there is some such duty. I agree that not only directors in prospectuses, but all persons in all dealings should tell the truth. If they do not they furnish evidence of fraud; they subject themselves to have the contract rescinded. But to say that there is "a right to have true statements only made," I cannot agree, and I think it would be much to be regretted if there was any such right. Mercantile men, as Stirling J. says, would indeed cry out. No qualification is stated.

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If this is law the statement may be reasonably believed to be true by him who makes it, but if untrue there is to be a cause of action; and that although he may have refused a warranty. I hope not. There is a duty to tell the truth, or, rather, what is believed to be the truth. At page 452, B., his Lordship says: "Where a man makes a false statement without reasonable ground to suppose it to be true, and without taking care to ascertain if it is true, he is liable civilly as much as a person who commits what is usually called fraud." I say I agree if that means making a statement of which he knows or believes not the truth. His Lordship proceeds to examine whether the defendants had reasonable ground for believing what they said, and comes to the conclusion that they had not, and so holds them liable, not because they were dishonest, but because they were unreasonable. I say they never undertook to be otherwise. He says (461 G.): "It is not that I attribute to them any intention to commit fraud, but they have made a statement without any sufficient reason for believing it to be true."

Sir James Hannen says that he agrees with Cotton L.J.'s statement of the law, and adds: "If a man takes upon himself to assert a thing to be true, which he does not know to be true, and has no reasonable ground to believe to be true," it is sufficient in an action of deceit. I agree, if he knows he has no such reasonable ground and the knowledge is present to his mind; otherwise, with great respect, I differ. He cites Lord Cairns (465 F.), that, "if persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must in a civil point of view be held as responsible as if they had asserted that which they knew to be untrue." So say I, but this does not support Sir James's proposition. Nor does he deal with what he quotes from Lord Cranworth. But further (466), he speaks of legal fraud as meaning "that degree of moral culpability in the statement of an untruth to induce another to alter his position, to which the law attaches responsibility." But if there is moral culpability, I agree there is responsibility. But to believe without reasonable grounds is not moral culpability, but, (if there is such a thing) mental culpability. He says, "the word 'fraud' is in common parlance reserved for actions of great turpitude, but

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H. L. (E.) the law applies it to lesser breaches of moral duty." I agree the  
1889, law applies it to all breaches of the moral duty to tell the truth  
DERRY in dealing with others; but that duty cannot be honestly broken.  
v. To be actionable, a breach of that duty must be dishonest. Nay,  
PEEK. it is a man's duty sometimes to tell an untruth. For instance,  
Lord Bramwell. when asked as to a servant's character, he must say what he believes  
is the truth, however he may have formed his opinion, and how-  
ever wrong it may be. His Lordship says he cannot think the  
directors had any reasonable ground for believing the prospectus  
to be true. But had they the matter present to their minds?  
Even if this were the question I should decide in their favour.

As to the judgment of Lopes L.J., I quite agree with what he  
says: "I know of no fraud which will support an action of deceit  
to which some moral delinquency does not belong." I think  
that shews the meaning of what he says "fourthly," though that is  
made doubtful by what he says at 472 D.

I think, with all respect, that in all the judgments there is, I  
must say it, a confusion of unreasonableness of belief as evidence  
of dishonesty, and unreasonableness of belief as of itself a ground  
of action.

I have examined these judgments at this length owing to my  
sense of their importance and the importance of the question  
they deal with. I think it is most undesirable that actions  
should be maintainable in respect of statements, made unreason-  
ably perhaps, but honestly. I think it would be disastrous if  
there was "a right to have true statements only made." This  
case is an example. I think that in this kind of case, as in some  
others, Courts of Equity have made the mistake of disregarding a  
valuable general principle in their desire to effect what is, or is  
thought to be, justice in a particular instance. It might, per-  
haps, be well to enact that in prospectuses of public companies  
there should be a warranty of the truth of all statements except  
where it was expressly said there was no warranty. The objec-  
tion is to exceptional legislation, and to the danger of driving  
respectable and responsible men from being promoters, and of  
substituting for them those who are neither.

In this particular case I hold that unless fraud in the defend-  
ants could be shewn, the action is not maintainable. I am

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satisfied there was no fraud. Further, if an unreasonable misstatement were enough, I hold there was none. Still further, I do not believe that the plaintiff was influenced by the misstatement, though I am entirely satisfied that he was an honest witness.

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LORD FITZGERALD :—

My Lords, the pleadings and the facts have been already referred to by the noble Lords who have addressed the House. The action is for deceit. The writ was sued out in February 1885, and originally claimed rescission of the contract with the company. It was subsequently amended by striking out the company as defendants, and also the prayer for rescission, and it assumed the character of an action for deceit against the present appellants (five of the directors), and claimed "damages for the fraudulent misrepresentations of the defendants."

The statement of claim, which is sufficient in form to raise the real question, alleged the misrepresentation to exist in the prospectus issued in February 1883, and to consist of the paragraph so often read, that the company had a right to use steam or other mechanical motive power; and it was further alleged "that the defendants intended thereby to represent that the company had an absolute right to use steam and other mechanical power," and that such representation was made fraudulently, and with the view to induce the plaintiff to take shares in the company.

So far, my Lords, the real issue seems to have been raised fairly and clearly, and to depend on matters of fact. There were circumstances connected with the promotion of the company, and the procuring of four of the defendants to act as directors, which tended to create suspicion as to their statements and their bona fides, and attracted directly the attention of the learned judge before whom the case was tried. The defendants, who were severally produced as witnesses at the trial, were exposed to a very lengthened and searching cross-examination by counsel for the plaintiff, and were also carefully examined by the judge as to these transactions, with the result apparently of freeing them from any imputation therein of moral misconduct.

The question which I am about to examine in the first in-

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 1889 whether the impugned statement in the prospectus was a false  
 DERRY statement in the sense of being untrue. That it was inaccurate  
 v. so far as it purported to give the legal effect of the special Act I  
 PEEK. do not doubt, but was it untrue as representing the position of  
 Lord FitzGerald. the company in a popular and business sense? The General  
 Tramways Act (33 & 34 Vict. c. 78), which regulates tramways  
 generally, but subject to the provisions of the special Act, if  
 any, of each company, places them under the supervision of the  
 Board of Trade with a view to public safety, and for public  
 protection generally, and by its 34th section it provides "that all  
 carriages used on tramways shall be moved by the power pre-  
 scribed by the special Act."

The special Act of this company became law on the 24th of  
 July 1882, and by ss. 4 and 5 the company incorporated by the  
 Act is empowered to make the seven tramways in question in  
 all respects in accordance with the plans and sections. Sect. 15  
 provides minutely for their formation, subject to the orders of  
 the Board of Trade, and by sect. 16 the tramway is not to be  
 opened for public traffic until it shall have been inspected and  
 certified by the Board of Trade to be fit for such traffic.

Before referring to the 35th section of the special Act we may  
 glance at sect. 37 of that Act, which empowers the Board of  
 Trade to make bye-laws as to any of the tramways on which  
 steam may be used under the authority of the Act, and sect. 44,  
 which provides that where the company intends to use steam  
 they shall give two months' notice.

There are several other sections providing for the use of steam  
 power if the company should elect to use it as the motor.

In the light of those sections of the special Act, and of sect. 34  
 of the general Act, let us now look at the particular paragraph  
 of the prospectus, and sect. 35 of the special Act. By that  
 section Parliament has done that which Parliament could do,  
 and which the Board of Trade could not do. It has conferred  
 on the company authority to use steam as its motive power. It  
 has not imposed on the company the use of steam power, but it  
 says that they may use it if they elect to do so. Before dealing  
 with the consent of the Board of Trade I desire to call attention

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to the proviso in the 35th section, "that the exercise of the powers hereby conferred with respect to the use of steam shall be subject to the regulations in Schedule 'A,' and to any regulations which may be added thereto or substituted therefor by the Board of Trade for securing to the public all reasonable protection against danger in the exercise of the powers by this Act conferred with respect to the use of steam."

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Schedule A., referred to in sect. 35, contains no less than ten regulations for the direction of the company in the exercise of the right so conferred to use steam power.

Now, turning back to the words "with the consent of the Board of Trade," in sect. 35 of the special Act, that consent could not confer, nor would its absence take away, the right conferred by the legislature to use steam as a motor. Its true character is that of a precaution imposed by the legislature to defer the actual exercise of the right conferred until the supervision of the Board of Trade secures to the public all reasonable protections against danger. To attain these objects the legislature provides that the powers it has conferred should not be actually exercised without the consent of the Board of Trade.

My Lords, I have, though with difficulty, arrived at the conclusion that the statement in the prospectus, that by the special Act the company had the right to use steam power, was not untrue in a popular or business sense.

Let us see for a moment in what way and with what meaning General Hutchinson used similar expressions. In his report of the 12th of July 1884 he says: "The Act of 1882 gives, however, the company authority to use mechanical power over all their system, and I think it would be most objectionable that this power should be exercised on parts of Tramway No. 1 on account of the narrowness of three of the roads."

The remainder of the incriminated paragraph of the prospectus is, "and it is fully expected that by means of this (i.e., the use of steam) a considerable saving will result in the working expenses of the line as compared with other tramways worked by horses." This was not untrue: there had been a division of opinion in the directory on the subject, which was finally and before the issue of the prospectus resolved in favour of steam.

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The conclusion I have arrived at, my Lords, is that this paragraph of the prospectus, though inaccurate in point of law in one particular, seems on the whole to have been morally true.

If this view is correct it is an answer to the action, but assuming that it is not correct, or that your Lordships are not prepared to adopt it, I proceed to express my opinion on the remaining substance of the action. Cotton L.J. describes the action as "an action of deceit, a mere common law action." The description is accurate, and I proceed to deal with it as a mere common law action. It has not been in the least altered in its characteristics by having been instituted in the Chancery Division, or tried by a judge without the aid of a jury, nor are your Lordships necessarily driven to consider on the present appeal some of the subtle and refined distinctions which have been engrafted on the clear and simple principles of the common law. The action for deceit at common law is founded on fraud. It is essential to the action that moral fraud should be established, and since the case of *Collins v. Evans* (1), in the Exchequer Chamber, it has never been doubted that fraud must concur with the false statement to maintain the action. It would not be sufficient to shew that a false representation had been made. It must further be established that the defendant knew at the time of making it that the representation was untrue, or, to adopt the language of the learned editors of the *Leading Cases*, that "the defendant must be shewn to have been actually and fraudulently cognisant of the falsehood of his representation or to have made it fraudulently without belief that it was true." The leading counsel for the respondent met the argument fairly on the allegations of fact. He alleged "that the defendants were not honest; that they stated in the prospectus a definite lie, and knew that it was a lie." That is the very issue, in fact, in the case.

The whole law and all the cases on the subject will be found in the notes to *Chandelor v. Lopus* (2) and *Pasley v. Freeman* (3). There is also a clear and able summary of the decisions, both in law and in equity, brought down to the present time in the recent edition of Benjamin on Sales, by Pearson-Gee and Boyd.

(1) 5 Q. B. 804, 820.

(2) 1 Smith's L. C. 9th Ed. p. 186.

(3) 2 Smith's L. C. 9th Ed. p. 74.

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I desire to make an observation on *Chandelor v. Lopus* (1). The report in Cro. Jac. 4 would seem to have but little direct bearing on the present case were it not for the opinion attributed to Anderson J.; but there is a valuable note in 1 Dyer by Vaillant (75a) which is as follows: Lopus brought an action upon the case against Chandelor, and shewed that, whereas the defendant was a goldsmith, and skilled in the nature of precious stones, and being possessed of a stone which the defendant asserted and assured the said plaintiff to be a true and perfect stone called a bezoar stone &c., upon which the plaintiff bought it &c. There the opinion of Popham C.J. was "that if I have any commodities which are damaged (whether victuals or otherwise), and I, *knowing them to be so*, sell them for good, and affirm them to be so, an action upon the case lies for the deceit: but although they be damaged, if I, *knowing not that*, affirm them to be good, still no action lies, without I warrant them to be good." The action seems originally to have been on a warranty which failed in fact, as there had been no warranty, and it was then sought to support it as an action for deceit; but it was not alleged in the count that the defendant knew the representation to be untrue. It was in reference to that that the observation of Popham C.J. was made. He had the reputation of being a consummate lawyer.

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The note in 1 Dyer (75a) was probably by Mr. Treby, afterwards Chief Justice Treby. He edited an edition of Dyer published in 1688. I have not had an opportunity of referring to it, but it is said that he gave the public some highly authoritative notes in that edition. I have quoted from Mr. Vaillant's edition, published in 1794.

The whole evidence given on this appeal has been laid before your Lordships, and we have to deal with it as a whole. That evidence has been already so fully stated and criticised that it is not necessary for me to do more than to state the conclusions of fact which in my opinion are reasonably to be deduced from it, viz. that the several defendants did not know that the incriminated statement in the prospectus was untrue, and that, on the contrary, they severally and in good faith believed it to be

(1) 1 Smith's L. C. 9th Ed. p. 186.

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H. L. (E.) true. The conclusions, in fact, at which I have arrived, render  
1889 it unnecessary for me to consider the long and rather bewildering  
DERRY list of authorities to which your Lordships were referred, or to  
v. criticise the reasons given in the Court of Appeal for their deci-  
PEEK. sion in the present case. I desire, however, to make a single  
Lord FitzGerald. observation.

There is one characteristic which, as it seems to me, pervades each of the several judgments in the Court of Appeal, viz. that the bonâ fide belief of the defendants in the truth of the representation was unavailing unless it was a reasonable belief resting on reasonable grounds. If this is correct, it seems to me that in an action for "deceit" it would be necessary to submit to the jury (if tried before that tribunal) not only the existence of that belief bonâ fide, but also the grounds on which it was arrived at, and their reasonableness.

I am by no means satisfied that such is the law, and if now driven to express an opinion on it, I would prefer following the opinion of Lord Cranworth in *Western Bank of Scotland v. Addie* (1), in which he said: "I confess that my opinion was that in what his Lordship (the Lord President) thus stated, he went beyond what principle warrants. If persons in the situation of directors of a bank make statements as to the condition of its affairs, which they bonâ fide believe to be true, I cannot think they can be guilty of fraud, because other persons think, or the Court thinks, or your Lordships think, that there was no sufficient ground to warrant the opinion which they had formed. If a little more care and caution must have led the directors to a conclusion different from that which they put forth, this may afford strong evidence to shew that they did not really believe in the truth of what they stated, and so that they were guilty of fraud. But this would be the consequence, not of their having stated as true what they had not reasonable ground to believe to be true, but of their having stated as true what they did not believe to be true."

A director is bound in all particulars to be careful and circumspect, and not, either in his statements to the public or in the performance of the duties he has undertaken, to be careless

(1) Law Rep. 1 H. L., Sc. 145, 168.

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or negligent, or rash. Want of care or circumspection, as well as recklessness, may in such a case as the present be taken into consideration in determining at every stage the question of bona fides.

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My Lords, I am of opinion that the decision of the Court of Appeal should be reversed.

LORD HERSCHELL:—

My Lords, in the statement of claim in this action the respondent, who is the plaintiff, alleges that the appellants made in a prospectus issued by them certain statements which were untrue, that they well knew that the facts were not as stated in the prospectus, and made the representations fraudulently, and with the view to induce the plaintiff to take shares in the company.

“This action is one which is commonly called an action of deceit, a mere common law action.” This is the description of it given by Cotton L.J. in delivering judgment. I think it important that it should be borne in mind that such an action differs essentially from one brought to obtain rescission of a contract on the ground of misrepresentation of a material fact. The principles which govern the two actions differ widely. Where rescission is claimed it is only necessary to prove that there was misrepresentation; then, however honestly it may have been made, however free from blame the person who made it, the contract, having been obtained by misrepresentation, cannot stand. In an action of deceit, on the contrary, it is not enough to establish misrepresentation alone; it is conceded on all hands that something more must be proved to cast liability upon the defendant, though it has been a matter of controversy what additional elements are requisite. I lay stress upon this because observations made by learned judges in actions for rescission have been cited and much relied upon at the bar by counsel for the respondent. Care must obviously be observed in applying the language used in relation to such actions to an action of deceit. Even if the scope of the language used extend beyond the particular action which was being dealt with, it must be remembered that the learned judges were not engaged in deter-

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There is another class of actions which I must refer to also for the purpose of putting it aside. I mean those cases where a person within whose special province it lay to know a particular fact, has given an erroneous answer to an inquiry made with regard to it by a person desirous of ascertaining the fact for the purpose of determining his course accordingly, and has been held bound to make good the assurance he has given. *Burrowes v. Lock* (1) may be cited as an example, where a trustee had been asked by an intended lender, upon the security of a trust fund, whether notice of any prior incumbrance upon the fund had been given to him. In cases like this it has been said that the circumstance that the answer was honestly made in the belief that it was true affords no defence to the action. Lord Selborne pointed out in *Brownlie v. Campbell* (2) that these cases were in an altogether different category from actions to recover damages for false representation, such as we are now dealing with.

One other observation I have to make before proceeding to consider the law which has been laid down by the learned judges in the Court of Appeal in the case before your Lordships. "An action of deceit is a common law action, and must be decided on the same principles, whether it be brought in the Chancery Division or any of the Common Law Divisions, there being, in my opinion, no such thing as an equitable action for deceit." This was the language of Cotton L.J. in *Arkwright v. Newbould* (3). It was adopted by Lord Blackburn in *Smith v. Chadwick* (4), and is not, I think, open to dispute.

In the Court below Cotton L.J. said: "What in my opinion is a correct statement of the law is this, that where a man makes a statement to be acted upon by others which is false, and which is known by him to be false, or is made by him recklessly, or without care whether it is true or false, that is, without any reasonable ground for believing it to be true, he is liable in an action of deceit at the suit of anyone to whom it was addressed or anyone of the class to whom it was addressed and who was

(1) 10 Ves. 470.

(2) 5 App. Cas. at p. 935.

(3) 17 Ch. D. 320.

(4) 9 App. Cas. 193.

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materially induced by the misstatement to do an act to his prejudice." About much that is here stated there cannot, I think, be two opinions. But when the learned Lord Justice speaks of a statement made recklessly or without care whether it is true or false, *that is* without any reasonable ground for believing it to be true, I find myself, with all respect, unable to agree that these are convertible expressions. To make a statement careless whether it be true or false, and therefore without any real belief in its truth, appears to me to be an essentially different thing from making, through want of care, a false statement, which is nevertheless honestly believed to be true. And it is surely conceivable that a man may believe that what he states is the fact, though he has been so wanting in care that the Court may think that there were no sufficient grounds to warrant his belief. I shall have to consider hereafter whether the want of reasonable ground for believing the statement made is sufficient to support an action of deceit. I am only concerned for the moment to point out that it does not follow that it is so, because there is authority for saying that a statement made recklessly, without caring whether it be true or false, affords sufficient foundation for such an action.

That the learned Lord Justice thought that if a false statement were made without reasonable ground for believing it to be true an action of deceit would lie, is clear from a subsequent passage in his judgment. He says that when statements are made in a prospectus like the present, to be circulated amongst persons in order to induce them to take shares, "there is a duty cast upon the director or other person who makes those statements to take care that there are no expressions in them which in fact are false; to take care that he has reasonable ground for the material statements which are contained in that document which he prepares and circulates for the very purpose of its being acted upon by others."

The learned judge proceeds to say: "Although in my opinion it is not necessary that there should be what I should call fraud, yet in these actions, according to my view of the law, there must be a departure from duty, that is to say, an untrue statement made without any reasonable ground for believing that statement

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1889 ment with an intention that it shall be acted upon without any  
DERRY reasonable ground for believing that statement to be true he  
v. makes a default in a duty which was thrown upon him from the  
PEEK. position he has taken upon himself, and he violates the right  
Lord Herschell. which those to whom he makes the statement have to have true  
statements only made to them."

Now I have first to remark on these observations that the alleged "right" must surely be here stated too widely, if it is intended to refer to a legal right, the violation of which may give rise to an action for damages. For if there be a right to have true statements only made, this will render liable to an action those who make untrue statements, however innocently. This cannot have been meant. I think it must have been intended to make the statement of the right correspond with that of the alleged duty, the departure from which is said to be making an untrue statement without any reasonable ground for believing it to be true. I have further to observe that the Lord Justice distinctly says that if there be such a departure from duty an action of deceit can be maintained, though there be not what he should call fraud. I shall have by-and-by to consider the discussions which have arisen as to the difference between the popular understanding of the word "fraud" and the interpretation given to it by lawyers, which have led to the use of such expressions as "legal fraud," or "fraud in law;" but I may state at once that, in my opinion, without proof of fraud no action of deceit is maintainable. When I examine the cases which have been decided upon this branch of the law, I shall endeavour to shew that there is abundant authority to warrant this proposition.

I return now to the judgments delivered in the Court of Appeal. Sir James Hannen says: "I take the law to be that if a man takes upon himself to assert a thing to be true which he does not know to be true, and has no reasonable ground to believe to be true, in order to induce another to act upon the assertion, who does so act and is thereby damnified, the person so damnified is entitled to maintain an action for deceit." Again, Lopes L.J. states what, in his opinion, is the result of the

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cases. I will not trouble your Lordships with quoting the first three propositions which he lays down, although I do not feel sure that the third is distinct from, and not rather an instance of, the case dealt with by the second proposition. But he says that a person making a false statement, intended to be and in fact relied on by the person to whom it is made, may be sued by the person damaged thereby: "Fourthly, if it is untrue in fact, but believed to be true, but without any reasonable grounds for such belief."

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It will thus be seen that all the learned judges concurred in thinking that it was sufficient to prove that the representations made were not in accordance with fact, and that the person making them had no reasonable ground for believing them. They did not treat the absence of such reasonable ground as evidence merely that the statements were made recklessly, careless whether they were true or false, and without belief that they were true, but they adopted as the test of liability, not the existence of belief in the truth of the assertions made, but whether the belief in them was founded upon any reasonable grounds. It will be seen, further, that the Court did not purport to be establishing any new doctrine. They deemed that they were only following the cases already decided, and that the proposition which they concurred in laying down was established by prior authorities. Indeed, Lopes L.J. expressly states the law in this respect to be well settled. This renders a close and critical examination of the earlier authorities necessary.

I need go no further back than the leading case of *Pasley v. Freeman* (1). If it was not there for the first time held that an action of deceit would lie in respect of fraudulent representations against a person not a party to a contract induced by them, the law was at all events not so well settled but that a distinguished Judge, Grose J., differing from his brethren on the Bench, held that such an action was not maintainable. Buller J., who held that the action lay, adopted in relation to it the language of Croke J., in 3 Bulstrode 95, who said: "Fraud without damage, or damage without fraud, gives no cause of action, but where these two concur an action lies." In reviewing the case

(1) 2 Smith's L. C. 74.

H. L. (E.) of *Crosse v. Gardner* (1) he says: "Knowledge of the falsehood of the thing asserted is fraud and deceit;" and further, after pointing out that in *Risney v. Selby* (2) the judgment proceeded wholly on the ground that the defendant knew what he asserted to be false, he adds: "The assertion alone will not maintain the action, but the plaintiff must go on to prove that it was false, and that the defendant knew it to be so," the latter words being specially emphasised. Kenyon C.J. said: "The plaintiffs applied to the defendant, telling him that they were going to deal with Falch, and desired to be informed of his credit, when the defendant fraudulently, and knowing it to be otherwise, and with a design to deceive the plaintiffs, made the false affirmation stated on the record, by which they sustained damage. Can a doubt be entertained for a moment but that this is injurious to the plaintiffs?" In this case it was evidently considered that fraud was the basis of the action, and that such fraud might consist in making a statement known to be false.

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*Haycraft v. Creasy* (3) was again an action in respect of a false affirmation made by the defendant to the plaintiff about the credit of a third party whom the plaintiff was about to trust. The words complained of were, "I can assure you of my own knowledge that you may credit Miss R. to any amount with perfect safety." All the judges were agreed that fraud was of the essence of the action, but they differed in their view of the conclusion to be drawn from the facts. Lord Kenyon thought that fraud had been proved, because the defendant stated that to be true within his own knowledge which he did not know to be true. The other judges thinking that the defendant's words vouching his own knowledge were no more than a strong expression of opinion, inasmuch as a statement concerning the credit of another can be no more than a matter of opinion, and that he did believe the lady's credit to be what he represented, held that the action would not lie. It is beside the present purpose to inquire which view of the facts was the more sound. Upon the law there was no difference of opinion. It is a distinct decision that knowledge of the falsity of the affirmation made is essential to the

(1) Carth. 90.

(2) 1 Salk. 211.

(3) 2 East, 92.

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maintenance of the action, and that belief in its truth affords a defence.

I may pass now to *Foster v. Charles* (1). It was there contended that the defendant was not liable, even though the representation he had made was false to his knowledge, because he had no intention of defrauding or injuring the plaintiff. This contention was not upheld by the Court, Tindal C.J. saying: "It is fraud in law if a party makes representations which he knows to be false, and injury ensues, although the motives from which the representations proceeded may not have been bad." This is the first of the cases in which I have met with the expression "fraud in law." It was manifestly used in relation to the argument that the defendant was not actuated by a desire to defraud or injure the person to whom the representation was made. The popular use of the word "fraud" perhaps involves generally the conception of such a motive as one of its elements. But I do not think the Chief Justice intended to indicate any doubt that the act which he characterised as a fraud in law was in truth fraudulent as a matter of fact also. Wilfully to tell a falsehood, intending that another shall be led to act upon it as if it were the truth, may well be termed fraudulent, whatever the motive which induces it, though it be neither gain to the person making the assertion nor injury to the person to whom it is made.

*Foster v. Charles* (1) was followed in *Corbett v. Brown* (2), and shortly afterwards in *Polhill v. Walter* (3). The learned counsel for the respondent placed great reliance on this case, because although the jury had negatived the existence of fraud in fact the defendant was nevertheless held liable. It is plain, however, that all that was meant by this finding of the jury was, that the defendant was not actuated by any corrupt or improper motive, for Lord Tenterden says, "It was contended that . . . in order to maintain this species of action it is not necessary to prove that the false representation was made from a corrupt motive of gain to the defendant or a wicked motive of injury to the plaintiff; it was said to be enough if a representation is made which the party

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(1) 7 Bing. 105.

(2) 8 Bing. 33.

(3) 3 B. & Ad. 114.

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1889 or which from the mode in which it is made is calculated, to  
DEHRY induce another to act on the faith of it in such a way as that he  
v. may incur damage, and that damage is actually incurred. A  
PEEK. wilful falsehood of such a nature was contended to be in the legal  
Lord Herschell. sense of the word *a fraud*, and for this position was cited *Foster*  
*v. Charles* (1), to which may be added the recent case of *Corbett v.*  
*Brown* (2). The principle of these cases appears to us to be well  
founded, and to apply to the present."

In a later case of *Crawshay v. Thompson* (3) Maule J. explains  
*Polhill v. Walter* (4) thus: "If a wrong be done by a false repre-  
sentation of a party who knows such representation to be false,  
the law will infer an intention to injure. That is the effect of  
*Polhill v. Walter*" (4). In the same case, Cresswell J. defines  
"fraud in law," in terms which have been often quoted. "The  
cases," he says, "may be considered to establish the principle  
that fraud in law consists in knowingly asserting that which is  
false in fact to the injury of another."

In *Moens v. Heyworth* (5), which was decided in the same year  
as *Crawshay v. Thompson* (3), Lord Abinger having suggested  
that an action of fraud might be maintained where no moral  
blame was to be imputed, Parke B. said: "To support that count  
(viz., a count for fraudulent representation) it was essential to  
prove that the defendants *knowingly*" (and I observe that this  
word is emphasised), "by words or acts, made such a representa-  
tion as is stated in the third count, relative to the invoice of  
these goods, as they knew to be untrue."

The next case in the series, *Taylor v. Ashton* (6), is one which  
strikes me as being of great importance. It was an action  
brought against directors of a bank for fraudulent representations  
as to its affairs, whereby the plaintiff was induced to take shares.  
The jury found the defendants not guilty of fraud, but expressed  
the opinion that they had been guilty of gross negligence.  
Exception was taken to the mode in which the case was left to  
the jury, and it was contended that their verdict was sufficient

(1) 7 Bing. 105.

(2) 8 Bing. 33.

(3) 4 M. & Gr. 357.

(4) 3 B. & Ad. 114.

(5) 10 M. & W. at p. 157.

(6) 11 M. & W. 401.

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to render the defendants liable ; Parke B., however, in delivering the opinion of the Court said : “ It is insisted that even that (*viz.*, the gross negligence which the jury had found), accompanied with a damage to the plaintiff in consequence of that gross negligence, would be sufficient to give him a right of action. From this proposition we entirely dissent, because we are of opinion that, independently of any contract between the parties, no one can be made responsible for a representation of this kind unless it be *fraudulently made*. . . . But then it was said that in order to constitute that fraud, it was not necessary to shew that the defendants *knew* the fact they stated to be untrue, that it was enough that the fact *was* untrue if they communicated that fact for a deceitful purpose, and to that proposition the Court is prepared to assent. It is not necessary to shew that the defendants knew the facts to be untrue ; if they stated a fact which was untrue for a fraudulent purpose, they at the same time *not believing* that fact to be true, in that case it would be both a legal and moral fraud.”

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Now it is impossible to conceive a more emphatic declaration than this, that to support an action of deceit fraud must be proved, and that nothing less than fraud will do. I can find no trace of the idea that it would suffice if it were shewn that the defendants had not reasonable grounds for believing the statements they made. It is difficult to understand how the defendants could, in the case on which I am commenting, have been guilty of gross negligence in making the statements they did, if they had reasonable grounds for believing them to be true, or if they had taken care that they had reasonable grounds for making them.

All the cases I have hitherto referred to were in courts of first instance. But in *Collins v. Evans* (1) they were reviewed by the Exchequer Chamber. The judgment of the Court was delivered by Tindal C.J. After stating the question at issue to be “ whether a statement or representation which is false in fact, but not known to be so by the party making it, but, on the contrary, made honestly and in the full belief that it is true, affords a ground of action,” he proceeds to say : “ The current of

(1) 5 Q. B. 804, 820.

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H. L. (E.) the authorities, from *Pasley v. Freeman* (1) downwards, has laid down the general rule of law to be, that fraud must concur with the false statement in order to give a ground of action." Is it not clear that the Court considered that fraud was absent if the statement was "made honestly, and in the full belief that it was true"?

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In *Evans v. Edmonds* (2) Maule J. expressed an important opinion, often quoted, which has been thought to carry the law further than the previous authorities, though I do not think it really does so. He said: "If a man having no knowledge whatever on the subject takes upon himself to represent a certain state of facts to exist he does so at his peril, and if it be done either with a view to secure some benefit to himself or to deceive a third person he is in law guilty of a fraud, for he takes upon himself to warrant his own belief of the truth of that which he so asserts. Although the person making the representation may have no knowledge of its falsehood the representation may still have been fraudulently made." The foundation of this proposition manifestly is, that a person making any statement which he intends another to act upon must be taken to warrant his belief in its truth. Any person making such a statement must always be aware that the person to whom it is made will understand, if not that he who makes it *knows*, yet at least that he *believes* it to be true. And if he has no such belief he is as much guilty of fraud as if he had made any other representation which he knew to be false, or did not believe to be true.

I now arrive at the earliest case in which I find the suggestion that an untrue statement made without reasonable ground for believing it will support an action for deceit. In *Western Bank of Scotland v. Addie* (3) the Lord President told the jury "that if a case should occur of directors taking upon themselves to put forth in their report statements of importance in regard to the affairs of the bank false in themselves and which they did not believe, or had no reasonable ground to believe to be true, that would be a misrepresentation and deceit." Exception having been taken to this direction without avail in the Court of Session, Lord Chelmsford in this House said: "I agree in the propriety of this

(1) 2 Smith's L. C. 74.

(2) 13 C. B. 777.

(3) Law Rep. 1 H. L., Sc. 145, 162.

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interlocutor. In the argument upon this exception the case was put of an honest belief being entertained by the directors, of the reasonableness of which it was said the jury, upon this direction, would have to judge. But supposing a person makes an untrue statement which he asserts to be the result of a bonâ fide belief in its truth, how can the bona fides be tested except by considering the grounds of such belief? And if an untrue statement is made founded upon a belief which is destitute of all reasonable grounds, or which the least inquiry would immediately correct, I do not see that it is not fairly and correctly characterised as misrepresentation and deceit."

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I think there is here some confusion between that which is evidence of fraud, and that which constitutes it. A consideration of the grounds of belief is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so. There may be such an absence of reasonable ground for his belief as, in spite of his assertion, to carry conviction to the mind that he had not really the belief which he alleges. If the learned Lord intended to go further, as apparently he did, and to say that though the belief was really entertained, yet if there were no reasonable grounds for it, the person making the statement was guilty of fraud in the same way as if he had known what he stated to be false, I say, with all respect, that the previous authorities afford no warrant for the view that an action of deceit would lie under such circumstances. A man who forms his belief carelessly, or is unreasonably credulous, may be blameworthy when he makes a representation on which another is to act, but he is not, in my opinion, fraudulent in the sense in which that word was used in all the cases from *Pasley v. Freeman* (1) down to that with which I am now dealing. Even when the expression "fraud in law" has been employed, there has always been present, and regarded as an essential element, that the deception was wilful either because the untrue statement was known to be untrue, or because belief in it was asserted without such belief existing.

(1) 2 Smith's L. C. 71.

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Lord Herschell.

I have made these remarks with the more confidence because they appear to me to have the high sanction of Lord Cranworth. In delivering his opinion in the same case he said: "I confess that my opinion was that in what his Lordship (the Lord President) thus stated, he went beyond what principle warrants. If persons in the situation of directors of a bank make statements as to the condition of its affairs which they bonâ fide believe to be true, I cannot think they can be guilty of fraud because other persons think, or the Court thinks, or your Lordships think, that there was no sufficient ground to warrant the opinion which they had formed. If a little more care and caution must have led the directors to a conclusion different from that which they put forth, this may afford strong evidence to shew that they did not really believe in the truth of what they stated, and so that they were guilty of fraud. But this would be the consequence not of their having stated as true what they had not reasonable ground to believe to be true, but of their having stated as true what they did not believe to be true."

Sir James Hannen, in his judgment below, seeks to limit the application of what Lord Cranworth says to cases where the statement made is a matter of opinion only. With all deference I do not think it was intended to be or can be so limited. The direction which he was considering, and which he thought went beyond what true principle warranted, had relation to making false statements of importance in regard to the affairs of the bank. When this is borne in mind, and the words which follow those quoted by Sir James Hannen are looked at, it becomes to my mind obvious that Lord Cranworth did not use the words "the opinion which they had formed" as meaning anything different from "the belief which they entertained."

The opinions expressed by Lord Cairns in two well-known cases have been cited as though they supported the view that an action of deceit might be maintained without any fraud on the part of the person sued. I do not think they bear any such construction. In the case of *Reese Silver Mining Co. v. Smith* (1) he said: "If persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue

(1) Law Rep. 4 H. L. 64, 79.

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they must, in a civil point of view, be held as responsible as if they had asserted that which they knew to be untrue." This must mean that the persons referred to were conscious when making the assertion that they were ignorant whether it was true or untrue. For if not it might be said of any one who innocently makes a false statement. He must be ignorant that it is untrue, for otherwise he would not make it innocently; he must be ignorant that it is true, for by the hypothesis it is false. Construing the language of Lord Cairns in the sense I have indicated, it is no more than an adoption of the opinion expressed by Maule J. in *Evans v. Edmonds* (1). It is a case of the representation of a person's belief in a fact when he is conscious that he knows not whether it be true or false, and when he has therefore no such belief. When Lord Cairns speaks of it as not being fraud in the more invidious sense, he refers, I think, only to the fact that there was no intention to cheat or injure.

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In *Peek v. Gurney* (2) the same learned Lord, after alluding to the circumstance that the defendants had been acquitted of fraud upon a criminal charge, and that there was a great deal to shew that they were labouring under the impression that the concern had in it the elements of a profitable commercial undertaking, proceeds to say: "They may be absolved from any charge of a wilful design or motive to mislead or defraud the public. But in a civil proceeding of this kind all that your Lordships have to examine is the question, was there, or was there not, misrepresentation in point of fact? If there was, however innocent the motive may have been, your Lordships will be obliged to arrive at the consequences which properly would result from what was done." In the case then under consideration it was clear that if there had been a false statement of fact it had been knowingly made. Lord Cairns certainly could not have meant that in an action of deceit the only question to be considered was whether or not there was misrepresentation in point of fact. All that he there pointed out was that in such a case motive was immaterial: that it mattered not that there was no design to mislead or defraud the public if a false representation were knowingly made. It was therefore but an affirmation of the law laid down in *Foster*

(1) 13 C. B. 777.

(2) Law Rep. 6 H. L. 377, 409.

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H. L. (E.) v. *Charles* (1), *Polhill v. Walter* (2), and other cases I have already referred to.

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I come now to very recent cases. In *Weir v. Bell* (3) Lord Bramwell vigorously criticised the expression “legal fraud,” and indicated a very decided opinion that an action founded on fraud could not be sustained except by the proof of fraud in fact. I have already given my reasons for thinking that, until recent times at all events, the judges who spoke of fraud in law did not mean to exclude the existence of fraud in fact, but only of an intention to defraud or injure.

In the same case Cotton L.J. stated the law in much the same way as he did in the present case, treating “recklessly” as equivalent to “without any reasonable ground for believing” the statements made. But the same learned judge in *Arkwright v. Newbold* (4) laid down the law somewhat differently, for he said: “In an action of deceit the representation to found the action must not be innocent, that is to say, it must be made either with knowledge of its being false, or with a reckless disregard as to whether it is or is not true.” And his exposition of the law was substantially the same in *Edgington v. Fitzmaurice* (5). In this latter case Bowen L.J. defined what the plaintiff must prove in addition to the falsity of the statement, as “secondly, that it was false to the knowledge of the defendants, or that they made it not caring whether it was true or false.”

It only remains to notice the case of *Smith v. Chadwick* (6). The late Master of the Rolls there said, “A man may issue a prospectus or make any other statement to induce another to enter into a contract, believing that his statement is true, and not intending to deceive; but he may through carelessness have made statements which are not true, and which he ought to have known were not true, and if he does so he is liable in an action for deceit; he cannot be allowed to escape merely because he had good intentions, and did not intend to defraud.” This, like everything else that fell from that learned judge, is worthy of respectful consideration. With the last sentence I quite agree,

(1) 7 Bing. 105.

(2) 3 B. &amp; Ad. 114.

(3) 3 Ex. D. 238.

(4) 17 Ch. D. 301.

(5) 29 Ch. D. 459.

(6) 20 Ch. D. 27, 44, 67.

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but I cannot assent to the doctrine that a false statement made through carelessness, and which ought to have been known to be untrue, of itself renders the person who makes it liable to an action for deceit. This does not seem to me by any means necessarily to amount to fraud, without which the action will not, in my opinion, lie.

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It must be remembered that it was not requisite for Sir George Jessel in *Smith v. Chadwick* (1) to form an opinion whether a statement carelessly made, but honestly believed, could be the foundation of an action of deceit. The decision did not turn on any such point. The conclusion at which he arrived is expressed in these terms: "On the whole I have come to the conclusion that this, although in some respects inaccurate, and in some respects not altogether free from imputation of carelessness, was a fair, honest, and bonâ fide statement on the part of the defendants, and by no means exposes them to an action for deceit."

I may further note that in the same case, Lindley L.J. said: "The plaintiff has to prove, first, that the misrepresentation was made to him; secondly, he must prove that it was false; thirdly, that it was false to the knowledge of the defendants, or at all events that they did not believe the truth of it." This appears to be a different statement of the law to that which I have just criticised, and one much more in accord with the prior decisions.

The case of *Smith v. Chadwick* was carried to your Lordships' House (2). Lord Selborne thus laid down the law: "I conceive that in an action of deceit it is the duty of the plaintiff to establish two things: first, actual fraud, which is to be judged of by the nature and character of the representations made, considered with reference to the object for which they were made, the knowledge or means of knowledge of the person making them, and the intention which the law justly imputes to every man to produce those consequences which are the natural result of his acts; and secondly, he must establish that this fraud was an inducing cause to the contract." It will be noticed that the noble and learned Lord regards the proof of actual fraud as essential, all the other matters to which he refers are elements to be considered in determining whether such fraud has been

(1) 20 Ch. D. 27, 44, 67.

(2) 9 App. Cas. 187, 190.

H. L. (E.) established. Lord Blackburn indicated that although he nearly  
 1889 agreed with the Master of the Rolls, that learned judge had not  
 DERRY quite stated what he conceived to be the law. He did not point  
 v. out precisely how far he differed, but it is impossible to read his  
 PEEK judgment in this case, or in that of *Brownlie v. Campbell* (1) with-  
 Lord Herschell. out seeing that in his opinion proof of actual fraud or of a wilful  
 deception was requisite.

Having now drawn attention, I believe, to all the cases having a material bearing upon the question under consideration, I proceed to state briefly the conclusions to which I have been led. I think the authorities establish the following propositions: First, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.

I think these propositions embrace all that can be supported by decided cases from the time of *Pasley v. Freeman* (2) down to *Western Bank of Scotland v. Addie* (3) in 1867, when the first suggestion is to be found that belief in the truth of what he has stated will not suffice to absolve the defendant if his belief be based on no reasonable grounds. I have shewn that this view was at once dissented from by Lord Cranworth, so that there was at the outset as much authority against it as for it. And I have met with no further assertion of Lord Chelmsford's view until

(1) 5 App. Cas. 925.

(2) 2 Smith's L. C. 74.

(3) Law Rep. 1 H. L., Sc. 145.

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the case of *Weir v. Bell* (1), where it seems to be involved in Lord Justice Cotton's enunciation of the law of deceit. But no reason is there given in support of the view, it is treated as established law. The dictum of the late Master of the Rolls, that a false statement made through carelessness, which the person making it ought to have known to be untrue, would sustain an action of deceit, carried the matter still further. But that such an action could be maintained notwithstanding an honest belief that the statement made was true, if there were no reasonable grounds for the belief, was, I think, for the first time decided in the case now under appeal.

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In my opinion making a false statement through want of care falls far short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds. Indeed Cotton L.J. himself indicated, in the words I have already quoted, that he should not call it fraud. But the whole current of authorities, with which I have so long detained your Lordships, shews to my mind conclusively that fraud is essential to found an action of deceit, and that it cannot be maintained where the acts proved cannot properly be so termed. And the case of *Taylor v. Ashton* (2) appears to me to be in direct conflict with the dictum of Sir George Jessel, and inconsistent with the view taken by the learned judges in the Court below. I observe that Sir Frederick Pollock, in his able work on Torts (p. 243, note), referring, I presume, to the dicta of Cotton L.J. and Sir George Jessel M.R., says that the actual decision in *Taylor v. Ashton* (2) is not consistent with the modern cases on the duty of directors of companies. I think he is right. But for the reasons I have given I am unable to hold that anything less than fraud will render directors or any other persons liable to an action of deceit.

At the same time I desire to say distinctly that when a false statement has been made the questions whether there were reasonable grounds for believing it, and what were the means of knowledge in the possession of the person making it, are most weighty matters for consideration. The ground upon which an alleged belief was founded is a most important test of its reality. I can conceive many cases where the fact that an alleged belief was

(1) 3 Ex. D. 238.

(2) 11 M. & W. 401.

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1889 convince the Court that it was not really entertained, and that  
DERRY the representation was a fraudulent one. So, too, although  
v. means of knowledge are, as was pointed out by Lord Blackburn  
PLEEK. in *Brownlie v. Campbell* (1), a very different thing from knowledge,  
Lord Herschell. if I thought that a person making a false statement had shut his  
eyes to the facts, or purposely abstained from inquiring into them,  
I should hold that honest belief was absent, and that he was just  
as fraudulent as if he had knowingly stated that which was false.

I have arrived with some reluctance at the conclusion to which  
I have felt myself compelled, for I think those who put before  
the public a prospectus to induce them to embark their money  
in a commercial enterprise ought to be vigilant to see that it  
contains such representations only as are in strict accordance  
with fact, and I should be very unwilling to give any countenance  
to the contrary idea. I think there is much to be said for the  
view that this moral duty ought to some extent to be converted  
into a legal obligation, and that the want of reasonable care to  
see that statements, made under such circumstances, are true,  
should be made an actionable wrong. But this is not a matter  
fit for discussion on the present occasion. If it is to be done the  
legislature must intervene and expressly give a right of action  
in respect of such a departure from duty. It ought not, I think,  
to be done by straining the law, and holding that to be fraudu-  
lent which the tribunal feels cannot properly be so described. I  
think mischief is likely to result from blurring the distinction  
between carelessness and fraud, and equally holding a man fraudu-  
lent whether his acts can or cannot be justly so designated.

It now remains for me to apply what I believe to be the law  
to the facts of the present case. The charge against the defen-  
dants is that they fraudulently represented that by the special  
Act of Parliament which the company had obtained they had a  
right to use steam or other mechanical power instead of horses.  
The test which I purpose employing is to inquire whether the  
defendants knowingly made a false statement in this respect, or  
whether, on the contrary, they honestly believed what they stated  
to be a true and fair representation of the facts. Before con-  
sidering whether the charge of fraud is proved, I may say that I

(1) 5 App. Cas. at p. 952.

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approach the case of all the defendants, except Wilde, with the inclination to scrutinise their conduct with severity. They most improperly received sums of money from the promoters, and this unquestionably lays them open to the suspicion of being ready to put before the public whatever was desired by those who were promoting the undertaking. But I think this must not be unduly pressed, and when I find that the statement impeached was concurred in by one whose conduct in the respect I have mentioned was free from blame, and who was under no similar pressure, the case assumes, I think, a different complexion.

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Lord Herschell.

I must further remark that the learned judge who tried the cause, and who tells us that he carefully watched the demeanour of the witnesses and scanned their evidence, came without hesitation to the conclusion that they were witnesses of truth, and that their evidence, whatever may be its effect, might safely be relied on. An opinion so formed ought not to be differed from except on very clear grounds, and after carefully considering the evidence, I see no reason to dissent from Stirling J.'s conclusion. I shall therefore assume the truth of their testimony.

I agree with the Court below that the statement made did not accurately convey to the mind of a person reading it what the rights of the company were, but to judge whether it may nevertheless have been put forward without subjecting the defendants to the imputation of fraud, your Lordships must consider what were the circumstances. By the General Tramways Act of 1870 it is provided that all carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only (1). In order, therefore, to enable the company to use steam-power, an Act of Parliament had to be obtained empowering its use. This had been done, but the power was clogged with the condition that it was only to be used with the consent of the Board of Trade. It was therefore incorrect to say that the company had the right to use steam; they would only have that right if they obtained the consent of the Board of Trade. But it is impossible not to see that the fact which would impress itself upon the minds of those connected with the company was that they had, after submitting

(1) 33 & 34 Vict. c. 78, s. 34.

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the plans to the Board of Trade, obtained a special Act empowering the use of steam. It might well be that the fact that the consent of the Board of Trade was necessary would not dwell in the same way upon their minds, if they thought that the consent of the Board would be obtained as a matter of course if its requirements were complied with, and that it was therefore a mere question of expenditure and care. The provision might seem to them analogous to that contained in the General Tramways Act, and I believe in the Railways Act also, prohibiting the line being opened until it had been inspected by the Board of Trade and certified fit for traffic, which no one would regard as a condition practically limiting the right to use the line for the purpose of a tramway or railway. I do not say that the two cases are strictly analogous in point of law, but they may well have been thought so by business men.

I turn now to the evidence of the defendants. I will take first that of Mr. Wilde, whose conduct in relation to the promotion of the company is free from suspicion. He is a member of the Bar and a director of one of the London tramway companies. He states that he was aware that the consent of the Board of Trade was necessary, but that he thought that such consent had been practically given, inasmuch as, pursuant to the Standing Orders, the plans had been laid before the Board of Trade with the statement that it was intended to use mechanical as well as horse-power, and no objection having been raised by the Board of Trade, and the Bill obtained, he took it for granted that no objection would be raised afterwards, provided the works were properly carried out. He considered, therefore, that, practically and substantially they had the right to use steam, and that the statement was perfectly true.

Mr. Pethick's evidence is to much the same effect. He thought the Board of Trade had no more right to refuse their consent than they would in the case of a railway; that they might have required additions or alterations, but that on any reasonable requirements being complied with they could not refuse their consent. It never entered his thoughts that after the Board had passed their plans, with the knowledge that it was proposed to use steam, they would refuse their consent.

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Mr. Moore states that he was under the impression that the passage in the prospectus represented the effect of sect. 35 of the Act, inasmuch as he understood that the consent was obtained. He so understood from the statements made at the board by the solicitors to the company, to the general effect that everything was in order for the use of steam, that the Act had been obtained subject to the usual restrictions, and that they were starting as a tramway company, with full power to use steam as other companies were doing.

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Mr. Wakefield, according to his evidence, believed that the statement in the prospectus was fair; he never had a doubt about it. It never occurred to him to say anything about the consent of the Board of Trade, because as they had got the Act of Parliament for steam he presumed at once that they would get it.

Mr. Derry's evidence is somewhat confused, but I think the fair effect of it is that though he was aware that under the Act the consent of the Board of Trade was necessary, he thought that the company having obtained their Act the Board's consent would follow as a matter of course, and that the question of such consent being necessary never crossed his mind at the time the prospectus was issued. He believed at that time that it was correct to say they had the right to use steam.

As I have said, Stirling J. gave credit to these witnesses, and I see no reason to differ from him. What conclusion ought to be drawn from their evidence? I think they were mistaken in supposing that the consent of the Board of Trade would follow as a matter of course because they had obtained their Act. It was absolutely in the discretion of the Board whether such consent should be given. The prospectus was therefore inaccurate. But that is not the question. If they believed that the consent of the Board of Trade was practically concluded by the passing of the Act, has the plaintiff made out, which it was for him to do, that they have been guilty of a fraudulent misrepresentation? I think not. I cannot hold it proved as to any one of them that he knowingly made a false statement, or one which he did not believe to be true, or was careless whether what he stated was true or false. In short, I think they honestly believed that what they asserted was true, and I am of opinion that the charge of fraud made against them has not been established.

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H. L. (E.) It is not unworthy of note that in his report to the Board of  
 1889 Trade, General Hutchinson, who was obviously aware of the pro-  
 DERRY v. PEEK.visions of the special Act, falls into the very same inaccuracy of  
 Lord Herschell. language as is complained of in the defendants, for he says: "The  
 Act of 1882 gives the company authority to use mechanical  
 power over all their system."

I quite admit that the statements of witnesses as to their belief are by no means to be accepted blindfold. The probabilities must be considered. Whenever it is necessary to arrive at a conclusion as to the state of mind of another person, and to determine whether his belief under given circumstances was such as he alleges, we can only do so by applying the standard of conduct which our own experience of the ways of men has enabled us to form; by asking ourselves whether a reasonable man would be likely under the circumstances so to believe. I have applied this test, with the result that I have a strong conviction that a reasonable man situated as the defendants were, with their knowledge and means of knowledge, might well believe what they state they did believe, and consider that the representation made was substantially true.

Adopting the language of Jessel M.R. in *Smith v. Chadwick* (1), I conclude by saying that on the whole I have come to the conclusion that the statement, "though in some respects inaccurate and not altogether free from imputation of carelessness, was a fair, honest and bonâ fide statement on the part of the defendants, and by no means exposes them to an action for deceit."

I think the judgment of the Court of Appeal should be reversed.

*Order of the Court of Appeal reversed; order of Stirling J. restored; the respondent to pay to the appellants their costs below and in this House: cause remitted to the Chancery Division.*

*Lords Journals 1st July 1889.*

Solicitors for appellants: *Linklater, Hackwood, Addison & Brown.*

Solicitors for respondent: *Tamplin, Tayler & Joseph.*

(1) 20 Ch. D. at p. 67.

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**EXHIBIT C**

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Wrangham J.

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view of the judgment that I have given, some arrangement will be made for the balance, if more were due to the plaintiffs, to be paid to the plaintiffs by anybody who owes it to them. I leave the matter at that. A

*Judgment for the plaintiffs in the sum of £1,987.*

Solicitors: *Palmer & Paling, Nottingham; Robert A. Buckley, Aiton & Davies, Hucknall.* B

[COURT OF APPEAL]

DOYLE v. OLBY (IRONMONGERS) LTD. AND OTHERS C

[1964 D. No. 981]

1969 Jan. 30, 31

Lord Denning M.R., Winn and Sachs L.JJ.

*Damages—Deceit—Measure—Principle applicable—Sale of business induced by fraud and conspiracy—Damages at large—Measure of damages all loss directly flowing from fraudulent inducement including consequential loss.* D

*Estoppel—Conduct by—Counsel’s argument—On law at first instance wrong—Party not estopped from taking different course on appeal where no prejudice to party opposing shown. Barrister—Conduct in court—Erroneous statement of law—Error at first instance—Whether client bound on appeal.* E

The plaintiff saw an advertisement of an ironmongers’ business for sale at £4,500 for the lease, business and goodwill, the stock to be taken at a valuation. He made inquiries, and the company’s director produced accounts for the preceding three years which showed considerable annual profits. The director’s brother told the plaintiff, inter alia, that all the trade was over the counter. The plaintiff agreed to buy and went into occupation under a new lease at a higher rent, but with a covenant that the vendors would not engage in a similar business within a 10-mile radius for five years. Having undertaken liabilities of some £7,000, he soon found that the turnover had been misrepresented and, in particular, that half the trade had been obtained by the director’s brother acting as part-time traveller at £555 a year; and shortly after he took over, an associated company began to canvass the vendors’ former customers in the district. F G

The plaintiff began an action against the two companies, the director, and his brother, for damages for fraud and conspiracy. Meanwhile, after three years’ disastrous efforts to trade, he sold the business, but was left with liabilities of some £4,000. At the trial Swanwick J. found all the defendants guilty of fraud and conspiracy and awarded the plaintiff damages of £1,500 calculated on the basis suggested by counsel for the plaintiff in his closing speech, namely, two and a half times the cost of employing a part-time traveller at £600 a year, as equivalent to the cost of making good the representation or the reduction in the value of the goodwill. H

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**2 Q.B. Doyle v. Olby Ltd. (C.A.)**

A The defendants filed an appeal against the findings of fraud and conspiracy and the plaintiff appealed in person against the amount of damages. The defendants withdrew their appeal on the first day of the hearing.

B The court had not been supplied with a transcript of the eight days of evidence at the trial, but questioned the plaintiff about his financial position, and also received a contemporary note of the opening speech of his counsel at the trial. For the defendants it was submitted that as the trial judge had assessed the damages on the basis of the closing submission by the plaintiff's counsel as to the proper measure of those damages, the court should not on the appeal substitute a different, albeit correct, measure of damages for deceit.

C *Held*, allowing the appeal: (1) that the court could apply the proper measure of damages for deceit despite the fact that the wrong measure was proposed by the plaintiff's counsel at the trial, for the court would not let a man with a just claim suffer by reason of his counsel's mistake unless it were shown that to take a different course would do injustice to the defendants; and that had not been shown.

D (2) That the proper measure of damages for deceit, as distinct from damages for breach of contract, was all the damage directly flowing from the tortious act of fraudulent inducement which was not rendered too remote by the plaintiff's own conduct, whether or not the defendants could have foreseen such consequential loss. The plaintiff's position before the fraudulent inducement should be compared with his position at the end of the transaction. As in the instant case the plaintiff had been tricked into buying a business which he would otherwise not have bought at all, the court should award him his overall loss up to his final disposal of the business, less any benefits he had received.

E (3) That as the evidence before the court was limited, the court should estimate the damages by treating the matter as one for a jury, and on that broad approach a proper round figure would be £5,500.

Obiter dictum of Lord Atkin in *Clark v. Urquhart* [1930] A.C. 28, 67-68, H.L.(E.) applied.

*McConnel v. Wright* [1903] 1 Ch. 546, 554, C.A. considered. Award of Swanwick J. increased.

F The following cases are referred to in the judgments:

*Clark v. Urquhart* [1930] A.C. 28, H.L.(E.).  
*Firbank's Executors v. Humphreys* (1886) 18 Q.B.D. 54, C.A.  
*Hadley v. Baxendale* (1854) 9 Ex. 341.  
*McConnel v. Wright* [1903] 1 Ch. 546, C.A.

G The following additional cases were referred to in argument:

*Clarke v. Yorke* (1882) 47 L.T. 381.  
*Hickman v. Kent or Romney Marsh Sheep Breeders' Association* (1920) 37 T.L.R. 163, C.A.  
*Langridge v. Levy* (1837) 2 M. & W. 519.  
*Milne v. Marwood* (1855) 15 C.B. 778.  
*Pearson v. Wheeler* (1825) Ry. & M. 303.  
*Wilson v. United Counties Bank Ltd.* [1920] A.C. 102, H.L.(E.).

H

APPEAL from Swanwick J.

The facts in narrative are stated in the judgment of Lord Denning M.R.

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**Doyle v. Olby Ltd. (C.A.)**

**[1969]**

The plaintiff, Herbert Leonard Doyle, brought an action against Olby (Ironmongers) Ltd., Mr. Cecil Augustus Olby, an employee employed as a part-time traveller at £555 a year, Mr. Leslie Morton Olby, a director of both defendant companies, and A. Olby & Sons Ltd., an associated company, in which he claimed damages for fraud and conspiracy in connection with the sale of a shop and dwelling-house at 12, Upper High Street, Epsom, Surrey, assigned to him by Olby (Ironmongers) Ltd. on January 31, 1964.

By his statement of claim, after a number of amendments and abandonment of a number of claims either before or at the trial, he claimed in deceit that the second defendant, Mr. Cecil Olby, as express or implied or ostensible agent for the vendor company, made false and fraudulent statements to the effect that all sales of the business being offered were over the counter and that the wages bill was £42 a week whereas in fact it was £57 5s., the wages of the manager and of himself as a part-time traveller being omitted. Secondly, in regard to conspiracy he claimed that all the defendants were engaged to injure his interest by cheating him of his bargain, the plot alleged being ostensibly to sell the whole business as a profitable concern whereas (a) it was declining and unprofitable and its unprofitability was masked by the deceit alleged and other ancillary abuses; and (b) the real intention was to abstract the trade, or wholesale part of the business, both by concealing that the fourth defendants, A. Olby & Son Ltd., were operating and would continue to operate in competition in the area and also by deflecting customers to that company and away from the plaintiff both before and after the sale.

Thirdly, there was a claim for breach of covenant against the vendor company as parties to the agreement for sale and the assignment of the lease to the plaintiff, on the ground that though the vendors were a separate company and not a subsidiary of the fourth defendant company, they were "interested" in that company's business of ironmongers and builders' merchants within the meaning of the covenant and that that business continued to be carried on within the 10-mile radius specified in the restrictive covenant.

The defendants' defence on deceit (as summarised by Swanwick J.) was that Mr. Cecil Olby was not an agent of the vendors to make any representation and probably did not make any, but that if he did it was by negligence and not by fraud. On conspiracy the defendants denied any intention to injure or cheat the plaintiff and any conspiracy to do so; claimed that the business was offered on terms suggested to them as fair by their accountants; that if the plaintiff failed to appreciate the position that was due at most to innocent misrepresentation which at that time would have given no cause of action and was indeed largely due to the plaintiff's failure to make appropriate inquiries; that the maxim caveat emptor applied; that the fourth defendants had for many years traded in that area, as the plaintiff should have suspected from their well-known and wide-spread interests, and were entitled to continue to do so; that the plaintiff's failure was due largely to his own errors and misjudgments; and that in any event there was nothing to give him a cause of action against any of the defendants, alone or in conjunction with one another. The alleged breach of covenant was denied in that the fourth defendants were not a party to it and that the vendors who were an independent company in law ceased to trade after the plaintiff took

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A over the business and had no interest in the fourth defendants' business within the meaning of the covenant; and that if there was any breach of it there was no evidence that it resulted in any gain to any of the defendants or any loss to the plaintiff.

B The hearing lasted ten days before Swanwick J. and he gave his judgment on July 24, 1967. He found that the plaintiff and his wife were "thoroughly honest and decent people" now completely convinced that they had been "tricked into buying a pup" and deliberately robbed of part of what they had bought. His Lordship said that in deciding that question he had also to bear in mind that the Olbys also bore high reputations for integrity in their business and private lives and that if he had to find for the plaintiff it must mean that on the present occasion they had departed from their normal rectitude; and that though the burden was not so high as in a criminal case, a finding of fraud or conspiracy was no light matter.

C The judge having dismissed the claim for breach of covenant, went on to find that the accounts as presented by Mr. Leslie Olby were to his knowledge inaccurate, that the statement by Mr. Cecil Olby about the staff and wages was made with knowledge of its falsity and intending that the plaintiff should act on it; that he gave the information probably because he had been told to do so by Mr. Leslie; that the plaintiff acted on it to his detriment, particularly in regard to the travelling part of the business, and that there were therefore present all the elements of fraud in law and of conspiracy between all the defendants.

D After a full consideration of the evidence his Lordship turned to the question of damages. He said:

E "My task is simplified . . . by the submission of [counsel for the plaintiff] which I accept, that there are two alternative bases for damages, each of which arrives at virtually the same round figure. . . . The first is that to preserve the trade custom it would have been necessary to employ a part-time traveller at about £600 a year, and I think there is a reasonable prospect that such a person could have been obtained. If two and a half times this figure is taken, that being the normal basis for valuing goodwill, it actually represents . . . a reduction in the value of the goodwill equivalent to the cost of making good the representation, that is, about £1,500. Secondly and alternatively, if the trade custom was 50 per cent. of the turnover, its loss would result in a reduction in the value of the goodwill of 35 per cent. to 40 per cent. which, applied to the accountant's figures of £4,000, again would approximate to a round figure of about £1,500. Therefore, I think it is at this figure that I can best quantify the loss."

G He granted a stay of execution on terms that £750 which had been paid into court with a denial of liability should remain in court.

H The defendants filed a notice of appeal against the finding of fraud and conspiracy and also against the amount of the damages. The plaintiff filed a cross-appeal against the amount of damages. Later the defendants abandoned their appeal, the stay was removed, and the damages were paid over to the Law Society, the plaintiff having been legally aided at the trial. When the plaintiff, having been refused legal aid, pursued his appeal in person, an application by the defendants for security for costs of the

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appeal was granted, and £250 was paid into court on behalf of the plaintiff. The defendants thereupon revived their appeal and it remained on the record until the beginning of the hearing of the appeal, when it was withdrawn. A

By his notice of appeal the plaintiff asked that judgment should be entered for him for greatly increased damages or alternatively for a new trial. The grounds of appeal included eight respects in which it was said that the judge had erred in his findings of fact on the evidence. Ground (9) was that the judge in awarding £1,500 damages had completely underestimated the amount of damage done by the fraudulent information given or withheld before contracts were signed and exchanged and had also failed to take into account that had the plaintiff known of any or all of the fraudulent points he would not have purchased, nor would he have been compelled to run the business for three years at a very heavy loss. B

No transcript of the evidence at the trial was available to the Court of Appeal, but the plaintiff made statements and answered questions put to him on his financial position, supported by a number of exhibits which had been before the trial judge; and when it was submitted for the defendants that the plaintiff was putting the case on a basis quite different from that on which his counsel had conducted it at the trial, counsel for the defendants provided for the assistance of the court his own note of the opening submissions by counsel for the plaintiff at the trial, which indicated that counsel had not at that stage advanced any argument as to the extent of the damages. The court inferred from the passage in the judgment of Swanwick J. (*supra*) the concluding submission for the plaintiff as to the basis on which the damages should be assessed. C D

The plaintiff in person told the court about his financial position up to the date of resale of the business and to the present date. E

*David Smout* for the defendants. The damages were assessed on the basis of calculations put to the accountant who prepared the accounts whose integrity was never challenged, and in accordance with the submissions of counsel for the plaintiff. It would be unjust to the defendants if the court, without the assistance of even a transcript of eight days of evidence, decides on a different basis the measure and quantum of damages, in view of the fact that the plaintiff has put before this court a case for damages at large which was not put at the trial on his behalf. There is no evidence before the court about the way in which the plaintiff carried on the business for three years other than what he has told the court; and such evidence might have an important bearing on the question of consequential loss and to what extent the defendants were responsible for it. F G

The first question is whether it is open to the plaintiff to ask for general damages on any footing other than that put forward on his behalf at the trial by leading counsel.

If the plaintiff is not estopped by reason of his counsel's submissions, the second question is whether the measure of damages for fraudulent misrepresentation is limited by the same principles as are damages for breach of contract or warranty. H

[WINN LJ. Contributory negligence is no defence to a charge of fraud. If in principle the damages for fraudulent misrepresentation are at large.

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A surely the burden would lie on the defendants to establish that the plaintiff could have avoided some part of the loss he has sustained; and if the evidence before the judge was relevant on that matter it would have been for the defendants to provide the transcript.]

On the first question, it is conceded that the contemporary note of counsel's opening speech at the trial shows that though he did not expressly ask for damages at large he did not at that point restrict his submissions on the assessment of damages to the basis which the judge eventually accepted. If counsel deliberately took the course he did—as he appears to have done since he did not lead any evidence on special damage—the defendants are entitled to challenge any different approach in this court. Though the appellate court has a discretion about allowing points to be taken before it which were not taken in the court below, it is a discretion which will be exercised with great caution and only when the court is satisfied that the manner of putting the case to the judge was accidental rather than deliberate. [Reference was made to *Wilson v. United Counties Bank Ltd.* [1920] A.C. 102 and *Hickman v. Kent or Romney Marsh Sheep Breeders' Association* (1920) 37 T.L.R. 163, 164.]

C On the second question the authors of *Mayne & McGregor on Law of Damages*, 12th ed. (1961), at pp. 802–3, paras. 955 to 957, have put forward propositions on the measure of damages for fraudulent misrepresentation; but their propositions are not supported by the authorities cited. [Reference was made to *Pearson v. Wheeler* (1825) Ry. & M. 303; *Clark v. Urquhart* [1930] A.C. 28, per Lord Atkin at pp. 67–8; *McConnell v. Wright* [1903] 1 Ch. 546, per Lord Collins M.R. at p. 554; *Clarke v. Yorke* (1882) 47 L.T. 381; and *Milne v. Marwood* (1855) 15 C.B. 778.]

E So far as it is possible to recollect the extensive evidence given at the trial the transcript might not assist much in any attempt by this court to evaluate how much of the loss was attributable to the defendants and how much to the plaintiff.

[LORD DENNING M.R. That often happens on a jury point. Damages at large are jury matters, and in many cases the jury has to do the best it can.]

F It is singularly unfortunate in a case where the figure could be very substantial if the damages are at large. There is a sum in court as security for costs of the plaintiff's appeal and that might be used to obtain a transcript.

G [LORD DENNING M.R. The defendants should have obtained it if they were seriously going to pursue their appeal against the findings of fraud and conspiracy; but they abandoned that appeal at the last moment and there is no reason why an impecunious plaintiff should supply it.]

H LORD DENNING M.R. Mr. Doyle in 1963 was minded to buy a business. He saw an advertisement in "Daltons Weekly." He got particulars. The business was said to belong to Olby (Ironmongers) Ltd., 12 Upper High Street, Epsom, Surrey, and the turnover £27,000. The price asked for the lease, the business and goodwill was £4,500. The stock was to be taken at valuation. Mr. Doyle made further enquiries about it. On November 6, 1963, Mr. Leslie Olby, a director of the company, produced accounts

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to him. They were for the three years ending December 31, 1962. In a covering letter Mr. Olby said:

A

“ Dear Mr. Doyle,

As requested we are enclosing accountant’s figures covering Olby (Ironmongers) Ltd., 12 Upper High Street, Epsom, Surrey.”

Those figures showed that for those three years there had been considerable profits: £1,921 net profits in 1960; £1,749 in 1961; and £1,361 in 1962. Mr. Doyle also saw Mr. Cecil Olby who worked on the premises. Mr. Doyle asked Mr. Cecil Olby what staff were employed. Mr. Cecil Olby said; “ One manager, two assistants, one van-driver, and a part-time clerical assistant; with a wage bill of £42 a week.” He added that one of the staff was a very old man. Mr. Doyle also asked Mr. Cecil Olby how the trade was geared as between the retail trade and the wholesale trade. Mr. Cecil said:

B

“ Two-thirds retail; one-third wholesale—all over the counter.”

C

In other words, it was trade which was done from the shop itself and would not need a traveller to go round and canvass for orders. On those representations, Mr. Doyle agreed to buy this business.

The agreement was entered into in January, 1964. Mr. Doyle agreed to pay £4,500 down in cash, which covered the goodwill, fixtures and fittings, and the remainder of the lease (which had about four years to run). The stock was to be bought on valuation. In addition, there was a restrictive covenant on the sellers, Olby (Ironmongers) Ltd., in which they covenanted that they would not for five years engage in any ironmongers’ business within a radius of ten miles from 12 Upper High Street, Epsom.

D

Mr. Doyle paid the £4,500. He took over stock at a valuation of £5,000 which he paid. He needed a longer lease, so he surrendered the existing lease and took a longer lease at a greatly increased rent. The freeholder who benefited was Mr. Cecil Olby himself.

E

In order to pay all the money, Mr. Doyle put up all the cash he had—£7,000; and he raised £3,000 on mortgage from Askinex Ltd.

So he went into occupation. But I am afraid that things were very different from what he was led to believe. The turnover was far less than he had been told. The trade was not all over the counter. Half of the trade was wholesale business which could only be obtained by employing a traveller to go round to the customers. Mr. Doyle could not afford to employ a traveller. So all that trade was lost. The whole transaction was a disaster for Mr. Doyle. To add to his troubles, in February, 1964, soon after Mr. Doyle went into occupation, a company called A. Olby & Son Ltd. of Penge (which was closely associated with the vendor company, Olby (Ironmongers) Ltd.) canvassed and sent travellers round to customers who had previously been customers of the Epsom business. The judge held that this was not a breach of the restrictive covenant, though I am not so sure about it.

F

G

Mr. Doyle was most dissatisfied, and in May, 1964, he brought this action for damages for fraud and conspiracy against the company which sold him the Epsom business, that is, Olby (Ironmongers) Ltd.; against Mr. Cecil Olby, who was the man who worked in that business; Mr. Leslie Olby, his brother, who was a director; and against A. Olby & Son Ltd.,

H

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A which was the company at Penge, of which Mr. Leslie Olby was managing director.

Although Mr. Doyle had started the action, he had to remain in occupation. He had burnt his boats and had to carry on with the business as best he could. He tried to sell it, but there were difficulties. One was that the landlord, Mr. Cecil Olby, would not give him a licence to assign, and so forth. After three years he did manage to sell it for a sum of some £3,700.

B This cleared off the mortgage to Askinex Ltd., but he was left with many outstanding debts to the bank, to suppliers, and the like. His debts came to £4,000, and he has been sued in the county court by many of his creditors.

The case came for trial before Swanwick J. in July, 1967. It took many days, but in the end Swanwick J. found that the defendants had been guilty of fraud and conspiracy. The accounts which were produced in November, 1963, to Mr. Doyle contained "a blatantly wrong figure" for wages and management remuneration. The representation by Mr. Cecil Olby that the sales were "all over the counter" was completely untrue, and must have been known to Mr. Cecil Olby to be untrue. He was a traveller himself and went round to customers on two days a week at least. His wages amounted in the year 1962 to £555. That figure was not brought into the accounts which were produced to Mr. Doyle, and made them completely false. It turned out that Mr. Cecil Olby had had a breakdown and was not really capable of doing much business. But Mr. Doyle was not to know that. The judge found that the representations were false to the knowledge of Mr. Cecil Olby, and that this knowledge must be imputed to the other defendants because he was acting on their behalf. Furthermore, there was a conspiracy between them to defraud Mr. Doyle.

E The defendants put in a notice of appeal against the finding of fraud and conspiracy. It was in the list in this court when the case was called on for hearing yesterday, but it was not persisted in. Mr. Smout abandoned it. So we approach the case on the accepted footing that Mr. Doyle was induced by the fraud and conspiracy of the defendants to buy this business.

F The judge awarded Mr. Doyle £1,500 damages. Mr. Doyle appeals against that award. He says it is far too small. The judge arrived at the figure of £1,500 by accepting the submissions of counsel then appearing for Mr. Doyle. The judge said as to damages:

G "My task is simplified by the submissions of the plaintiff's counsel, which I accept, that there are two alternative bases for damages, each of which arrives at virtually the same round figure. . . . The first is that to preserve the trade custom it would have been necessary to employ a part-time traveller at about £600 a year, and I think there is a reasonable prospect that such a person could have been obtained. If two-and-a-half times this figure is taken, that being the normal basis for valuing goodwill, it actually represents, as I have said, a reduction in the value of the goodwill equivalent to the cost of making good the representation, that is, about £1,500. Secondly and alternatively, if the trade custom was 50 per cent. of the turnover, its loss would result in a reduction in the value of the goodwill of 35 per cent. to 40 per cent., which, applied to the accountant's figures of £4,000, again would

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approximate to a round figure of £1,500. Therefore, I think it is at this figure that I can best quantify the loss."

A

It appears, therefore, that the plaintiff's counsel submitted, and the judge accepted, that the proper measure of damages was the "cost of making good the representation," or what came to the same thing, "the reduction in value of the goodwill" due to the misrepresentation. In so doing, he treated the representation as if it were a contractual promise, that is, as if there were a contractual term to the effect "The trade is all over the counter. There is no need to employ a traveller." I think it was the wrong measure. Damages for fraud and conspiracy are assessed differently from damages for breach of contract.

B

It was submitted by Mr. Smout that we could not or, at any rate, ought not to correct this error. I do not agree. We never allow a client to suffer for the mistake of his counsel if we can possibly help it. We will always seek to rectify it as far as we can. We will correct it whenever we are able to do so without injustice to the other side. Sometimes the error has seriously affected the course of the evidence, in which case we can at best order a new trial. But there is nothing of that kind here. The error was made at the end of the case. All the evidence had been taken on the footing that the damages were at large. It was only in the final submission that the error was made. Such an error we can, and will, correct.

C

D

The second question is what is the proper measure of damages for fraud, as distinct from damages for breach of contract. It was discussed during the argument in *Hadley v. Baxendale* ((1854) 9 Ex. 341), and finds a place in the notes to *Smith's Leading Cases*, 13th ed. (1929) at p. 563, where it is suggested there is no difference. But in *McConnel v. Wright* [1903] 1 Ch. 546, 554, Lord Collins M.R. pointed out the difference. It was an action for fraudulent statements in a prospectus whereby a man was induced to take up shares. Lord Collins said of the action for fraud:

E

"It is not an action for breach of contract, and, therefore, no damages in respect of prospective gains which the person contracting was entitled by his contract to expect to come in, but it is an action of tort—it is an action for a wrong done whereby the plaintiff was tricked out of certain money in his pocket, and, therefore, prima facie, the highest limit of his damages is the whole extent of his loss, and that loss is measured by the money which was in his pocket and is now in the pocket of the company."

F

But that statement was the subject of comment by Lord Atkin in *Clark v. Urquhart* [1930] A.C. 28, 67-68. He said:

"I find it difficult to suppose that there is any difference in the measure of damages in an action of deceit depending upon the nature of the transaction into which the plaintiff is fraudulently induced to enter. Whether he buys shares or buys sugar, whether he subscribes for shares, or agrees to enter into a partnership, or in any other way alters his position to his detriment, in principle, the measure of damages should be the same, and whether estimated by a jury or a judge. I should have thought it would be based on the actual damage directly flowing from the fraudulent inducement. The formula in *McConnel v. Wright* [1903] 1 Ch. 546 may be correct or it may be expressed in too rigid terms."

G

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A I think that Lord Collins did express himself in too rigid terms. He seems to have overlooked consequential damages. On principle the distinction seems to be this: in contract, the defendant has made a promise and broken it. The object of damages is to put the plaintiff in as good a position, as far as money can do it, as if the promise had been performed. In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment. The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties. In fraud, they are not so limited. The defendant is bound to make reparation for all the actual damages directly flowing from the fraudulent inducement. The person who has been defrauded is entitled to say:

C "I would not have entered into this bargain at all but for your representation. Owing to your fraud, I have not only lost all the money I paid you, but, what is more, I have been put to a large amount of extra expense as well and suffered this or that extra damages."

D All such damages can be recovered: and it does not lie in the mouth of the fraudulent person to say that they could not reasonably have been foreseen. For instance, in this very case Mr. Doyle has not only lost the money which he paid for the business, which he would never have done if there had been no fraud: he put all that money in and lost it; but also he has been put to expense and loss in trying to run a business which has turned out to be a disaster for him. He is entitled to damages for all his loss, subject, of course to giving credit for any benefit that he has received. There is nothing to be taken off in mitigation: for there is nothing more that he could have done to reduce his loss. He did all that he could reasonably be expected to do.

E This brings us to the third question: must we send the case back for a new trial for damages; or can we assess them ourselves? The difficulty is that we have not got a transcript of all the evidence. Mr. Doyle is a poor man. He comes here without legal aid. He was unable to afford a transcript. The defendants, I presume, could afford it, but they have not thought fit to get one. There was a finding of fraud and conspiracy against them. They gave notice of appeal against that finding. Yet, they did not get a transcript of the evidence. It was they who ought to have done so. In these circumstances, I do not think it would be right to put either party to the expense of getting a full transcript of eight or nine days' evidence with all the delay that would entail. The court must do the best it can to put right the error which has taken place. I will not go into the details myself as to the figures. It is a case for assessing damages at large, much as a jury would do. Winn L.J. has considered the matter carefully, and he will deal with it; but I say in advance that I agree with the figure which he is going to propose, that the damages should be in the sum of £5,500.

H WINN L.J. I agree respectfully and entirely with the judgment delivered by my Lord, and desire only to echo and then add a little to what he has said about the proper measure of damages for deceit. It is a most remarkable fact, as my Lord has remarked, that there is a complete dearth of authority on the topic of the proper measure of damages in such a case.

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I would pay tribute to the passage in *Mayne & McGregor on Damages*, 12th ed. (1961), where, in Chapter 41, paragraph 955 and some following paragraphs, the authors have in effect proposed, in the absence of authority—since the cases to which they refer really lend no support for their proposition—that there should be a clear distinction drawn between the measure of damages which can be recovered for such a breach of contract as a breach of warranty as to the quality or value or condition of goods or premises sold, and the measure of damages for deceit—tortious fraudulent deceit. They make that proposition, and perhaps, if the judgment of this court were to stand, they will in their next book have support for what they themselves were thinking. They refer to *McConnel v. Wright* [1903] 1 Ch. 546 and *Clark v. Urquhart* [1930] A.C. 28, where a passage from Lord Atkin may be found which has been read by my Lord. It is right to observe that that passage of Lord Atkin's speech was entirely obiter, since the subject-matter of the case then before their Lordships' House was nothing more than the proper form of order which should be made in the particular case, where there had been a payment into court with a denial of liability and a number of complicated events.

When one finds a great lawyer of Lord Atkin's standing saying that which my Lord has quoted, I, for my part, think there is ample authority for the propositions in the edition of *Mayne* to which I have referred, and the ruling which this court is now giving. It is of interest, though of no direct support to that ruling, to note that a very similar distinction is found in decided authorities between damages for breach of contract and damages for breach of warranty of authority to contract on a principal's behalf. In *Firbank's Executors v. Humphreys* (1886) 18 Q.B.D. 54 Lord Esher M.R. said, at p. 60:

“The damages, under the general rule, are arrived at by considering the difference in the position he would have been in had the representation been true, and the position he is actually in, in consequence of its being untrue.”

It appears to me that in a case where there has been a breach of warranty of authority, and still more clearly where there has been a tortious wrong consisting of a fraudulent inducement, the proper starting-point for any court called upon to consider what damages are recoverable by the defrauded person is to compare his position before the representation was made to him with his position after it, brought about by that representation, always bearing in mind that no element in the consequential position can be regarded as attributable loss and damage if it be too remote a consequence: it will be too remote not necessarily because it was not contemplated by the representor, but in any case where the person deceived has not himself behaved with reasonable prudence, reasonable common sense, or can in any true sense be said to have been the author of his own misfortune. The damage that he seeks to recover must have flowed directly from the fraud perpetrated upon him. I, myself, gave during the argument in this court, an illustration—hypothetical, of course—which I understood Mr. Smout was prepared to accept as theoretically a sound illustration of the principle which these judgments are enunciating, it may

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A be, for the first time, always assuming, of course, that that principle was itself to be accepted.

B If a man in this country is made the victim of a fraudulent misrepresentation that a business in Bangkok, Hongkong, Manila or the Fiji Islands has certain equipment, certain assets, certain goodwill, certain trade contracts and profits, and is thereby induced to pay for that business, it being, of course, understood by both parties to the transaction of sale, for the procurement of which a fraudulent misrepresentation is made, that he will set out to that remote place with his family and, it may be, his household goods, at very considerable expense, and on arrival will acquire living accommodation and, perhaps, have to buy additional furniture and engage staff or servants; and if he acts upon the representations and incurs all such expenses, and the business is found to be very different from that which it was fraudulently represented to be, so that he cannot survive out in the remote place to which he has gone, and is bound to come back again, then I, speaking for myself, would not hesitate to give him all the outgoings from his pocket of the kinds which I have indicated, up to such time as he should sensibly have come home again, and had the money to come back again, less, of course, by way of set-off, any benefit which he has derived from the exploitation of such assets as he found there upon his arrival.

D Having said that much, one turns to the instant case. It is, as my Lord has said and I respectfully agree, essentially a matter for a jury. I think, myself, with confidence that there is already sufficient evidentiary material available to enable this court to make a jury assessment in round figures. It would be wrong and, indeed, an intolerable expenditure of judicial time and the money of the parties to embark upon any detailed consideration of isolated items in the account on which a balance must be struck. I have looked at it myself in this way, and have arrived, let me say at once, at the same figure that my Lord has already mentioned. The starting point is a simple one: £4,500 was paid away out of his pocket by the plaintiff to acquire this business; and a further £5,000, in round figures, to take over stock at valuation. That was £9,500. When he came ultimately to leave the business, I say quite confidently that he is not revealed by the evidence now before this court, nor do I think it could have been shown by any evidence, having regard to the general circumstances of the case, to have hung on too long or to have behaved otherwise than as a sensible business man or to have brought misfortune upon himself. When he gave up the business after three years, he got out of it at that time £3,500 from the purchaser to whom he sold it, and he had, at a knock-down price, which I think was forced upon him, £800 for the sale of such stock as he then had. During the time that he was running or trying to run and revive this moribund, if not dead, business, he drew £10 a week to live on out of the till, if one may use that expression, and he lived with his wife in part of the premises, for the totality of which he was paying a rental of £800 a year, plus, of course, rates. I think he should be debited with the £10 a week for the period and debited with £300 a year, making £900, for such living accommodation benefit as he and his wife then received from these premises. I would take those two items at a round figure together of £2,500. Adding up the benefits which I have mentioned, I arrive at a figure of £6,700 and call it £7,000.

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[1969]

At that point, comparing outgoings with such benefits as ought to be set off, there is a gap or balance of losses of £2,500. Then one considers other consequences in terms of finance, because no damages are being awarded, at any rate, in this case today, by the court for worry, strain, anxiety and unhappiness; it may be that in some cases such considerations might well be appropriate. He lost during the time he was trying to run this business additionally £700 that he borrowed from his mother and another relative. He incurred an overdraft of £1,400 with his bankers. At the time when he came out of occupation he was owing £480 odd for rates. He also owed some items, the items which he could actually recall in court, totalling about £100, for goods supplied. He had been paying £22 odd a month interest on the loan of £4,000 which he had to raise in order to enable him to meet the purchase price of the business and the stock, which I have already mentioned. I do not propose to say more about details. If it were appropriate to go into those item by item, then I would think that three or four days would be set aside before some tribunal to investigate with more complete discovery; I venture to hope the result would not differ very much from that which I, as a common juror, have arrived at. As I say, one brings in those items. I have taken them at £6,800, which I have called £7,000 for the benefits, a gap of £2,500; and, having regard to the plaintiff's evidence—when I say "evidence" I mean evidence before the trial judge—and his answers to questions in this court which I accept from him as an honest man, I think that a further round figure of £3,000 (for an estimated £3,380) should be added, and that his total loss should be £2,500 plus £3,000—£5,500, as an award of damages. That means that this appeal should be allowed, in my view, to that extent.

SACHS L.J. I agree with all that has fallen from my Lords and with the award they propose.

I would first like to add a few words on the question whether anything that happened at trial should debar the plaintiff from recovering the amount of damages to which he is in law entitled. It has been submitted on behalf of the respondents that because in his closing address counsel for the plaintiff adopted at first instance an approach which led to the judge making an assessment of damages upon the wrong basis, this court cannot now award this plaintiff the sum to which in law he is entitled. Where an argument presented to this court is different from that put before the trial judge, this court must approach with a degree of caution the question of whether to consider the new argument: but, after such examination it should be slow to impose a bar which would drive from the judgment seat any man with a just claim merely because it was not at trial presented in the best way. Unless the respondent can, at any rate, show that he has been prejudiced by the course taken at first instance to such an extent that departure from it would be unjust to him, there should be no bar. The books are full of instances where an appellant has succeeded on a different point from that taken at the trial. If, and in so far, as an erroneous approach at trial merely results in additional costs to the respondents, that can, of course, in appropriate cases be a matter to be dealt with by the appellate court.

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1 Q.B.

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Sachs L.J.

A In the present case, one has the position that the plaintiff has been the victim of a deplorable fraud—deplorable as regards the complete disregard of the defendants for commercial honesty; he has been awarded a sum that goes nowhere near the proper compensation, and to my mind, for the reasons given by the Master of the Rolls, there is no good reason why this court should not order a proper compensatory award.

B Turning now to the issue as to how much shall be awarded, it is the fact that the law as to the measure of damages recoverable in actions for deceit is one in which there is a dearth of direct authority except in cases relating to the purchase of shares, of goods, and of land, all of which have certain factors in common. The resulting problem is one which, for my part, I first came across some 35 years ago, and it is a problem that has in various forms recurred not infrequently in cases with which it has been my lot to be concerned. I take some comfort in the fact that, over  
C all that period, it has seemed to me that practitioners have, in general, taken the same clear course as this court is today adopting—based upon that passage in *Clark v. Urquhart* [1930] A.C. 28, which is worth again recalling. There Lord Atkin said in a concise manner (at p. 68): “I should have thought it”—that is the measure of damages—“would be based on the actual damage directly flowing from the fraudulent induce-  
D ment.”

E In cases such as the present the wrong done is tricking a plaintiff into a contract, and the plaintiff is entitled by way of damages to whatever sum he has lost by being thus tricked. The question as to what a purchaser has lost must naturally depend on the subject-matter of the contract. If the contract is simply one such as the purchase of shares, normally the maximum loss will be the money out of which the purchaser has been  
F tricked, a sum which, however, may well include brokerage or stamp duty: the value of benefits received will be taken into account. If the purchase is one of a business which the plaintiff but for the fraud would not have acquired at all, the objective of the court is to put the plaintiff, so far as it is possible, into the same position financially as if he had not entered into the contract at all; in other words, one must look at the end result  
G of his having entered into the transaction and find out what was his loss over all. In this behalf, I entirely agree with what has fallen from my Lords. The acquiring of a business normally entails the expenses of moving into fresh premises, keeping the business going, and at any rate continuing to keep it going until such time as it can be disposed of; and then one looks also at the expenses of selling. The computation of the loss may in many cases not be easy. Thus, the court must obviously take  
H care not to include sums for consequences which may be due to the plaintiff's own unreasonable actions, and also not to include results which are too remote—matters which often involve difficult questions of fact and degree. But such difficulties do not alter the duty of the court, which should approach the matter on a broad basis.

In this case, the central fact is that the plaintiff was tricked into buying a business which he would not otherwise have bought at all. It was one which, even with suitable protective covenants from the fourth defendant—and none were acquired—would anyway have been singularly unattractive to anyone who had honestly been told all the relevant facts. It was a

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business on which such goodwill as there was depended greatly on whatever course might be adopted by the fourth defendant in the future; and I, for my part, doubt whether a suitable protective covenant which would have worked from a practical point of view could have been devised.' Any value attached to the business itself as being a going concern on an independent basis was very small indeed; and it would seem to me that when once the facts were fully known to a purchaser, any sizable payment for goodwill would have been very unlikely.

In fact, as matters turned out, the fourth defendants, A. Olby & Son Ltd., part of what was called "the Olby empire," within weeks of the sale of the relevant business (which was being carried on as A. Olby & Sons), for reasons which they were in law entitled to adopt, did take a course which in practice saw to it that any goodwill of the business sold was recovered for the empire and got back into the hands of the fourth defendants. For, when the plaintiff raised the question of whether he had not been tricked by the first defendant, the fourth defendant cut off his supplies and set about canvassing the customers of the business sold. We have the benefit of having seen a letter signed by a director of the fourth defendant which contains, among other things, two lists, "B" and "C" and refers to them as follows: "The list marked 'B' contains accounts which dealt with Epsom"—that is to say, the business sold—"and Mr. Coombe was instructed on February 20, 1964, to call on those customers on behalf of Penge. As regards list 'C,' also containing Epsom accounts, another gentleman was asked 'to call on behalf of Penge' (i.e., the fourth defendants) as from the same date." I mention those facts because, while that defendant was in law entitled to take that course, it does demonstrate the risks which a purchaser of the business sold would take and would thus have a bearing on what is the proper measure of damages if one had in this instance to make a separate assessment of the value of the business sold, as Mr. Smout submitted. In practice, however, any value it had is taken into account in the balance worked out by Winn L.J.

Now, turning from the general picture to figures, for my part I do not wish to add anything to what has been said on detail by Winn L.J. I would only add that making my calculations, at times by a slightly different route, from that taken in the course of his judgment, I came to a figure within a very small margin indeed of £5,500, before I had heard any of the questions put to or answers given by Mr. Doyle to certain matters in this court. That figure of £5,500 seems the right figure, purely on the basis of those facts which were, we have been told, in evidence before the trial judge: it has been reached on a broad basis, and it is one with which I find myself in full agreement.

*Appeal allowed.*

*Judgment for £5,500 instead of £1,500, with all plaintiff's costs.*

*Later application by plaintiff for leave to appeal on the amount of damages refused.*

Solicitors: *George & George.*

M. M. H.

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**EXHIBIT D**

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a

Hall v Cable and Wireless plc

b

Parry and another v Cable and  
Wireless plc

c

Martin v Cable and Wireless plc

[2009] EWHC 1793 (Comm)

QUEEN'S BENCH DIVISION (COMMERCIAL COURT)

TEARE J

d 9, 21 JULY 2009

*Financial Services – Statutory requirements – Breach – Remedies for breach – Act providing different remedies for breaches of different rules made by Financial Services Authority – Whether private right of action for breach of rules if not expressly provided for in Act – Financial Services and Markets Act 2000, ss 73A, 90, 118, 123, 150, 383.*

*Shares – Publicly listed company – Purchase of shares on stock market – Whether purchase of shares on stock market giving rise to contract between company and purchaser of shares.*

*Stock market – Listing rules – Listing particulars – Company announcements made after listing – Whether announcements constituting ‘listing particulars’ – Financial Services and Markets Act 2000, s 90.*

g

*Negligence – Company’s accounts failing to disclose contingent liability if its debt rating fell below specified level – Claimants buying shares in company unaware of contingent liability – Whether company negligent in failing to disclose contingent liability – Whether claimants’ cause of action arising at time of purchase or time of sale of shares in company.*

h

*The claimants bought shares in the defendant, a publicly listed company, between 1997 and 2002. In August 1999 the defendant sold its interest in a mobile telephone company to a third party under an agreement which contained a clause (the ratings clause) to the effect that if the defendant’s debt rating fell below a specified level it was obliged to provide the purchaser with a bank guarantee for £1.5bn or pay £1.5bn into escrow. The ratings clause was not disclosed to the market when details of the sale were announced in 1999. From about March 2000 to December 2002 the share price of the defendant fell until on 6 December 2002 its debt rating fell*

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below the level specified in the ratings clause. On that date it issued a press release revealing the ratings clause and its obligation to provide a bank guarantee for £1.5bn or to pay that amount into escrow. That news caused the shares to fall even further. The claimants sold their shares in November and December 2002 incurring heavy losses. On 10 November 2008 they filed claims against the defendant for damages for breach of statutory duty, market abuse, negligent misrepresentation under the Misrepresentation Act 1967, and negligence. The breach of statutory duty relied on was breach of the stock market listing rules made under s 73A of the Financial Services and Markets Act 2000. Those rules required a listed company to give public notice of any major new developments in its sphere of activity, and in particular any guarantee or security, which was not public knowledge and which might affect its assets and liabilities or financial position, and to take all reasonable care to ensure that any statement, forecast or other information was not deceptive or omitted relevant information. The claimants contended (i) that the breaches of the listing rules gave them a right of action under s 90 of the 2000 Act, which made a person responsible for listing particulars liable to pay compensation to any person who suffered loss as a result of any untrue or misleading statement in listing particulars, (ii) the defendant was guilty of ‘market abuse’ contrary to s 118 of the 2000 Act by deliberately withholding information which might damage its share price, and (iii) the defendant had negligently misrepresented the position regarding the ratings clause and negligently failed to publish full and accurate information about the clause when details of the sale of its mobile telephone interests were first announced and later when statutory accounts and a company restructuring were announced. The defendant applied for summary judgment or an order that the claims be struck out, on the grounds that they had no real prospect of success and were time-barred.

**Held** – (1) The 2000 Act specified different modes of enforcement for breaches of different rules made by the Financial Services Authority under the Act, namely penalties, ‘restitution orders’ or a right of action, which indicated clearly that Parliament had expressly considered which duties or obligations imposed by the 2000 Act would give rise to a cause of action at the suit of a private person. It followed that the absence of any express provision that breach of a rule gave rise to a cause of action at the suit of a private person indicated that it was not intended that there should be a private right of action for such breach (see [14]–[16], [21], below).

(2) Applying that principle, the claimants had no cause of action for breach of statutory duty or market abuse, because—

(a) although s 150 of the 2000 Act provided that contravention by an ‘authorised person’ of a rule made by the Financial Services Authority was actionable at the suit of a private person, the listing rules were specifically excluded from s 150 and it could not be inferred from that exclusion that a private cause of action could be brought against persons, such as the defendant, who did not fall into the category of authorised persons; moreover, the claim for breach of statutory duty based on failure to abide by the listing rules also failed because the documents issued and announcements made by the defendant after listing which were alleged to

- a* have breached the listing rules were not ‘listing particulars’ within s 90 of the 2000 Act, since ‘listing particulars’ were confined to the particulars, including supplementary listing particulars, issued prior to listing and commencement of dealings on the stock exchange (see [18], [20], [49], below); *Possfund Custodian Trustee Ltd v Diamond* [1996] 2 BCLC 665 considered.
- b* (b) the provision in ss 123 and 383 for the imposition of penalties or restitution orders for market abuse and the absence of an express cause of action at the suit of a private person indicated that Parliament intended that penalties or restitution orders were the means of preventing market abuse (see [23]–[24], [49], below).
- c* (3) The claimants had no cause of action for negligent misrepresentation pursuant to the 1967 Act because, assuming they fulfilled the requirement for a cause of action under s 2(1) of the 1967 Act of having entered into a contract with the defendant when they were registered as members of the company, any loss arose from the contract to purchase the shares and not as a result of entering into any such contract with the defendant (see [25], [49], below).
- d* (4) It could not be said with certainty that the claimants had no real prospect of establishing a cause of action in negligence based on a duty of care owed by the defendant to publish full and accurate information about the ratings clause. However, if the claims were based on negligent inflation of the share price caused by non-disclosure of the ratings clause at the time the claimants purchased their shares, their loss occurred and the cause of action was complete at the time of purchase, because that was when the damage was caused, in the form of paying more than the shares were worth, and since the shares had been purchased more than six years before the issue of the claims on 10 November 2008 the claims would be time-barred. Moreover, the claimants could not rely on s 32 of the Limitation Act 1980 to have the limitation period extended because there was no allegation of deliberate concealment of the ratings clause. On the other hand, if the basis of the claims was that the damage was caused on 6 December 2002 when the ratings clause was disclosed, with adverse consequences for the share price, those claimants who sold before that date had no real prospect of being able to establish that the defendant’s negligence had caused them to suffer loss and only the claimant who sold his shares after that date had a possible cause of action in negligence, and then only in respect of the fall in the share price on and after 6 December 2002 caused by the announcement of the ratings clause. Accordingly, that was the only claim that would be allowed to proceed (see [32]–[34], [41], [46], [48]–[51], below). Dicta of Lord Nicholls in *Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)* [1998] 1 All ER 305 at 310 and of Lord Millett in *Cave v Robinson Jarvis & Rolfe (a firm)* [2002] 2 All ER 641 at [23]–[25] applied.
- e*
- f*
- g*
- h*
- i* **Cases referred to in judgment**  
*Caparo Industries plc v Dickman* [1990] BCLC 273, [1990] 1 All ER 568, [1990] 2 AC 605, [1990] 2 WLR 358, HL.  
*Cave v Robinson Jarvis & Rolfe (a firm)* [2002] UKHL 18, [2002] 2 All ER 641, [2003] 1 AC 384, [2002] 2 WLR 1107, HL.

*Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)* [1998] 1 All ER 305, [1997] 1 WLR 1627, HL. a  
*Possfund Custodian Trustee Ltd v Diamond* [1996] 2 BCLC 665, [1996] 2 All ER 774, [1996] 1 WLR 1351.  
*South Australia Asset Management Corp v York Montague Ltd* [1996] UKHL 10, [1996] 3 All ER 365, sub nom *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* [1997] AC 191, [1996] 3 WLR 87, HL. b

### Application

The defendant, Cable and Wireless plc, applied for summary judgment or an order striking out the causes of actions relied on by the claimants, Derek William Hall, William Donald Parry and Elaine Parry, and Peter Martin, in the claims brought by them on 10 November 2008 seeking damages from the defendant for breach of statutory duty, market abuse, misrepresentation and negligence. The facts are set out in the judgment. c

*David Guy* (instructed by *Beynon Nicholls*) for the claimants. d  
*Benjamin Strong and Nicholas Sloboda* (instructed by *Slaughter and May*) for the defendant.

*Cur adv vult*

e

21 July 2009. The following judgment was delivered.

### TEARE J.

[1] This is an application by the defendant in these three actions for summary judgment or, alternatively, an order striking out one or more of the causes of actions relied upon on the grounds that there is no real prospect that the actions will succeed. It is accepted that if there is more than a fanciful prospect of success then the application should be refused. f

[2] The claimants were shareholders in the defendant company. They allege that the defendant wrongfully failed to disclose information to the market and that as a result they suffered loss. g

[3] The background to the claim is that in August 1999 the defendant sold its interest in the mobile telephone company One2One to Deutsche Telekom. The defendant gave the buyer an indemnity in respect of One2One's tax liabilities. The defendant also agreed that if its debt rating fell below a particular level it would either provide Deutsche Telekom with a bank guarantee in the sum of £1.5bn or pay £1.5bn into escrow. This obligation has been described as the ratings clause. h

[4] From about March 2000 to December 2002 the market price of the shares in the defendant fell steadily. On 6 December 2002 the defendant's debt rating fell below the relevant level and the defendant issued a press release to the effect that it was obliged to procure a bank guarantee for £1.5bn or pay that sum into escrow. The market price of the shares fell further. i

[5] Each of the claimants issued proceedings on 10 November 2008, shortly before the expiry of six years from the press release of 6 December

QBD

Hall v Cable and Wireless (Teare J)

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*a* 2002. The delay in commencing proceedings, long after the expiry of six years from the dates on which the shares were purchased, has created problems for the claimants with regard to proof of loss and limitation of actions.

*b* [6] The particulars of claim in each action are in identical form save that the number of shares which were purchased and sold differ as do the dates of the transactions. The losses claimed therefore also differ. The pleaded share transactions and resulting losses are as follows:

(I) MR HALL

*c* Purchases: 9 June 2001, 64,000 shares @ 407p  
 14 August 2002 38,000 @ 146.75p  
 14 August 2002 20,000 @ 145.45p  
 Sales: 14 November 2002 122,000 shares @ 73p  
 Loss: £256,546

*d*

(II) MR AND MRS PARRY

Purchases: Between August 1999 and 2002 31,784 @ average price of 331p  
 Sales: 18 November 2002 31,784 @ 76p  
*e* Loss: £81,050

(III) MR MARTIN

Purchases: Between 1997 and 2001 21,234 as follows  
*f* 7,739 @ 738.99p  
 5,422 @ 553.3p  
 5,241 @ 884p  
 2,832 @ 383.25p  
 Sales: 12 December 2002 21,234 @ 46p  
 Loss: £134,591.14

*g* [7] In each case the losses have been calculated by reference to the difference between purchase and sale price.

[8] The causes of action relied upon against the defendant are described as breach of statutory duty, market abuse, misrepresentation and negligence.

*h* [9] The facts on which these causes of action are based have been pleaded as follows:

*i* '3. As a publicly listed company the defendant had obligations, set out more fully below, to disclose any information which was not public knowledge and may affect the market price of the defendant's shares. The escrow requirement was not disclosed when details of the agreement were first announced in August 1999 and was not subsequently announced until 6 December 2002. In 1999 Moody's rating of the defendant was A3. Between that date and 6 December 2002 the defendant's credit rating deteriorated, in August 2002 it was A3, on 6 December 2002 it was reduced from Baa2 to Ba1, known as a "junk" rating ...

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5. Before 6 December 2002 the defendant had issued public statements and statutory accounts (including but not limited to the accounts for the years ending 2001 and 2002) stating that it held net cash of approx £2.65 billion and omitting any reference to the escrow requirement (hereinafter the published information). On 5 August 2002 in response to a reduction in the credit rating of Moody's the defendant confirmed that there was no new material information since the defendant's annual accounts were issued on 15 May 2002 and that the defendant had one of the strongest balance sheets in the industry. On 13 November 2002 the defendant announced a company restructuring and expected substantial losses without revealing the escrow requirement. On a date or dates unknown to the claimants before 6 December 2002 the defendant held unsuccessful meetings with Moody's in order to persuade them not to downgrade its credit rating. The effect of the announcement of the escrow requirement on 6 December was that the market concluded that there had been a material non-disclosure and the share price fell sharply.'

[10] The causes of action themselves have been pleaded as follows:

'7. By reason of the above the defendant was in breach of the Listing Rules made under s 73A of the Financial Services and Markets Act 2000 (FSMA) known as the "Part 6 rules" as provide as follows:

(a) Listing Rule 9.1. "A company must notify the Company Announcement Office without delay of any major new developments in its sphere of activity which is not public knowledge and which may: (i) by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to a substantial movement in the price of its listed securities; or (ii) in the case of a company with debt securities listed, by virtue of the effect of those developments on its assets and liabilities of financial position or on the general course of its business, lead to substantial movement in the price of its listed securities, or significantly affect its ability to meet its commitments."

(b) Listing Rule 9.3A. "A company must take all reasonable care to ensure that any statement or forecast or any other information it notifies to the Company Announcements Office or makes available through the UK Listing Authority is not deceptive and does not omit anything likely to affect the import of such statement, forecast or other information."

(c) Listing Rule 9.10. "A company must notify the Company Announcements Office without delay (unless otherwise indicated) of the following information relating to its capital ... **New issues of debt securities** (b) where a company has listed debt securities, any new issues of debt securities, and in particular any guarantee or security in respect thereof:"

(d) By Listing Rule 10, consent for the escrow requirement should have been obtained from shareholders in advance ...

9. Further, the defendant was in breach of s 118 of FSMA in that it committed market abuse as therein defined in that it deliberately withheld information which might damage its share price since: (a) knowledge of the escrow requirement was not generally available,

*a* would have been thought by a regular user of the market to be relevant to the market price of the share, and would be thought by the same regular user to be a failure by the person withholding it to observe the standard of behaviour expected of a person in his position in relation to the market, and (b) by so doing the defendant was disseminating information likely to mislead.

*b* 10. Further, the defendant made misrepresentations in the company accounts for the years ending 2001 and 2002 (the omission of any reference to the escrow requirement and the assertion of a net cash balance of approximately £2.65 billion) and in other formal statements made to the market between those dates upon which the claimants were entitled and did rely in acquiring the said shares and in holding the shares whilst the share price declined throughout 2001 and 2002. As a result of the said misrepresentation the claimants suffered damages as set out hereafter.

*c* 11. Further the defendant owed the claimants a duty of care to publish information about the escrow requirement because of the defendant knew or ought to have known that otherwise misleading statements were being put into general circulation and were likely to be relied upon by person considering acquiring the defendant's shares and once, acquired, in deciding whether to hold them or sell them. The claimants suffered damage as a result of the defendant's failure to comply with such duty of care as set out hereinafter.'

*d* [11] Counsel for the defendant submitted that the claimants had no real prospect of succeeding on causation, that the causes of action were time barred and that in any event there was no real prospect that the causes of action themselves would be established. I prefer to deal with these submissions in the reverse, and more conventional, order, commencing with the alleged causes of action.

#### BREACH OF STATUTORY DUTY

*e* [12] The breach relied on is of the listing rules made under s 73A of the Financial Services and Markets Act 2000 (the 2000 Act). Counsel for the defendant submitted that on the true construction of the 2000 Act Parliament did not intend that breach of such rules would give rise to a civil cause of action for loss caused by such breach of duty.

*f* [13] It is accepted that the listing rules relied upon (save for rule 9.3A) were in force at the material time. However, they had been made under s 74, not s 73A which did not come into force until 1 July 2005.

*g* [14] The 2000 Act provides that breach of certain rules will give rise to a penalty, that breach of others will enable 'restitution orders' to be made and that others will give rise to a right of action.

*h* [15] Thus, s 91 gives the Financial Services Authority power to impose a penalty where there has been a contravention of the listing rules. Section 382 gives the court power, on the application of the FSA or the Secretary of State, where a person has contravened 'a relevant requirement' (which would include the listing rules) to make a restitution order where one or more persons have suffered loss as a result of that contravention. Section 384 gives similar powers to the FSA. Section 71 specifically provides that a contravention of ss 56(6) or 59(1) or (2) is actionable at the suit of a

private person. Section 150 provides that contravention of a rule by an 'authorised person' is actionable at the suit of a private person but 'Part 6 rules', which it is accepted are the listing rules, are excluded from the definition of rule for the purposes of s 150. a

[16] These provisions indicate clearly that Parliament expressly considered which of the duties or obligations imposed by the 2000 Act would give rise to a cause of action at the suit of a private person. Parliament did not provide expressly that a breach of the listing rules would give rise to a cause of action at the suit of a private person. Other remedies and penalties were provided by ss 382, 384 and 91. That is a clear indication that Parliament did not intend that a breach of the listing rules would give rise to a cause of action at the suit of a private person. To hold that Parliament did so intend would interfere with the scheme and modes of enforcement provided by the 2000 Act. b

[17] It was submitted on behalf of the claimants that:

(i) it is to be inferred from the fact that s 150 excluded listing rules from the cause of action created by s 150 against authorised persons that breach of such rules was intended to give rise to a cause of action for breach of the listing rules; c

(ii) s 90 provides that a person responsible for listing particulars is liable to pay compensation to any person who has suffered loss as a result of any untrue or misleading statement in the particulars. Such liability applies to all breaches of the listing rules; d

(iii) in any event it would be absurd if a breach of the listing rules were not actionable at the suit of a private person. e

[18] I shall deal with each submission in turn. Section 150 provides a cause of action against an authorised person at the suit of a private person where a rule is contravened but expressly excludes breach of the listing rules. I do not understand why it is to be inferred from this section that a breach of the listing rules by persons other than authorised persons (such as the defendant) will give rise to a cause of action. Section 150 does not provide for such a cause of action and the scheme of the Act, variously providing for penalties, restitution orders and causes of action, prevents the court from inferring that where a cause of action is not expressly created such a cause of action is to be implied. f

[19] Section 90 is concerned with untrue or misleading statements in 'listing particulars'. Section 90 is within Pt VI of the Act which is concerned with 'official listing'. 'Listing rules' may be made for the purposes of this part of the Act: s 74(4). 'Listing particulars' are referred to in ss 79–83. It was submitted on behalf of the defendant that 'listing particulars' are particulars prepared to enable securities to be listed on the official list. It was submitted that 'listing particulars' did not include statements made by a company after the securities had been listed. This submission appears to be supported by a consideration of the terms of ss 79, 80 and 81. g

[20] Counsel for the claimants relied upon s 79(2) which defined 'listing particulars' as meaning 'a document in such form and containing such information as may be specified in listing rules'. Chapter 5 of the listing rules is concerned with listing particulars. I was not referred to any part of Ch 5 which specified the form and content of listing particulars in such a way as to include post-listing announcements. Instead, I was referred to *Possfund Custodian Trustee Ltd v Diamond* [1996] 2 BCLC 665. That case h

- a* concerned the question whether those who issue a prospectus in connection with the flotation of shares on the unlisted securities market owed a duty of care not only to subscribers at the time of the placing of the shares but also to ‘after-market’ purchasers. In the course of his judgment Lightman J referred to s 150 of the Financial Services Act 1986 and noted that protection was afforded by it to all purchasers of listed securities (whether
- b* placees or after-market purchasers) ‘who had relied on the continuing and updated representations in the listing particulars and the updates’. I assume that the cause of action created by s 90 of the 2000 Act is likewise for the benefit of all purchasers of listed securities. However, the relevant question is whether the documents issued by the defendant after listing but allegedly in breach of the listing rules are ‘listing particulars’ within s 90. Although
- c* ‘listing rules’ create obligations on the company in respect of announcements made long after listing, ‘listing particulars’ appear to me to be the particulars issued prior to listing. They expressly include supplementary listing particulars (see s 90(10)) which are issued after preparation of the listing particulars and before the commencement of
- d* dealings in the securities following their admission to the official list (see s 81(1)). Since the announcements alleged in this case to have been made in breach of the listing rules were not listing particulars in the sense of particulars issued prior to listing, including supplementary particulars, s 90 cannot give the claimants a cause of action in respect of them. In any event, a cause of action pursuant to s 90 of the 2000 Act is not one of the pleaded
- e* causes of action and no application was made to amend the pleadings to include such a cause of action.

[21] I must also reject the third submission, that it would be absurd if a breach of the listing rules were not actionable at the suit of a private person. Remedies for breaches of the listing rules are provided by ss 382 and 384, via the FSA. In those circumstances it is not absurd that a breach of the

*f* listing rules is not actionable at the suit of a private person.

[22] For these reasons I have concluded that the claimants do not have a cause of action for the alleged breaches of statutory duty.

*g* MARKET ABUSE

[23] Market abuse is defined by s 118 of the 2000 Act. Section 123 of the 2000 Act provides that the FSA may impose a penalty on a person who has engaged in market abuse. Section 383 provides that the court may, on the application of the FSA, make a restitution order where one or more persons have suffered loss as a result of market abuse. As with the breach of

*h* statutory duty the question is whether Parliament intended that those who have suffered loss as a result of market abuse should have a cause of action. Counsel on behalf of the claimants submitted that the object of the legislation can only be achieved if civil liability attaches to market abuse. I must disagree. The sections of the Act to which I have referred indicate that the intent of Parliament was that the object of the Act would be achieved by

*i* the imposition of penalties or restitution orders pursuant to ss 123 and 383. In those circumstances the absence of an express cause of action at the suit of a private person is a clear indication that none was intended.

[24] I have therefore concluded that the claimants have no cause of action for the alleged market abuse.

## MISREPRESENTATION

[25] The question raised by counsel for the defendant is whether there can be a cause of action for damages for misrepresentation pursuant to the Misrepresentation Act 1967 in circumstances where the claimants entered into a contract to purchase shares but not with the defendant as is required by s 2(1) of the 1967 Act. The only suggested answer to this point was that a contract also arises between the defendant and the claimants when the latter are registered as members of the defendant. It was suggested that the transfer of shares was a 'tripartite arrangement'. Whether or not the claimants enter into a contract with the defendant when they are registered as members, s 2(1) of the Act requires the person claiming damages to have suffered loss as a result of entering into the contract with the representor. If the claimants have suffered loss it is as a result of entering into the contract of purchase, not as a result of entering into the contract between the claimants and the defendant which (it is assumed) arises when the claimants are registered as members of the defendant. I therefore do not consider that a claim for damages under the Misrepresentation Act 1967 has a real prospect of success.

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## NEGLIGENCE

[26] The allegation in negligence, as I understand it, is that the defendant owed the claimants a duty of care to publish full and accurate information about the ratings clause. The defendant failed to do so in August 1999 (when details of the sale of One2One were first announced), in May 2001 and May 2002 (when statutory accounts were announced), on 5 August 2002 (in response to a reduction in the credit rating of Moody's) and on 13 November 2002 (when a company restructuring was announced).

e

[27] In so far as reliance is placed on the publication of statutory accounts it was submitted on behalf of the defendant that such a claim was doomed to failure because of the decision in *Caparo Industries plc v Dickman* [1990] BCLC 273, [1990] 2 AC 605. Particular reliance was placed on a passage in the speech of Lord Jauncey ([1990] BCLC 273 at 321–322, [1990] 2 AC 605 at 661–662). However, the basis of the claim as pleaded (and as explained in oral argument to me) relies also upon an allegation that the publication of accurate information was required because of other misleading statements made by the defendant. This may allow the principle in *Caparo v Dickman* to be circumvented. For example a duty of care might be said to arise, when issuing the accounts, by reason of the failure to disclose the rating clause in 1999. Whether or not it does will depend upon the facts as proved. I do not consider therefore that it can be said at this stage with confidence that the claim in negligence based upon the published accounts has no real prospect of success.

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[28] With regard to the balance of the negligence claim it is said that the claim requires some explanation, that no evidence is offered to explain why the defendant was negligent and that it is not clear that all of the claimants reasonably relied upon the misleading statements. These are questions of evidence which cannot be investigated at this stage of the trial process. Leaving aside the questions of limitation and causation of loss I do not consider that there grounds for holding at this stage that there is no real prospect of establishing a cause of action in negligence.

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[29] It follows that the claimants have no real prospect of succeeding on

*a* any of the pleaded causes of action save as to negligence.

LIMITATION

*b* [30] The cause of action in negligence is only complete when damage has been caused. The simplest manner in which it can be said that the claimants suffered damage is that the shares were purchased in reliance upon negligent misstatements by the defendant and that, because information about the ratings clause was withheld, the market price was higher than it would have been had the market known of the ratings clause. It was therefore submitted on behalf of the defendant that the claimants must have suffered loss when they purchased the shares. But the latest date on which shares were purchased was August 2002 which was more than six years before these proceedings were commenced on 10 November 2008. It was therefore said that claims based upon the purchase of the shares must be time-barred (subject to the effect of s 32 of the Limitation Act 1980).

*c* [31] It is submitted on behalf of the claimants that the loss was sustained when the shares were sold, which was after 10 November 2002, in which case the claims are not time-barred.

[32] In my judgment, upon the assumption that the claimants purchased shares at a price which was inflated by reason of the alleged non-disclosure of the ratings clause, then they must have suffered an immediate loss at the time of purchase because they paid out more than the shares are worth.

*e* [33] I was referred to *Nykredit Mortgage Bank plc v Edward Erdman Group Ltd (No 2)* [1998] 1 All ER 305 at 310, [1997] 1 WLR 1627 at 1632 where Lord Nicholls said, in the context of a lender who relies on a security which has been over-valued by reason of negligent advice:

*f* ‘Realisation of the security does not create the lender’s loss, nor does it convert a potential loss into an actual loss. Rather, it crystallises the amount of a present loss, which hitherto had been open to be aggravated or diminished by movements in the property market.’

[34] I consider that that analysis also applies to a purchaser of an asset who pays a price which has been inflated by negligent misstatements.

*g* [35] However, in order to avoid the conclusion that the damage was sustained more than six years before the proceedings were commenced the claimants advanced a further argument (in counsel’s skeleton argument):

*h* ‘[I]t is possible that earlier disclosure (say in 1999) might not have affected the share price but failure to disclose until it became a very significant (and immediate) liability caused the damage (particularly amongst other bad news) because it confirmed to the market that there had been material non-disclosure before.’

*i* [36] Thus the case which may be run on the facts is that earlier non-disclosure did not affect the share price but later non-disclosure did. It may be possible to show that no loss was caused on purchase but that loss was caused on 6 December 2002 when, it is said, the market reacted adversely to the discovery that there had been a material non-disclosure. Whilst this has not been pleaded in terms it is difficult to say that the present pleading is not wide enough to encompass such a factual case. No

expert evidence has yet been produced to support it but I am not able to say that it is doomed to fail. It would appear to derive support from the witness statement of Mr Cotton of the defendant's solicitors that—

'prior to November 2002 the ratings clause was unimportant. The defendant was four or five notches above the ratings clause trigger throughout the period prior to 14 November 2002, and any trigger of the ratings clause was therefore a remote prospect.'

[37] Thus the cause of action in negligence may not have been completed until 6 December 2002 when damage was caused by the share price being affected by the ratings clause only at that time.

[38] If that is so then the claimants have no need of s 32 of the Limitation Act 1980. But I should nevertheless deal with the suggested argument. Section 32 provides that where any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant the period of limitation shall not begin to run until the claimant has discovered the concealment. The claimants wish to say that the existence of the ratings clause was not discovered until 6 December 2002 and therefore that the 6 year limitation period did not expire until 6 December 2008, before which proceedings had been commenced on 10 November 2008. This raises the question whether the claimants have a real prospect of establishing that the defendant was guilty of 'deliberate concealment' within the meaning of s 32.

[39] No particulars of the allegation of deliberate concealment have been pleaded but counsel has stated that the claimants will not allege that the defendant was aware of a duty to disclose the existence of the ratings clause and deliberately chose not to disclose it. What will be said is that the defendant was aware in general terms that it had a duty to disclose price sensitive matters and that the decision not to disclose the ratings clause was deliberate.

[40] The meaning of deliberate concealment in s 32 has been explained by Lord Millett in *Cave v Robinson Jarvis & Rolfe (a firm)* [2002] UKHL 18, [2002] 2 All ER 641 at paras 23–25, [2003] 1 AC 384:

'23. As I have explained, in enacting the 1980 Act Parliament substituted "deliberate concealment" for "concealed fraud". This is a different and more appropriate concept. It cannot be assumed that the law remained the same. But reference to the old law explains why Parliament enacted s 32(2) and did not rely on s 32(1)(b) alone to cover the whole ground. With all reference to fraud or conscious impropriety omitted, there was an obvious risk that "deliberate concealment" might be construed in its natural sense as meaning "active concealment" and not as embracing mere non-disclosure. Section 32(2) was therefore enacted to cover cases where active concealment should not be required. But such cases were limited in two respects: first, the defendant must have been guilty of a deliberate commission of a breach of duty; and secondly, the circumstances must make it unlikely that the breach of duty will be discovered for some time.'

24. Given that s 32(2) is (or at least may be) required to cover cases of non-disclosure rather than active concealment, the reason for limiting it to the deliberate commission of a breach of duty becomes clear. It is

*a* only where the defendant is aware of his own deliberate wrongdoing that it is appropriate to penalise him for failing to disclose it.

*b* 25. In my opinion, s 32 deprives a defendant of a limitation defence in two situations: (i) where he takes active steps to conceal his own breach of duty after he has become aware of it; and (ii) where he is guilty of deliberate wrongdoing and conceals or fails to disclose it in circumstances where it is unlikely to be discovered for some time. But it does not deprive a defendant of a limitation defence where he is charged with negligence if, being unaware of his error or that he has failed to take proper care, there has been nothing for him to disclose.'

*c* [41] Since it is not alleged, and I am told will not be alleged, that the defendant was aware its own deliberate wrongdoing it follows that there is no real prospect of establishing that the limitation period can be extended by reason of deliberate concealment pursuant to s 32 of the Limitation Act 1980. However, for the reason given earlier in this judgment I am unable to conclude that the claims are clearly time-barred.

*d* [42] I have not considered the effect of limitation on the causes of action for breach of statutory duty, market abuse or misrepresentation because I do not consider that such causes of actions have a real prospect of success. If, contrary to my opinion, they do, the limitation analysis is the same since they are, or are to be regarded as, causes of action in tort.

*e* CAUSATION

*f* [43] Counsel for the defendant has observed that Mr Hall and Mr and Mrs Parry sold their shares before 6 December 2002, that is, before the defendant disclosed the ratings clause to the market. It must follow that when the shares were sold Mr Hall and Mr and Mrs Parry were able to achieve a sale price unaffected by market knowledge of the ratings clause. It was therefore submitted that Mr Hall and Mr and Mrs Parry are unable to establish that they had suffered any loss caused by the failure of the defendant to disclose the ratings clause to the market until 6 December 2002. The shares had been purchased at a price which was not affected by market knowledge of the ratings clause and had been sold at a price which was not affected by market knowledge of the ratings clause. The market price had been steadily falling from 2000–2002 but the claimants are not able to say that that fall was caused by the alleged negligence of the defendant; see *South Australia Asset Management Corp v York Montague Ltd* [1996] 3 All ER 365 at 371, [1997] AC 191 at 213.

*g* [44] What is said by counsel on behalf of the claimants is that—

*h* 'expert evidence will be needed to establish the effect of the defendant's announcements. Such evidence is expected to show that the market was already affected by suspicion of non-disclosure prior to 6 December 2002 although it also reacted adversely immediately after that announcement ... it was already happening in the run up to the announcement ...'

*i* [45] This argument is also developed in the witness statement of Mr Lally of the claimants' solicitors. Whilst there is evidence to support the assertion that the share price was falling in November 'because there was great

suspicion in the market that the defendant had more bad news to disclose' *a*  
there is no evidence that the ratings clause was suspected by the market.  
There is a suggestion in Mr Lally's witness statement that directors knew  
and sold their shares and that ratings agencies were informed about it. But  
the first part of that suggestion is based upon a misunderstanding. None of  
the trades was a share sale by an individual director and the majority were *b*  
sales by the trustees of the defendant's employee share ownership trust over  
which the directors have no operational control. The second part is based  
upon the evidence of Mr Cotton that the ratings clause was discussed with  
Standard & Poor's on 4 December 2002. However, it is no more than  
speculation to suggest that participants in the market either knew of or  
suspected the existence of the ratings clause before 6 December 2002. In *c*  
any event, the particulars of claim do not allege that the defendant was  
responsible for generating suspicion in the market as to the existence of the  
ratings clause.

[46] I must therefore conclude that Mr Hall and Mr and Mrs Parry have  
no real prospect of being able to establish that the alleged negligence of the  
defendant caused them to suffer loss. When the ratings clause was disclosed *d*  
to the market on 6 December 2002 the share price fell but Mr Hall and  
Mrs and Mrs Parry had avoided that fall by selling their shares on 14 and  
18 November 2002.

[47] Mr Martin sold his shares on 12 December 2002 so he does not face  
this particular problem. Counsel for the defendant submitted that  
Mr Martin faces another problem. Had the defendant performed its alleged *e*  
duty by disclosing the existence of the ratings clause, say on 13 November  
2002, thereby causing Mr Martin to decide not to hold the shares but to sell  
them Mr Martin would have sustained the very same loss he in fact  
incurred when he sold after 6 December 2002. That is because the market  
price would have fallen following an earlier disclosure of the ratings clause. *f*  
Thus the defendant says that whether a claimant sold before 6 December  
2002 (like Mr Hall and Mr and Mrs Parry) or after (like Mr Martin) the  
alleged negligence caused no loss.

[48] However, Mr Martin may argue that he suffered loss in December  
2002 because he had held on to his shares throughout 2000 and 2001 as a  
result of the failure by the defendant to disclose the ratings clause in 2000 *g*  
and 2001. That failure did not affect the share price (because the possibility  
that the ratings clause would be invoked was remote) but when the ratings  
clause was disclosed in December 2002 it then caused the market price to  
fall. There will be (at the very least) a tension in the evidence between  
saying, on the one hand, that the ratings clause was sufficiently material in  
2000 and 2001 that it had to be disclosed and saying, on the other hand, *h*  
that such early disclosure would not have affected the market price. But  
these evidential difficulties cannot be resolved on an application of this  
nature. However, if Mr Martin can establish any loss on this basis it will be  
far less than that pleaded because the market price had already fallen  
greatly before December 2002, a fall which he cannot attribute to the  
alleged failings by the defendant. *i*

*a* CONCLUSIONS

[49] The claims of Mr Hall and Mr and Mrs Parry have no real prospect of success for these reasons:

(i) They have no cause of action for breach of statutory duty, market abuse or negligent misrepresentation pursuant to the Misrepresentation Act 1967.

*b* (ii) Whilst they have a cause of action in negligence which may not be time-barred there is no real prospect that they will establish that the alleged negligence caused them any loss because they sold their shares on 14 and 18 November 2002 and so did not suffer the losses caused by the disclosure of the ratings clause on 6 December 2002.

*c* [50] The claim of Mr Martin has no real prospect of success in so far as it relies on breach of statutory duty, market abuse and negligent misrepresentation. Mr Martin has a cause of action in negligence which may not be time barred and may have caused him loss. That loss will however be restricted to the fall in the market value of the shares on and after 6 December 2002 caused by the announcement of the ratings clause.

*d* [51] It follows that the defendant is entitled to summary judgment against Mr Hall and Mr and Mrs Parry. As against Mr Martin the defendant is not entitled to summary judgment but the claims based on breach of statutory duty, market abuse and negligent misrepresentation pursuant to the Misrepresentation Act 1967 should be struck out.

*e* *Order accordingly.*

Peter Hutchesson Barrister (NZ).

**EXHIBIT E**



**Prodefin Trading Limited v Midland Resources Holding Limited & Others**  
Royal Court  
14<sup>th</sup> February 2017

**JUDGMENT**  
7/2017

Compulsory Liquidation

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION**

**IN THE MATTER OF MIDLAND RESOURCES HOLDING LIMITED (a Guernsey registered company)**

**AND**

**IN THE MATTER OF PARTS XIX AND XXII OF THE COMPANIES (GUERNSEY) LAW, 2008**

**Between: PRODEFIN TRADING LIMITED (“the Applicant”)**

**-v-**

- (1) MIDLAND RESOURCES HOLDING LIMITED (“the Respondents”)**  
(A Company registered in Guernsey)
- (2) MIDLAND RESOURCES HOLDING LIMITED**  
(A Company registered in BVI)
- (3) LEXINTER INTERNATIONAL INC.**  
(A Company registered in BVI)

**Judgment handed down: 14<sup>th</sup> February 2017**

**Before: Sir Richard Collas, Bailiff**

**Advocate for the Applicant: Advocate J J Barclay**

**Advocate for the Second & Third Respondents: Advocate M C Newman**

**Cases, texts and laws referred to:**

Companies (Guernsey) Law, 2008  
Arnold v Britton [2015] AC 1619

O'Brien v Marett [2008] JCA 178  
UK Companies Act 2006, section 994  
Apex Global Management Limited v Fi Call Limited [2015] EWHC 3269 (Ch)  
Re: Coroin Limited (No2) [2012] EWHC 2343 (Ch), [2013] EWCA Civ 781  
O'Neill v Phillips [1999] 1BCLC 1  
Ebrahimi v Westbourne Galleries Limited [1973] AC 360  
Grace v Biagioli [2006] 2BCLC 70

1. The applications before me concern a company registered in Guernsey, Midland Resources Holding Limited (to which I refer both as the “Company” and as “Midland Guernsey”), which is ultimately owned equally by two businessmen who have been referred to in the proceedings as the Russian businessman and the Canadian businessman. The Company was at one time the holding company of a large group of companies with interests in Eastern Europe and elsewhere. The two businessmen have largely unwound their mutual interests, although there remain a small number of assets, or contingent assets, of the Company which may or may not have very substantial value. The two businessmen are in total disagreement as to how to deal with one of those contingent assets.
2. The Company has two directors. One of them, Robert Edward Lee, is a resident of Canada and a trusted associate of the Canadian businessman. The sister of the Russian businessman, Inna Sergiyenko, is the only other director of the Company unless I determine that she was validly removed as a director and replaced by another associate of the Canadian businessman, Daniel Tilis, by a purported resolution of the board of the Company, executed by Mr Lee, dated 18<sup>th</sup> November 2016. (I refer to the three of them as “Mr Lee”, “Ms Sergiyenko” and “Mr Tilis”). Mr Lee and Ms Sergiyenko both claim to have acted at all times in the best interests of the Company but each faces allegations that they have been pursuing the interests of the businessman at whose behest he or she was appointed in priority to the interests of the Company. Each of Mr Lee and Ms Sergiyenko has lost all trust and confidence in the other and there is also clear evidence that each of the two businessmen has lost trust and confidence in the other businessman. Consequently, the board of directors of the Company is deadlocked (unless Mr Tilis’s appointment as a director is valid). Each side has brought applications with a view to seeking to resolve the deadlock so that the actions that remain to be taken in order to complete the realisation of the Company’s assets may be pursued.
3. The Applicant, Prodefin Trading Limited, owns 50% of the Company’s shares and is ultimately owned by family trusts connected to the Russian businessman. The other 50% of the Company’s share capital is held by the Second and Third Respondents, both of which are ultimately controlled by the Canadian businessman. The Company is the First Respondent.

### **The Applications**

4. By an application dated 28<sup>th</sup> September 2016 (“the Application”), the Applicant applied for: an Order that the Company “be wound up pursuant to Sections 350 and/or 406(i) and 412” of the Companies (Guernsey) Law, 2008 as amended (“CGL”); an Order that Timothy Le Cornu of Krys Global (Guernsey) Limited and John Skelton of Krys Global (UK) Limited be appointed as the joint liquidators of the Company; some consequential Orders relating to the powers of the joint liquidators; and costs. The Application was amended on 2<sup>nd</sup> December 2016 (the “Amended Application”) by including an application for declarations both that the purported removal of Ms Sergiyenko as a director of the Company on 18<sup>th</sup> November 2016 was unlawful and also that the appointment of Mr Tilis is invalid and hence he is not a director of the Company.

5. In response, the Second and Third Respondents filed an Application (“the Alternative Relief Application”) dated 17<sup>th</sup> November 2016 seeking: an Order pursuant to Section 350(2)(b) of CGL that the Company be required to continue the arbitration proceedings referred to as the “Gorlane Proceedings”; an Order, pursuant to Section 350(2)(d) of CGL, that the Applicant’s shares in the Company be purchased by the Canadian businessman or a company nominated by him on terms set out at paragraph 39 of Mr Lee’s first affidavit; and costs.

### The Witnesses

6. On behalf of the Applicant, evidence was given by Ms Sergiyenko and by Michael Timothy Fenn (“Mr Fenn”), a partner in Pinsent Masons, a London firm of solicitors instructed by Ms Sergiyenko. Ms Sergiyenko produced one affidavit dated 30<sup>th</sup> December 2016 and there were three affidavits by Mr Fenn, dated 28<sup>th</sup> September and 24<sup>th</sup> November 2016 and 9<sup>th</sup> January 2017. Mr Lee gave evidence on behalf of the Second and Third Respondents; he had sworn four affidavits dated 17<sup>th</sup> November and 12<sup>th</sup> December 2016 and 13<sup>th</sup> January and 18<sup>th</sup> January 2017. The affidavits stood as the evidence in chief of the three witnesses, each of whom was cross-examined. There was also in evidence a letter from the Russian businessman to the Canadian businessman dated 12<sup>th</sup> January 2017 and a letter from the Canadian businessman to the Russian businessman dated 18<sup>th</sup> January 2017.
7. Advocate Jonathan Barclay appeared for the Applicant and Advocate Mathew Newman appeared for the Second and Third Respondents. Skeleton arguments were produced by them on behalf of the Applicant and the Second and Third Respondents, both dated 16<sup>th</sup> January 2017. The skeleton arguments stood as the opening speeches of counsel. The First Respondent played no part in the proceedings.

### The Facts

8. To a large extent the facts were agreed, or at least not disputed. The disputed evidence was more concerned with disagreements as to who was responsible for events that had occurred or for actions that should have, but had not, been taken; and the underlying motives and intentions of those concerned.
9. I will begin by setting out the key facts which are either agreed or not disputed.
  - (1) 20.02.1998 - the Company was incorporated in Guernsey.
  - (2) 12.06.2007 - Ms Sergiyenko was appointed as a director of the Company.
  - (3) 2009 - The two businessmen agreed to go their separate ways and to begin to liquidate and separate their interests.
  - (4) 19.05.2010 - the Company entered into a sale and purchase agreement (“SPA”) with five parties known collectively as the “Gorlane Purchasers” for a substantial steel business located in the Ukraine. The total consideration was \$850,000,000 US dollars of which \$50,000,000 (“the Holdback Amount”), was to be paid into an account known as the “Blocked Account” for a period of 18 months following “Completion” during what was effectively a warranty period, following which adjustments were to be made to the purchase price to take account of provisions detailed in the SPA relating to the “Net Debt Adjustment Amount”. Post Completion, the Company was to transfer to the Gorlane Purchasers a number of assets defined as the “Future Interests”. The present position is that the Blocked Account has not been opened, the Holdback Amount has not been paid, the Net Debt Adjustment Amount has not

- been calculated and the Future Interests have not all been transferred. Where the responsibility falls for such failures is a matter of dispute between the parties and something to which I turn later in this judgment.
- (5) 23.05.2010 - “Completion” of the transaction took place.
  - (6) 19.08.2010 - The Gorlane Purchasers wrote regarding the failure to transfer the Future Interests.
  - (7) 05.10.2010 - The date of the first of three “Unwind Agreements” made between the Russian businessman and the Canadian businessman, agreeing how to unwind their shared business interests.
  - (8) 02.2011 - Further letter from Gorlane Purchasers re the failure to transfer the Future Interests.
  - (9) 29.03.2011 - Mr Lee was appointed as a director of the Company.
  - (10) 28.04.2011 - Allen and Overy (“A&O”), instructed by the Company, wrote to the Gorlane Purchasers.
  - (11) 12.05.2011 - The date of the second Unwind Agreement made by the Canadian Businessman and the Russian Businessman.
  - (12) 05.10.2011 - the Gorlane Purchasers wrote again regarding the failure to transfer the Future Interests.
  - (13) 23.11.2011 - being 18 months after Completion of the transaction was the date by which the Holdback Amount should have been paid to the Blocked Account by the Gorlane Purchasers.
  - (14) 28.11.2011 - A&O wrote demanding payment of the Holdback Amount. No response has been received from the Gorlane Purchasers
  - (15) 10.07.2012 - the Russian businessman and the Canadian businessman entered into the third Unwind Agreement.
  - (16) 17.07.2013 - A&O produced a memorandum of advice to the effect that pursuit of the Holdback Amount from the Gorlane Purchasers was relatively straightforward and there was no meritorious defence to the claim.
  - (17) 28.03.2014 - letter to the Gorlane Purchasers seeking payment.
  - (18) 24.04.2014 - three of the Gorlane Purchasers wrote to the Company regarding the failure to transfer the Future Interests.
  - (19) 17.06.2015 - a meeting took place with representatives of the Gorlane Purchasers at their offices, attended by Ms Sergiyenko and Alexander Zyuba (“Mr Zyuba”), a Russian lawyer, appointed by the Canadian businessman.
  - (20) 29.06.2015 - A list of the Gorlane Purchasers’ counter-claims was sent to the son of the Russian businessman, “Igor”, along with claims relating to the Net Debt Adjustment Amount and the failure to transfer the Future Interests.
  - (21) 04.12.2015 - the Canadian businessman commenced arbitration proceedings against the Russian businessman in the London Court of International Arbitration (“LCIA”) alleging that he had suffered a fraud perpetrated by the Russian businessman in the region of several million US dollars (“the Fraud Claim”).
  - (22) April/May 2016 - correspondence was exchanged between Mr Lee and Ms Sergiyenko in which Mr Lee was seeking agreement that the Company commence proceedings for payment of the Holdback Amount, to which Ms Sergiyenko objected for reasons that include the risk of a counter-claim by the Gorlane Purchasers and doubts as to the enforceability of any judgment, which I describe in more detail later in this judgment.

- (23) 13.05.2016 - proceedings were commenced in the LCIA against the Gorlane Purchasers (“the Gorlane Arbitration”, also the “Gorlane Proceedings”) issued by Messrs DWF LLP (“DWF”) purporting to act on behalf of the Company but instructed solely by Mr Lee. Their authority to do so is challenged by Ms Sergiyenko and the Applicant who also has concerns that DWF have a conflict of interest in that the same firm is acting for the Canadian businessman in the Fraud Claim. The conduct of the Gorlane Arbitration is discussed further by me later in this judgment.
- (24) 28.09.2016 - the Applicant issues the Application.
- (25) 17.11.2016 - the Second and Third Respondents issue the Alternative Relief Application.
- (26) 18.11.2016 - Mr Lee acting as a sole director of the Company purports to remove Ms Sergiyenko and replace her as a director with Mr Tilis.

Subsequent events are described by me later in this judgment.

### **The Blocked Account**

10. The SPA was negotiated with the Gorlane Purchasers over a short period of time, a mere two days. Prior to then, negotiations that had been going on over a period of six months with another party for the purchase of the steel business had fallen through. Clause 3 of the SPA provided for the purchase price of \$850,000,000 to be paid in three tranches. On 19<sup>th</sup> May 2010, or such other day as the parties might agree, \$425,000,000 was to be paid to an escrow agent pending Completion. On Completion, a further \$375,000,000 was to be paid to the Company’s account and the balance of \$50,000,000 to the Blocked Account, this being the Holdback Amount. The first two tranches of the purchase price were duly paid but the final tranche has never been paid. Clause 5.2(b) specified that if the Blocked Account had not been opened by the Completion date, the Gorlane Purchasers were to retain the Holdback Amount until the Blocked Account had been opened and were to deposit it within two days following the opening of such account.
11. A proviso to clause 5.2 stated that the Company was not obliged to complete the sale of the “Shares” as defined in the SPA unless the entire completion payment was made, the Blocked Account was opened by the Completion date and the entire Holdback Amount was paid into the Blocked Account. Clause 6.5 specified that the Company was to procure that the Future Interests be transferred to the Gorlane Purchasers for nominal value, as soon as reasonably practical, but in any event no later than 10<sup>th</sup> June 2010, the longstop date. The Blocked Account was to be operated in accordance with the principles set out in schedule 10 of the SPA and in accordance with a Blocked Account Agreement which I understand has not been completed. Schedule 10 stated that payments would be made from the Blocked Account to settle any adjustments to the purchase price, including any relating to the Net Debt Adjustment Amount and pursuant to a completion statement which was to be prepared within ninety days of Completion.
12. Neither Ms Sergiyenko nor Mr Lee accepted any responsibility for the failure to open the Blocked Account. Mr Lee is by profession a chartered accountant who joined the Midland Group in 2002, not as an employee of the Company, but employed by a Canadian company that represented the Group’s interests in Canada. He has always been based in Toronto. He described his role in 2002 as being the preparation and collation of financial data from the Group’s activities around the world for presentation to auditors to enable the preparation of

financial statements for showing to banks and others who required them. Ms Sergiyenko alleged, in cross-examination, that Group bank accounts were dealt with by the Toronto office and she claimed that it was Mr Lee's responsibility to open the Blocked Account. She said that, as far as she was concerned, he was the finance director in the Group's structure, he was responsible for opening the account, he was *de facto* dealing with it so she left him to it as she had no reason to mistrust him.

13. Mr Lee said that he had initially proposed two banks that he considered were suitable to open and operate the Blocked Account. However, neither of them was acceptable to the Gorlane Purchasers who requested that the account be opened with the bank that had provided the finance to them for the purchase. Further discussions were needed and as it was the son of the Russian businessman ("Igor") and Ms Sergiyenko who had conducted the negotiations for the purchase and continued to deal with the Gorlane Purchasers after Completion, Mr Lee said that he left it to Igor to agree with them the setting up of the Blocked Account. Mr Lee said that when he became a director of the Company in 2011, he was aware that the Blocked Account had not been opened.
14. Mr Lee acknowledged that the failure to open the account was never formally discussed at a board meeting but said it was discussed in e-mail correspondence exchanged with Ms Sergiyenko. He then explained how he and Ms Sergiyenko had conducted their management of the Company. They never held regular physical meetings of the directors. The best way for them to communicate was by e-mail, although there were occasional telephone conversations between the two of them. Email communication worked best because of their geographical separation, the time difference between Toronto and Kiev and language differences (Ms Sergiyenko has a command of English but relies on dictionaries to translate words that she does not immediately recognise and Mr Lee's command of Russian is much worse). The Company's agents in Guernsey arranged for the completion of statutory records and for filing requirements to be satisfied.
15. It was suggested to Ms Sergiyenko in cross-examination that the failure to open the Blocked Account was the reason for the present proceedings. It was also suggested to her that if the account had been opened, the Holdback Amount would have been paid into it. She refused to accept that would be the case as she said that the Gorlane Purchasers would have had to be motivated to make the payment. Regarding the responsibility for the proceedings, she said that difficulties with the Gorlane Purchasers were not the only issue. Indeed, she described a number of difficulties dating back to 2010. The steel business in the Ukraine had been the main source of funding for the Midland Group. After its sale and after other assets had been divided between the businessmen or liquidated pursuant to the Unwind Agreements, it was difficult for her to obtain the finance needed to run the office in Kiev. She was reliant upon the two businessmen providing the funds required and she experienced what she described as major disputes over every item of expenditure. She said that the relationship between the Russian businessman and the Canadian businessman deteriorated day by day because of the lack of a source of finance from the Group's operations.
16. Despite the reference to numerous emails passing between Ms Sergiyenko and Mr Lee, none of the contemporaneous correspondence was produced to the Court by either party even though it might have helped to clarify or explain the conflicting oral evidence.

#### **Taking action against the Gorlane Purchasers**

17. In 2011, A&O were instructed to write to the Gorlane Purchasers. Exhibited to the first affidavit of Mr Lee is a letter from A&O dated 28<sup>th</sup> November 2011, addressed to the five purchasers and a memorandum written by A&O dated the 17<sup>th</sup> July 2013, addressed to Igor, entitled "Possible Claims Resulting from Gorlane SPA". Mr Lee said that A&O were not

instructed by him but by Igor. Ms Sergiyenko was asked whether she was involved in instructing the firm. She said she did not know and would have to check, although she acknowledged that she knew of A&O. She said they never asked her for any documents or information and she does not know who they obtained instructions or information from. A&O purported to be acting on behalf of the Company but even though Mr Lee had become a director of the Company on 29<sup>th</sup> March 2011, A&O refused to disclose their file to him when he asked for it. My interpretation of the evidence is that A&O were instructed on behalf of the Company by the Russian businessman and/or by his son acting on his behalf.

18. The letter from A&O dated 28<sup>th</sup> November 2011 noted that no reply had been received to an earlier letter of 28<sup>th</sup> April that year which has not been produced to the Court. Nor have I seen *“the numerous letters you have received about the draft Completion statement or Net Debt Adjustment”* to which it was also said that no replies had been received either by A&O or their client. The Completion statement was long overdue and the 18 month period from the date of Completion during which the Holdback Amount was to have been paid had expired. The letter claimed that the Holdback Amount was therefore now due direct to the Company. A&O concluded the letter by saying: *“It appears, therefore, that you have no possible defence to a claim by [the Company] for the Holdback amount. [The Company] therefore requires you to pay this amount, and an amount equal to the interest which would have accrued had you paid funds into Blocked Account, immediately”*.
19. The Gorlane Purchasers have not replied to the letter of 28<sup>th</sup> November 2011.
20. The memorandum from A&O to Igor dated 17<sup>th</sup> July 2013, stated that it was in response to a request from him for advice *“on a number of points about a possible claim arising from the sale of Gorlane”*. They advised that *“subject to what follows, [the Company] appears to be entitled to receive the Holdback Amount”*. A&O understood that the purchasers had refused to pay the Holdback Amount by arguing that they were entitled to set off against the payment a Net Debt Adjustment. However, the entitlement to receive a Net Debt Adjustment was dependent upon production of the Completion Statement within ninety days of the Completion date. As the Completion Statement had not been produced, A&O advised that *“we do not think this is a strong argument”*. The advice proceeded to explain that the dispute resolution mechanism is arbitration rather than court proceedings. A&O addressed the enforceability of any award against the Gorlane Purchasers, one of which is incorporated in the BVI and the others in Cyprus. They raised the practical consideration of considering whether those companies were shell companies that might not still hold any assets and advised that the Company should check whether they would be worth suing. The advice envisaged that the Gorlane Purchasers would bring counter-claims and anticipated the tribunal would order payment of the full amount of any award, even if there were unresolved outstanding counter-claims and stated *“it is almost inconceivable that they would be able to persuade the tribunal dealing with your claim to off-set any potential award that the Purchasers might receive in a separate arbitration”*. The final paragraph stated, *“Arbitrations can take from around a year, to several years, from the date the request (for arbitration) is issued to the date of an award, depending on the complexity of the case. For the reasons mentioned above, this claim at present appears to be reasonably straightforward and we would therefore expect it would be a relatively quick claim to resolve.”*
21. Ms Sergiyenko was asked in cross-examination to explain why she considered it was not in the best interests of the Company to pursue a claim against the Gorlane Purchasers in accordance with the advice received from A&O. She raised a number of difficulties including that the Company no longer retained the managers who could have assisted by providing any evidence and advice needed. Secondly, she envisaged that the costs of pursuing the claim would be jolly expensive and the Company no longer had the funds to enable it to do so. She was having difficulty at that time in raising sufficient funds from the ultimate shareholders to

pay the staff employed in the Kiev office and said that a decision was taken not to issue proceedings. She added that it was not in the best interests of the Company and pure fantasy to look at the prospects of success identified by A&O unencumbered by the other issues such as potential counter-claims. In taking the decision not to issue proceedings she had taken account of the fact that the Future Interests had not been transferred, notwithstanding that the matter had not been raised by A&O and said she did not know whether A&O were aware of that issue. She maintained that she took the decision not to follow A&O's advice in the best interests of the Company uninfluenced by her brother and his personal interests. She has taken no other legal advice on the claim other than that given by A&O.

22. For his part, Mr Lee said he was aware that A&O had been instructed by the Russian businessman through Igor and that A&O had written to the Gorlane Purchasers to chase payment. He described himself as being only loosely involved. He had requested to be kept informed. He was comfortable leaving others to deal with the matter notwithstanding that he acknowledged that he was not kept fully informed. He considered it was a matter for the Russians (i.e. the Russian businessman, Ms Sergiyenko and Igor) to deal with as they were the ones principally involved with the Gorlane Purchasers, they conducted discussions in Russian and were familiar with dealing with them. However, with the passage of time, he became increasingly dismayed at the lack of progress and concluded that there was some ulterior motive for their lack of progress. He had been unable to obtain any information from A&O who had told him that they would need a board resolution, signed by Ms Sergiyenko, before releasing any information to him. He described A&O as being obstructive towards him. He referred to extensive correspondence between him and Ms Sergiyenko on the matter and he said the issues were repeatedly dealt with by him but not by her. Mr Lee exhibited to the Court correspondence passing between him and Ms Sergiyenko in respect of the period starting in April 2016. The Bailiff understood Mr Lee also to have referred to other extensive correspondence that was not exhibited to the Court.
23. There was little other evidence before the Court of the steps being taken by Ms Sergiyenko or anyone else on behalf of the Company to pursue the payment of the Holdback Amount during the period from Completion until about 2015. On 30<sup>th</sup> April 2015, Ms Sergiyenko wrote to Mr Lee advising him of a meeting with the Gorlane Purchasers "*to negotiate final settlement*". The meeting took place on 17<sup>th</sup> June 2015 at the office of representatives of the Gorlane Purchasers. The Company was represented by Ms Sergiyenko and Mr Zyuba, a lawyer. Mr Lee explained that he chose not to attend because he had been told by Ms Sergiyenko that no decision-makers would be present and that the meeting would be conducted in the Russian language. After discussion with the Canadian businessman, they determined that the most efficient way was to engage the Russian lawyer who was instructed to report to Mr Lee after the meeting. Ms Sergiyenko described her purpose in attending the meeting as being to try to understand the nature of the claims that the Gorlane Purchasers might pursue against the Company with a view to assisting with negotiations. At the meeting, the Gorlane Purchasers presented a list of their counter-claims and a calculation of the Net Debt Adjustment. The total value of the threatened counter-claims was \$136,000,000 which greatly exceeded the Company's claim for payment of the Holdback Amount of \$50,000,000 plus interest and consequently Ms Sergiyenko concluded that a settlement should be reached if at all possible. In her oral evidence, Ms Sergiyenko said that she has continued to have meetings with the Gorlane Purchasers, including as recently as the week before the hearing, with the view to trying to resolve outstanding issues. There is no clear evidence before the Court as to what these meetings and discussions have achieved.
24. Mr Lee became increasingly concerned about the non-payment of the Holdback Amount as the date of expiry of the limitation period for commencing any proceedings of 22<sup>nd</sup> May 2016 (six years after Completion) was approaching. On 18<sup>th</sup> April 2016, he e-mailed Ms Sergiyenko seeking her agreement that the Company should commence proceedings and Ms

Sergiyenko responded asking him not to do so as Igor was dealing with the matter. Mr Lee questioned Igor's authority and referred to a board minute of 19<sup>th</sup> May 2010, executed immediately prior to Completion of the transfer of the steel business under the terms of the SPA, under which he asserted that he had authority to deal with the matter. The resolution upon which he was relying reads:

*"Any one Director (or his alternate) is authorised to do all other such acts and things as might in his sole opinion and absolute discretion be necessary or desirable for the purposes of the effecting (sic) the transactions contemplated by the SPA".*

25. Ms Sergiyenko responded with reference to the risk of the counter-claims; the difficulties of enforcing any arbitral awards against the Gorlane Purchasers, each of which might be shell companies with little or no assets; requiring the Canadian businessman to fund the claim whilst indemnifying the Russian businessman; and suggesting that an extension of time be negotiated for filing the claim.
26. Without authorisation from Ms Sergiyenko, Mr Lee instructed DWF to act on behalf of the Company to seek recovery of the Holdback Amount, plus interest, claiming a total of approximately \$86,000,000 US dollars. When asked why he had not gone back to A&O who previously had been instructed in the matter, Mr Lee said he did not ask them to quote in relation to the present matter because he considered them to be expensive based on his previous knowledge of their services. He had also been dissatisfied on previous occasions with the quality of advice given by them and he said that, in his experience, such large firms do not give the client *"the right bang for your buck"*.
27. DWF were already acting for the Canadian businessman in relation to the fraud claim brought against the Russian businessman, a matter to which I turn later in this judgment.
28. He did not seek Ms Sergiyenko's agreement to instruct DWF because she was strongly resisting the commencement of proceedings against the Gorlane Purchasers and he knew that she and the Russian businessman would object to the actions he was taking. The arrangements for payment of DWF's fees are that the Canadian businessman is paying them; the payment would be recorded as an expense in the books of the Company, shown as being funded by a loan from the Canadian businessman. Ms Sergiyenko had proposed to Mr Lee that a standstill agreement be entered into in order to agree an extension of time for issuing any proceedings. Had the same been agreed, she said it would have given more time to properly consider whether to issue proceedings, taking into account all the issues. Mr Lee saw no merit in proposing any standstill agreement to the Gorlane Purchasers because, in his view, they were certain to object to it.

### **Relationship between the Businessmen**

29. In the background of all these events and of the applications before the Court is the relationship between the Russian businessman and the Canadian businessman as well as the question of whether Mr Lee and Ms Sergiyenko were at all times acting in the best interests of the Company, which they both repeatedly claimed to be doing, or whether they were acting in furtherance of the interests of the businessman at whose behest each had been appointed.
30. It is apparent that relations between the two businessmen had deteriorated by 2010, hence the decision taken the previous year to go their separate ways and the reason for entering into the first Unwind Agreement between the two of them on 5<sup>th</sup> October 2010. Ms Sergiyenko gave evidence that after the sale of the steel business in the Ukraine, relations became more difficult because the Group had lost a significant revenue source. Expenses had to be funded

by the two businessmen and expenditure items were queried, giving rise to difficulties for those managing the affairs of the Group.

31. By 4<sup>th</sup> December 2015, the relationship had deteriorated to the point where the Canadian businessman commenced the Fraud Claim in the LCIA. The details of that arbitration claim are confidential to the parties and, I was told, are not material to the Applications before this Court. It is not disputed that both businessmen have lost all trust and confidence in each other, just as Mr Lee and Ms Sergiyenko have each lost all trust and confidence in their fellow director.
32. In these proceedings, the Second and Third Respondents allege that the reason the Russian businessman and Ms Sergiyenko have not actively pursued the Holdback Amount is that the money has been diverted by the Russian businessman for his own purposes. The Second and Third Respondents have no direct proof, but invite me to draw that inference on the basis that it is the only plausible explanation for the conduct of Ms Sergiyenko and the Russian businessman. In addition, Mr Lee said on oath that he is firmly of the opinion that is what has happened. This allegation was strongly denied by Ms Sergiyenko.
33. The solicitors acting on behalf of the Canadian businessman in the Fraud Claim are DWF, the firm instructed by Mr Lee to represent the Company in the Gorlane Proceedings. The Applicant challenges the ability and propriety of DWF acting in both matters. Mr Lee said in cross-examination that DWF had taken advice from the Solicitors' Regulation Authority to the effect that there was no conflict. I do not see it as the function of the Royal Court of Guernsey to express an opinion as to whether an English solicitor is or is not acting with a conflict of interest. In any event, I am not in a position to do so as the answer will depend upon the precise instructions given to DWF in both sets of proceedings and those have not been disclosed to me. Within DWF, the same partner is supervising both sets of proceedings and some of the associates involved are concerned with both matters. Ms Sergiyenko said that DWF could not properly act without full instructions which would include statements and documents from her, yet they had not contacted her. Mr Lee's response was that as a director of the Company, she had an obligation to volunteer such information as she has to the liquidator in the event he is appointed, in order to maximise recovery on behalf of the Company.
34. Ms Sergiyenko and the Applicant maintain that DWF have been instructed to pursue the Gorlane Proceedings as a fishing expedition to obtain documents and evidence for use by the Canadian businessman in the Fraud Claim. That allegation was denied by Mr Lee. Nevertheless it is, in my view, understandable that Ms Sergiyenko has not volunteered to contact DWF in circumstances where they are acting against her brother. It is apparent from the evidence of Mr Lee that DWF have not set up any Chinese walls within their firm and it is difficult to see how they could deal with issues of confidentiality if matters disclosed to them by Ms Sergiyenko in relation to the Gorlane Arbitration were also relevant to the other set of proceedings they are conducting against her brother on the instructions of the Canadian businessman.
35. The present proceedings in the Royal Court commenced with the Applicant's Application issued on 28<sup>th</sup> September 2016. The Second and Third Respondents replied with the Alternative Relief Application issued on 17<sup>th</sup> November, alleging, *inter alia*, deadlock between the two directors of the Company. In an attempt to resolve the deadlock, on 18<sup>th</sup> November 2016, Mr Lee purported to remove Ms Sergiyenko as a director of the Company and replace her with Mr Tilis. There was in evidence a letter of the same date giving notice to Ms Sergiyenko that he intended to do so. He purported to be acting in accordance with the provisions of the Articles of Association of the Company and to have acted lawfully. The

basis on which he acted, and the question of whether it was lawful to do so, are considered later in this judgment.

36. On 28<sup>th</sup> October 2016 an article was published on [www.dispatchweekly.com](http://www.dispatchweekly.com) written with intimate knowledge of the Guernsey proceedings. Mr Lee alleged that the information could only have originated from Ms Sergiyenko or the Russian businessman. He alleged that publication of the article is contrary to the best interests of the Company as it will alert the Gorlane Purchasers to the proceedings in Guernsey and the allegations contained therein which, he says, will further dent the Company's bargaining position in the Gorlane Proceedings with the Gorlane Purchasers.

### The Offer Letters

37. On 9<sup>th</sup> November 2016, the Canadian businessman wrote to the Russian businessman and Ms Sergiyenko marked "subject to contract" with two alternative offers. The first was an offer to buy shares on the following terms –

*"We enter into an agreement pursuant to which:*

- (2) You procure the transfer of your shares in [the Company] (i.e. the shares held by [the Applicant]) to a company nominated by me; and*
- (3) (After being paid the legal fees that I pay for running the Gorlane Arbitration) I will pay to you 50% of the net proceeds of the sums recovered in respect of:*
  - (a) The Gorlane Arbitration; and*
  - (b) The sums owed to [the Company] in the Shtaif Case."*

38. In the alternative, the Canadian businessman proposed that he would fund the Gorlane Arbitration and indemnify Ms Sergiyenko against any liability arising from her directorship as a result of pursuing the claim. He offered to do so on the basis that the Company would receive the sums recovered, the Canadian businessman would be repaid the costs incurred in running the claim and the two businessmen would share the net proceeds equally. The Canadian businessman requested a response within seven days i.e. by the 16<sup>th</sup> November. As it transpired, no response had been received by the 17<sup>th</sup> November, the date upon which the Alternative Relief Application was served.
39. By letter dated 18<sup>th</sup> November, Ms Sergiyenko responded repeating an earlier request for copies of correspondence between DWF and the Gorlane Purchasers and asking whether DWF had considered the earlier A&O memorandum particularly in relation to the counter-claim and the prospect of recovering any money that might be awarded. She asked for assurances that the Canadian businessman would not simply make off with any proceeds received from a claim and questioned how she and the Applicant could be protected from any third-party costs exposure. She requested an irrevocable guarantee or letter of credit to support the indemnity being offered in the magnitude of \$30,000,000 to \$50,000,000 US dollars.
40. On the same day, Mr Lee wrote to Ms Sergiyenko formally requesting her resignation as a director of the Company. In a separate letter of the same date, he advised that he had removed her as a director and referred to the three 'well considered' proposals in his earlier letter and the stay in the Gorlane Arbitration which was due to come to an end on 25<sup>th</sup> November. He wrote that it was the need to make progress prior to that date which had caused him to remove Ms Sergiyenko, purportedly under Article 82(d) of the Articles of Association, and appoint Mr Tilis in her place. The letter also advised that irrevocable instructions had been given by him to DWF to hold any funds recovered in the Gorlane Arbitration, after payment of legal fees, in their client account until agreement could be

reached as to the distribution of the proceeds between the businessmen or pursuant to any court order.

41. Ms Sergiyenko did not accept her removal from the board and, on 20<sup>th</sup> November 2016, purported to sign a Consent Order on behalf of the Company extending the stay in the Gorlane Arbitration until 25<sup>th</sup> February 2017. On 25<sup>th</sup> November 2016, the Russian businessman wrote to the Canadian businessman offering that he (the Canadian businessman) and Mr Lee pursue the Gorlane Arbitration on terms that the Russian businessman and Ms Sergiyenko be provided personal indemnities secured by way of bank guarantee or letter of credit and that the Company also be indemnified with a similar security. In the event of any recovery being made following successful proceedings, after payment of any legal costs incurred by the Canadian businessman, the proceeds would be divided equally between the two businessmen.
42. On 9<sup>th</sup> January 2017 the Canadian businessman wrote to the Russian businessman stating that the basis for requesting indemnities was misconceived. He repeated his offer to purchase the shares on terms that they would submit to a reputable jurisdiction such as the LCIA to deal with any enforcement concerns and that the Russian businessman would be indemnified in respect of a non-party costs order, even though he saw no legal basis for it.
43. The Russian businessman responded on 12<sup>th</sup> January stating that he had been advised there was a risk of a costs order being made against him, to which he did not wish to be exposed and therefore required an indemnity, fortified by way of an irrevocable bank guarantee or letter of credit. He also made reference to the Shtaif proceedings. As an alternative to the Canadian businessman's offer, he indicated the Applicant would be willing to sell its shares in the Company for \$50,000,000 US dollars in order to achieve a clean break.
44. His proposals were answered, and rejected, by the Canadian businessman by letter dated 18<sup>th</sup> January.
45. Thus the position at the hearing was that all offers had been rejected.

#### **Declaration concerning the Removal of Ms Sergiyenko**

46. In purporting to remove Ms Sergiyenko as a director, Mr Lee relied upon Article 82(d) of The Company's Articles of Association which provides that "*the office of Director shall, ipso facto, be vacated if .... (d) he is requested to resign in writing signed by all his co-directors*". To interpret the article, Advocate Newman quoted Article 1 which provides, "*words importing the singular number only shall include the plural number vice versa*". Thus, taking the two Articles together, it is submitted that one director has the power to remove another director in a situation where, as here, there are only two directors of the company. In doing so, Mr Lee claims he was acting *bona fide* in the best interests of the members of the Company in view of Ms Sergiyenko's conduct which was detrimental and prejudicial to the Company as she had placed the personal interests of her brother ahead of the Company's interests.
47. Advocate Newman submitted that the principles applicable to the construction of documents were established under the law of England and Wales, most recently, in the UK Supreme Court in Arnold v Britton [2015] AC 1619 per Lord Neuberger (with whom Lord Sumption and Lord Hughes agreed):

*"When interpreting the written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have*

*understood them to be using the language in the contract to mean' ... and it does so by focussing on the meaning of the relevant words ... in their documentary, factual and commercial context. That meaning has to be assessed in the light of:*

- (i) *The natural and ordinary meaning of the clause,*
- (ii) *Any other relevant provisions of the [contract],*
- (iii) *The overall purpose of the clause and the [contract],*
- (iv) *The facts and circumstances known or assumed by the parties at the time the document was executed and*
- (v) *Commercial common-sense, but*
- (vi) *Disregarding subjective evidence of any parties' intentions."*

48. Advocate Newman noted that in some recent decisions of the Jersey courts, such as O'Brien v Marett [2008] JCA 178, a more subjective approach has been adopted pursuant to Pothier's *Traité des Obligations* and Modern French Law. He submitted however that in the present case there is no real difference between an objective and a subjective test because the Court has no evidence of any subjective intention when the Company's Articles were drafted and the Company incorporated. Thus he submitted the Articles are to be construed objectively.
49. If I were to find in favour of his submissions, the current constitution of the board would be Mr Lee and Mr Tilis, both of whom are employed within the Canadian businessman's group of companies and (it is to be assumed) will work together, thereby removing the deadlock that currently exists between Mr Lee and Ms Sergiyenko. The Company would then be able to continue to operate under the new board of directors and there would be no need to proceed to consider the other heads of relief being claimed in the Application and the Amended Relief Application.
50. In my judgment, I note that if the singular of the word "*co-directors*" were substituted in Article 82(d), it would read that "*the office of director shall, ipso facto, be vacated if ... (d) he is requested to resign in writing signed by all his co-director*". "*All his co-director*" would not be grammatically correct. Any interpretation of the Article cannot ignore the word "all". If that word were absent, the Article would read that "*a director could be removed if requested by his co-director*" and the meaning sought by the Second and Third Respondents would be permissible. However, the inclusion of the word "*all*" means that the Article can only be invoked if there are at least three, if not four, directors all but one of whom unanimously agree to the removal of the other director. That is the natural and ordinary meaning of the clause, construed objectively in accordance with the principles set out by Lord Neuberger. Advocate Newman correctly stated that we have no evidence of the subjective intention of the parties at the time of approving the Articles. However, it seems inconceivable that they would have intended that if there were only two directors, one representing each shareholder, one director could remove the other, thus depriving one of the shareholders of any representation on the board, with the result depending upon which director struck first.
51. Having reached that conclusion, there is no need, in this context, to consider whether or not Mr Lee was acting *bona fide* in the best interests of the Company. Indeed, the Article does not apparently require any such good intentions.

#### **The Law – Relief for Unfair Prejudice**

52. In the Amended Application, the Applicant seeks the winding up of the Company by way of relief in respect of unfair prejudice suffered by it pursuant to Sections 349 and 350 of the CGL. Alternatively, it seeks the winding up of the Company pursuant to Section 406(i) of the CGL on "just and equitable" grounds and pursuant to Section 412 by which the Court may grant such an application "*on such terms and conditions as it thinks fit*" or may "*make such*

*order as it thinks fit*". The Second and Third Respondents also rely upon Sections 349 and 350 of the CGL in the Amended Relief Application.

53. I will consider first the circumstances in which the Court may grant relief for unfair prejudice and the nature of the relief available, before addressing the "just and equitable" winding up provisions.

54. The material parts of Section 349 and 350 of the CGL are as follows:

"349. (1) *A member of a company may apply to the Court for an order under section 350 on the ground that –*

*(a) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*

*(b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."*

.....  
(5) *The provisions of sections 349 and 350 are without prejudice to any other remedy.*

"350. (1) *If the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.*

*(2) Without prejudice to the generality of subsection (1), an order of the Court may –*

*(a) regulate the conduct of the company's affairs in the future,*

*(b) ....*

*(c) authorise civil proceedings to be brought in the name and on behalf of the company by such persons and on such terms as the Court may direct,*

*(d) provide for the purchase of shares of any member of the company by other members of the company or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly,*

*(e) ...*

*And the Court may make such consequential alterations to the company's memorandum or articles and any of its resolutions as the Court thinks fit."*

55. There is little, if any, Guernsey authority on the interpretation and application of the unfair prejudice provisions. Consequently both counsel addressed me on English authorities on the similar (but not identical) provisions contained in Sections 994 *et seq* of the UK Companies Act 2006 which, I accept, are persuasive authority in this jurisdiction. The English provisions were helpfully summarised by Hildyard J in Apex Global Management Limited v Fi Call Limited [2015] EWHC 3269 (Ch) at paras 34 – 51, and in particular at para 37 where the learned judge said that the petitioner must establish three things:

- “(1) first, that the matters of which he complains are either actual or proposed acts or omissions of the company or consist of the conduct of the company’s affairs;*
- (2) secondly, that those matters have caused prejudice to his interests as a member of the company; and*
- (3) thirdly, that the prejudice is unfair.”*

56. I am satisfied that the natural meaning of Section 349(1) of the CGL requires the applicant for relief from unfair prejudice to establish the same three elements to the civil standard of proof.

57. Regarding the nature of the prejudice that must be established, David Richards J in Re: Coroin Limited (No 2) [2012] EWHC 2343 (Ch), (affirmed by the Court of Appeal in the same matter at [2013] EWCA Civ 781), held that prejudice is capable of being established either as economic prejudice in some capacity connected with the members’ shareholding or in a non-economic sense.

*“The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section.”*

58. In Section 349, “prejudicial” is qualified by the adverb “unfairly” indicating that there may be some managerial decisions taken by a company which are prejudicial to one or more of its shareholders but that the court will only intervene in cases of unfairness. I do not consider it necessary to give a comprehensive definition of what could amount to unfairness in this context, but Advocate Newman helpfully referred me to certain persuasive English authorities including O’Neill v Phillips [1999] 1BCLC 1, Ebrahimi v Westbourne Galleries Limited [1973] A.C. 360 and Grace v Biagioli [2006] 2 BCLC 70. Those decisions show that the required degree of unfairness may be established: either by breach of an applicant’s contractual rights, especially where the board has acted in bad faith or for an ulterior purpose; or where equitable factors such as those available in a quasi-partnership relationship may be proved. The particular conduct relied upon by the Applicant can be summarized as:

- (1) The Canadian businessman and the Russian businessman were engaged in a joint venture, akin to a quasi-partnership which has now come to an end and the Canadian businessman is accusing the Russian businessman of fraud in connection with the business of the Company. In those circumstances it is wholly unrealistic to suppose any such relationship can continue.
- (2) Ms Sergiyenko has been excluded from the management of the Company and denied access to the Company’s documents and information, both before and after her purported removal as a director.
- (3) Mr Lee is conducting the affairs of the Company in a manner which is wholly hostile, both to Ms Sergiyenko and to the Russian businessman, for example by instructing DWF to act on behalf of the Company in pursuing the Gorlane Purchasers.

59. The Second and Third Respondents allege unfair prejudice based on different facts although they preface their contentions by saying that if the appointment of Mr Tilis as a director had been valid, there would be no continuing boardroom deadlock. In the light of my decision that Ms Sergiyenko was not validly removed and that Mr Tilis has not been validly appointed to the board of the Company, Mr Lee and Ms Sergiyenko are the continuing directors and they are deadlocked. The matters of prejudice alleged by the Second and Third Respondents can be summarized as follows:

- (1) The failure to pursue payment of the Holdback Amount and the failure to arrange the opening of the Blocked Account.
- (2) Despite instructing A&O on behalf of the Company in 2011, the failure to make progress in pursuing the Gorlane Purchasers prior to Mr Lee commencing the Gorlane Arbitration.
- (3) The inference drawn by them that the Russian businessman is prioritising his personal interests, with the assistance of Ms Sergiyenko, in priority to the best interests of the Company.
- (4) Publication of the Article in *Dispatch Weekly* based on information supplied by the Russian businessman or a person or persons acting on his behalf, such as Ms Sergiyenko.

### The Law – “Just and Equitable” Winding-Up

60. Section 406(i) of the CGL provides as follows;

“406. A company may be wound up by the Court if –

....

- (i) the Court is of the opinion that it is just and equitable that the company should be wound up.”

61. The leading English decisions on the principles that constitute “just and equitable” grounds for winding-up a company, such as Ebrahimi v Westbourne Galleries Limited [1973] 360 have been followed in this jurisdiction, see for example Hubert v Circuit Skips Limited (unreported, Royal Court, 24<sup>th</sup> January, 2001). Such English decisions make clear that the “just and equitable” principles were borrowed from the law of partnership, recognising not only that in many cases there may have been a pre-existing partnership but also that behind many companies, “*there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure*”, per Lord Wilberforce at page 379C. He went on to say, at 379E: “*It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may apply*”.

62. Lord Wilberforce added the following, at page 379G:

*“The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be “sleeping members”), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members’ interest in the company – so that if confidence is lost, or one member is removed from the management, he cannot take out his stake and go elsewhere.*

*It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly through the force of the words themselves.....A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in.”*

### Discussion

63. The board of directors of the Company is deadlocked. Both sides are agreed on that fact and, even if they were not agreed, there is very clear, uncontroverted, evidence that it is so.

However, that fact needs to be placed in context. This is not a normal company acting in accordance with normally accepted standards of good governance. There are two directors but they never meet, they do not hold board meetings, the only board minute that has been drawn to my attention is the minute of 19<sup>th</sup> May 2010 authorising the entry into and execution of the SPA and other activities in connection therewith, a minute which reads as if it has been prepared by lawyers for the purpose of ensuring that the Gorlane transaction was properly authorised. There are reasons why the directors operate as they do and it is helpful to set those out.

64. The Company was formed as a joint venture holding company to hold the shared interests of the two businessmen. That was in 1998 when the two businessmen reposed mutual trust and confidence in each other. There is no evidence of any underlying shareholder agreement or partnership agreement and the inference is that none exists or, at least, if there is an agreement, it did not make provision for what would happen if the two businessmen wished to separate their interests and dissolve their relationship. Had there been such a prior agreement, it is likely that one or other of them would have been seeking to enforce its terms, rather than relying upon the provisions of the CGL and the Articles of Association of the Company that do not seem to have been tailored to suit a joint venture.
65. The Court was told that at one time the board of directors was larger, up to eight in number. I have no evidence as to how it operated at that time or whether formal meetings were convened. What is in evidence is how the board has operated with only two directors: Mr Lee and Ms Sergiyenko. Precisely who nominated each of them and who appointed them may be unclear but the evidence shows that each was appointed to represent the interests of one of the businessmen. Mr Lee is a senior employee of the Canadian businessman and Ms Sergiyenko is the sister of the Russian businessman.
66. Although the two directors claim to act at all times in the best interests of the Company, they consult with and may take instructions from their respective businessman. They do so in circumstances where the two businessmen have lost all trust and confidence in each other. As long ago as 2009 they agreed to go their separate ways and since then have been working to separate or unwind their mutual interests. The events that led to the decision to separate are not material. I note that Mr Fenn suggests (in a statement that is hearsay) the reason was that during the period 2005 to 2009, the Canadian businessman had made a number of business decisions that were unprofitable and in some cases extremely loss-making to the joint venture. For his part, Mr Lee said (in a statement that may also be hearsay) that the reason to separate was that the Russian businessman wanted to continue to invest in new business projects in Russia and the Canadian businessman did not. I am not required to determine why they decided to separate as nothing turns on the truth of their reason to do so.
67. The entry into the SPA for the purpose of selling the Ukrainian steel business was a significant step in unwinding the joint venture. As a result, and possibly following the disposal of other profitable assets, Ms Sergiyenko explained that the Company's activities no longer generated sufficient funds to operate the Kiev office and she was dependent upon the businessmen providing funds, the requests for which were often challenged. She said that as a result of the lack of an internal source of funds, the Company was not functioning normally and it experienced problems which started in 2010 and became exacerbated later.
68. I conclude from that evidence that since about 2010, the need to request funds and justify expenditure has inevitably limited the directors' ability to act independently in the best interests of the Company. When taking decisions they have had to be conscious of the requirement to justify their actions to the businessmen and/or to whoever in their respective organisations controlled the purse strings.

69. I mentioned that there were never formal board meetings. Both Ms Sergiyenko and Mr Lee said that they conducted the management of the Company through email exchanges, apparently on a very frequent basis although very few emails have been produced in evidence, giving the impression that the full facts may not have been disclosed to the Court, save in respect of the period from April 2016 onwards.. I accept that I have to decide the outcome of the Applications on the evidence that is before the Court, not on what might be undisclosed.
70. Much of the evidence was in the form of documents that were not challenged. Regarding the evidence of the two main witnesses, Mr Lee and Ms Sergiyenko, there were some discrepancies but by and large the discrepancies were not material. I agree with Advocate Newman's assessment of Ms Sergiyenko's evidence, that at times she attempted to avoid questions, she was unnecessarily verbose, she was not candid and was sometimes evasive. I should add that I have allowed for the fact that she was giving evidence through an interpreter. I do not agree with Advocate Newman's assessment of Mr Lee as being at all times cogent and frank. I paid careful attention to both witnesses and having observed the demeanour of them both when giving their evidence, the impression I have is that neither of them told "the whole truth". As for Mr Fenn, he gave largely hearsay evidence and without the protection of a Hearsay Notice having been served, little weight can be attached to his hearsay. However that is not significant as Ms Sergiyenko was able to plug some of the gaps with her evidence and the documents produced by Mr Fenn spoke for themselves (save when they were in the Russian language without a translation, when they were of no assistance to me whatsoever).
71. Returning to how the directors operated, I understand that one of the ways in which they managed was by delegating. Mr Lee and/or others based in Canada took care of the Company's activities in the western hemisphere while Ms Sergiyenko and others situated in Eastern Europe, including the Russian businessman's son Igor, took care of activities in that area. The East European activities included responsibility for negotiating the SPA and dealing with post-completion matters. However, delegation to one director does not absolve the other director from responsibility if he or she fails to supervise. The failure to hold regular board meetings might explain why there was apparently no process for reporting back to the board the progress, or lack of progress, in dealing with post-completion matters such as the opening of the Blocked Account and chasing payment of the Holdback Amount.
72. Both directors tried to blame the other. Ms Sergiyenko said in cross-examination that it was Mr Lee's responsibility to open the Blocked Account; he dealt with accounts from the office in Toronto, together with Mr Tilis. Mr Lee said that after Completion of the sale, he suggested the names of two banks but neither was acceptable to the Gorlane Purchasers so he left it to those who were dealing with the Purchasers, that is to say people in the Kiev office, to agree the arrangements. It is not clear precisely what each of Mr Lee and Ms Sergiyenko knew at different times but they have both known for several years that the Blocked Account has not been opened. Mr Lee said that when he became a director of the Company in 2011 he was aware that the account had not been opened. Ms Sergiyenko was aware in 2014 when A&O were involved and I am satisfied that she was aware long before that date. Even though both directors were aware that the Blocked Account had not been set up, they did not convene a board meeting to discuss what should be done. It was not the board of directors who instructed A&O nor was it the board who authorised the involvement of A&O. That was arranged by someone on the Russian side of the joint venture, possibly Igor. Mr Lee was not made aware or kept informed; he was even denied access to A&O. That is not how a properly functioning board of directors should act especially when the sum involved is a significant amount of money: US\$50 million.
73. The nature of the Company's operations changed after the two businessmen took the decision to separate, since when the focus has been on separating and liquidating the assets. The

management has inevitably had to change too. The two businessmen have co-operated with each other in agreeing how to divide the assets and have been able to agree the terms of three separate Unwind Agreements. Since 2014, the pursuit of the Fraud Claim in the LCIA by the Canadian businessman against the Russian businessman has not prevented them working together when it has suited them, for example in the handling of the “Shtaiif” case. There the Company has obtained a judgment on a counter-claim for US\$137million, which is subject to appeal by the judgment debtor. It is not known whether there is any real value in the judgment as the Company does not know what assets may be available to satisfy the judgment. If and when there is any recovery, Mr Lee said that he had given irrevocable instructions to the solicitors acting for the Company to hold the net proceeds of the claim in their client account pending division between the two businessmen. What is interesting about the handling of the claim is that, apart from those instructions, the directors are not involved in it. Instead, Mr Lee informed the Court that the solicitors have been taking their instructions direct from the two businessmen and have continued to do so.

74. I have concluded from Mr Lee’s evidence on the Shtaiif claim that the directors are not in full control of the Company. I have also concluded that the two businessmen can continue to work together when it suits them. It is not surprising that they do so. The evidence is that these are two successful businessmen who take pragmatic, commercial, decisions by assessing the risks and rewards of a decision and then acting accordingly. When it suits them, their commercial instincts override their mutual distrust of each other.
75. Who then is truly controlling the Company and has been doing so for the past several years? Is it the two directors in the, now deadlocked, board or is control exercised from elsewhere? Understandably, neither businessman would wish to be found to be a shadow director so they are seeking to protect themselves from any allegations that they are. When asked whether the Canadian businessman and Russian businessman directed the business of the Company and determined what was to happen with it, Mr Lee replied that *“they were both active, and they were the ultimate beneficial owners. So, it’s fair to say that everyone else regarded them as their bosses.”* Ms Sergiyenko said that the two businessmen participated more when the business was larger. Presently, her brother does not issue much by way of instruction and she does not communicate with him a lot because it is difficult to do so as communications are poor between their countries. The impression given by both of the directors is that the businessmen are involved. Whilst the directors may retain some element of control, the scope they have for reaching independent decisions as to what is in the best interests of the Company is limited because of the need to discuss with the businessmen and not least because it is the businessmen who fund the Company’s activities.
76. Further evidence of the involvement of the businessmen can be seen in the actions taken to instruct solicitors to pursue the Gorlane Purchasers for the Holdback Amount. Mr Lee could not have instructed DWF to commence the arbitration claim without the consent of the Canadian businessman who is funding the proceedings. Previously, A&O had been instructed but not by the directors; Mr Lee was not involved and could not even get access to the solicitor’s file. Ms Sergiyenko could not recall who had instructed A&O and did not know what instructions they had been given. A&O addressed their memorandum of advice to Igor and it may have been he who instructed them. If he did, it was not with the authority of a board resolution from the Company; most likely, it was on instructions from his father.
77. The Shtaiif claim is, as I have said, being run directly by the two businessmen giving instructions to the solicitors.
78. There is a further claim in the Ukraine known as the “Amstor” claim which may or may not realise any value eventually. Again, the board is not in control of the action which is being run by a person or persons in Kiev. It is inconceivable that such persons could do very much

unless they have the agreement of the Russian businessman who is presumably funding it or assisting in some way. I cannot say much about the claim because the evidence was very limited but what was clear to me is that the board of directors of the Company do not have control of it.

79. Since 2009, the activities of the Company have been directed towards giving effect to what was described as the “economic divorce” between the two businessmen. By and large, the businessmen have been able to agree what should happen and they continue to be able to do so when it suits them, for instance over the Shtauf claim. The underlying cause of the present proceedings appears to be that the two of them are at loggerheads over the Gorlane Proceedings where they have very different views as to what should or should not happen.
80. Each side challenges the other’s motives. The Canadian businessman thinks that the Russian businessman has diverted the Holdback Amount of US\$50 million for his own purposes. The evidence against him is that Ms Sergiyenko, Igor and, no doubt, others working from Kiev are the ones handling the post-completion issues with the Gorlane Purchasers. Ms Sergiyenko said that she continues to communicate with them and had done so as recently as in the week before the hearing. If there has been so much contact, it is surprising that no correspondence or meeting notes were produced to evidence the discussions and that there is little evidence of any progress having been made either in securing payment of the Holdback Amount or in the transfer of the Future Interests. A&O were instructed to write to the Gorlane Purchasers and gave a memorandum of advice but that firm has not been instructed to do anything to chase replies to correspondence or to commence proceedings. Ms Sergiyenko and Mr Zyuba attended a meeting in 2015 but the purpose of the meeting was very limited, no decision makers were present and little or nothing was achieved. Ms Sergiyenko gave some potentially plausible reasons for not commencing proceedings such as the risk of a counter-claim and the prospect of the Gorlane purchasers having no assets against which a judgment could be enforced. However, she had not taken advice on those issues and does not appear to have explored them in the competent and thorough manner that is to be expected of the directors of a Company wishing to recover a potentially very valuable debt. When expiry of the limitation period was fast approaching her response was to seek a standstill agreement even though they have, in effect, been standing still for years. The overall impression is one of inactivity, obstruction and prevarication. The clearest evidence of the unwillingness of the Russian businessman to pursue the Gorlane Proceedings is that he will not fund the liquidators to do so (if they are appointed) and he is not co-operating constructively with the Canadian businessman’s offer to conduct the Proceedings at his expense. Despite the concerns advanced by the Second and Third Respondents, there is no evidence before me upon which I could find that the Russian businessman has diverted the Holdback Amount for his own benefit and I cannot say what motives he may have when he has not given evidence.
81. As for the Canadian businessman, the Russian businessman is suspicious of his motives in instructing DWF to pursue proceedings. The proceedings were commenced without further express authority from the board, in the knowledge that Ms Sergiyenko had expressed opposition to them. It is not clear what instructions were given to DWF but I was told that they had no information from Ms Sergiyenko or Igor about their ongoing discussions with the Gorlane Purchasers. The precise legal advice on which the decision to issue proceedings was based has not been disclosed, the Court was only told that DWF and an unnamed counsel had agreed with A&O’s memorandum of advice given in 2013. It is not clear what advice has been given on the merits or otherwise of any potential counter-claim. Mr Lee expressly refused to disclose the advice for fear, he says, that someone on the Russian side will leak it to the Gorlane Purchasers and thereby weaken any negotiating position. Unilateral action has been instituted by the Canadian businessman who is funding the action, or at least on his instructions. The Russian businessman is unhappy that it is DWF who have been instructed when the same supervising partner and some of the associates engaged on the case are

pursuing the Fraud Claim against him. Mr Lee may have added to those concerns by saying in evidence that DWF have been told that the Canadian businessman believes that the Russian businessman has diverted the Holdback Amount for his own purposes. The reasons given by Mr Lee for instructing DWF instead of A&O who were previously instructed require examination. He said that A&O would be more expensive but he did not seek a fee quote from DWF to confirm whether that would be so. He said he had been dissatisfied with the quality of A&O's advice on other occasions but he has no concerns about the advice they gave in relation to the Gorlane Purchasers, indeed he relied upon their advice as justification for issuing proceedings. The Canadian businessman is prepared to fund the Gorlane Proceedings while he (or Mr Lee) is in control but he will not presently agree to do so if liquidators are to be appointed. Against that background, it is not surprising that Ms Sergiyenko and, presumably the Russian businessman, suspect that the reason or one of the reasons for issuing the Gorlane Proceedings is to attempt to gather evidence for use against the Russian businessman in the Fraud Claim.

82. The evidence established that it is in relation to Gorlane that the parties have had their biggest differences. If there have been other differences, the businessmen have been able to resolve them. The management of the Company has no doubt been difficult for some time whilst its activities are wound down. There may be many factors that have had a bearing on the current deadlock but it is in relation to Gorlane that matters have come to a head. The reason they have done so is more likely to be because the two businessmen are of different minds as to what to do. If they were in agreement, I can see nothing that would prevent them from running the Gorlane Proceedings in the same way that they are instructing lawyers on the Shtaif claim.
83. In conclusion, the board of directors is in deadlock, but that deadlock would not prevent the businessmen from proceeding with their "economic divorce" if they were in agreement as to what should happen in the Gorlane Proceedings.

### **The Alternative Relief Application**

84. I turn now to consider the relief sought in the Amended Application and in the Alternative Relief Application, starting with the latter as an order for compulsory liquidation would be more Draconian and would be a remedy of last resort.
85. The basis for the Alternative Relief Application is that the affairs of the Company are being conducted in a manner that is unfairly prejudicial to the Second and Third Respondents, two of the members in the Company. There was very little evidence about any of the Second and Third Respondents or the Applicant other than that they were the owners of the share capital of the Company and held the shares ultimately for the benefit of the respective businessmen and their families.
86. "Prejudice" is to be interpreted broadly. It includes, but is not limited to, financial prejudice as David Richards J held in Re Coroin. The prejudicial acts alleged by the Second and Third Respondents relate in one way or another to the cost implications of the Gorlane Proceedings, their impact on the value of the Company and hence of the shares held by its members. The allegations are that the value of the Company has decreased because of the failure to secure payment of the Holdback Amount, the failure to pursue the Gorlane Purchasers and the publication of an article in Dispatch Weekly which will have reduced the strength of the Company's negotiating hand.
87. I accept that the delay in securing the Holdback Amount and the furnishing of information to the magazine are matters capable of causing unfair prejudice to the members of the Company and therefore could invoke the Court's powers to grant relief under section 350 of CGL.

88. The two alternative orders sought are either an order that the Company continue the Gorlane Proceedings or an order for the sale of the Applicant's shares. Neither proposal can be acceptable. (Paragraphs 1 and 2 of the Alternative Relief Application refer respectively to paragraphs "x" and "39" of Mr Lee's first affidavit; I have taken those references to be to paragraphs 38, 39 and 40.)
89. I do not have the evidence that I would require before making an order that the Gorlane Proceedings be continued. I would require expert evidence by way of a legal opinion given by or on behalf of those conducting the extant Gorlane Proceedings, opining upon matters such as the merits of the claim as issued, the merits of any counter-claim, the costs of the proceedings and the prospects of recovering any award. The memorandum issued by A&O in 2013 is wholly insufficient, lacking in content and of course being several years out of date.
90. I am also unable to order a sale of the Applicant's shares on the terms proposed for lack of a sufficiently detailed proposal and for the reason that terms proposed would not achieve a clean break between the parties. Advocate Newman relied upon the judgment of Patten J sitting as a judge of the Court of Appeal in Grace v Biagioli [2006] 2 BCLC 70 (at para 75):

*"[75] In most cases, the usual order to make will be the one requiring the respondents to buy out the petitioning shareholder at a price to be fixed by the court. This is normally the most appropriate order to deal with intra-company disputes involving small private companies. This is the relief which Mr Grace says that the judge should have granted and which he seeks on this appeal. The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the value of its business and assets in return for foregoing any future right to dividends. The company and its business will be preserved for the benefit of the respondent shareholders, free from his claims and the possibility of future difficulties between shareholders will be removed. In cases of serious prejudice and conflict between shareholders, it is unlikely that any regime or safeguards which the court can impose will be as effective to preserve the peace and to safeguard the rights of the minority. Although, as Lord Hoffmann emphasised in O'Neill v Phillips, there is no room within this jurisdiction for the equivalent of no-fault divorce, nothing less than a clean break is likely in most cases of proven fault to satisfy the objectives of the court's power to intervene."*

91. For all the reasons given by Patten J, a buyout of shares would be a good solution to the present matter if it could achieve a clean break but it would not do so. One major drawback is that the payment of the purchase price would be deferred, and not only the payment but ascertainment of the price would be delayed pending the conclusion of legal proceedings. There is no clarity or precision as to what is meant by "running the Arbitration" or what is meant by "the sums owed to the [Company] in the Shtauf case" (quoting from the Canadian businessman's letter of 9 November 2016). In particular, the letter does not specify what the Canadian businessman would be undertaking to do in order to run the Arbitration or to ascertain the sums owed in the Shtauf claim. Could he settle either claim by agreement with the other parties to each claim or would he have to pursue each to the conclusion of proceedings? Would "the proceedings" be deemed to include appeal proceedings? Would he have to use his best endeavours, reasonable endeavours or what? There are so many uncertainties, I cannot list them all. In his oral evidence, Mr Lee admitted that in respect of the Gorlane Proceedings there would have to be a funding agreement between the Company and the Canadian businessman which he would prepare. In saying that, he acknowledged that the present arrangement regarding the funding of the litigation is not finalised and hence is unsatisfactory.

92. In conclusion in relation to the Alternative Relief Application, the evidence may have been sufficient to engage the Court's powers to order some form of alternative relief but unfortunately, neither of the options presented to the Court would be appropriate. I therefore have to consider whether grounds have been established that would justify an order for compulsory liquidation.

### **The Amended Application**

93. The principal ground on which it is sought to place the Company into liquidation is that it is "just and equitable" to do so. The Applicant also sought to rely upon the Court's powers under the "unfair prejudice" provisions of the CGL. I consider that there is sufficient overlap between the two grounds on the facts of the present case that there is no need for me to consider the "unfair prejudice" ground.
94. English authorities such as Ebrahimi considered the basis and origins of that test, tracing it back to the law of partnership and the circumstances in which the courts would intervene to dissolve a partnership. Counsel disagreed as to whether the two businessmen could properly be described as "partners" in the joint venture. As I have said, there was no evidence before the Court of any agreement between the two businessmen underpinning the joint venture so I cannot say that the two of them had formed a legal partnership. I do not consider it necessary to equate their joint venture either to a partnership or to a quasi-partnership, but insofar as the former is suggestive of a legal relationship and the latter of something less than a formal legal agreement to work together, the latter may be the more accurate. It is sufficient to say that the two businessmen were equal beneficial owners and participants together in a joint venture that operated through the Company.
95. I do not accept the submission that the Company should be wound up on the ground that the purpose for which it existed has come to an end. As the owner of the remaining activities of the joint venture, the Company will continue to have a purpose until all those activities have either been liquidated or distributed between the two businessmen. However, the fact that the decision has been taken to unwind the activities of the joint venture is a factor to be considered when deciding whether liquidation is appropriate.
96. It is apparent that the CGL borrowed the expression "just and equitable" from the English legislation and it is to be inferred that in doing so the legislature intended that the expression should be interpreted by the Guernsey courts with the same meaning as the expression has been given by the courts of England and Wales. Hence the relevant English authorities are to be regarded in this jurisdiction as being highly persuasive. The passage from the judgment of Lord Wilberforce cited above from Ebrahimi is apposite. The joint venture was formed or continued on the basis of a personal relationship involving mutual confidence and there was an understanding that the two businessmen were to participate in the decision making, at least indirectly if not directly. I have heard no evidence as to whether there was a restriction on the transfer of shares but there may well have been. However, Lord Wilberforce said that not all of those elements need be present; he said that one or more of those elements is "typical" of the circumstances where equitable considerations may apply. I am satisfied that the circumstances in the present matter are such as to bring the just and equitable clause into play, as he put it.
97. The facts I set out above, such as the deadlock within the board of directors of the Company, the failure of the two businessmen to agree a common approach to handling the Gorlane Proceedings, the steps taken by one director to remove another and, generally, the failure to agree what is in the best interests of the Company in dealing with the Gorlane Purchasers and the outstanding issues arising from the sale of the steel business are all sufficient to justify making an order for liquidation on just and equitable grounds.

98. The factor that I find especially troubling and which justifies taking the Draconian step of placing the Company into liquidation is that there are two directors who both claim to have the authority to act in relation to the Gorlane Purchasers including taking steps to instruct lawyers or to engage with the Purchasers, or both, without requiring the authority of a board decision and without fully informing the other director of what they are doing. In doing so they may contradict each other and undermine the steps taken by the other director. Such behaviour is not in the best interests of the Company. It is a consequence of the deadlock. The circumstances are such that the Court has the jurisdiction to intervene and it is just and equitable to do so. There is no proposal before me which would resolve the deadlock other than to appoint independent liquidators in place of the directors.
99. I have reservations as to how much the liquidators will be able to achieve with the limited funding offered by the Russian businessman. I am also conscious that in deciding what action to take in the best interests of the Company, the liquidators will be dependent upon the information supplied to them, including what is supplied by the present directors and the two businessmen. I would hope that the full support and co-operation of them all will be forthcoming. I take comfort from the fact that the two directors have both said on oath that they act only in the best interests of the Company. The liquidators will have access to the files held by the solicitors instructed by the Company and those files will contain instructions, correspondence and advice that will undoubtedly be of assistance to the liquidators in carrying out their duties under the supervision of the Royal Court from whom they may seek directions at any time. Although the initial funding promised by the Russian businessman is limited to £20,000, it should be sufficient to enable the liquidators to investigate the principal issues and advise whether the Gorlane Proceedings should be pursued. When they have received the liquidators' informed opinion, the two businessmen will be better able to decide what further action, if any, they wish to have taken.
100. In Ebrahimi, Lord Cross of Chelsea held (*per curiam*) that a petitioner who relies on the "just and equitable" clause must come to court with clean hands. I accept, as I have said, that by adopting the "just and equitable" ground, it must be inferred that our legislature imported English equitable principles into the test to be applied by the Royal Court. I will assume for the purposes of this judgment that there remains a requirement under modern English law that an applicant shall come with clean hands.
101. The Applicant company has "clean hands". There is no evidence that it has ever done anything in relation to the Company other than to act as the vehicle through which shares in the Company are held on behalf of the Russian businessman. However, I will treat the "hands" with which I need to be concerned as being those of the Russian businessman.
102. No allegations in the nature of dishonesty or fraud have been proved in these proceedings. Having taken the decision to unwind the joint venture, the two businessmen have been working to dissolve or distribute their joint activities. On the whole, they have done that successfully but in relation to the issues arising from the sale of the steel business to the Gorlane Purchasers, they have been unable to agree and instead, each of them has been seeking to act in his own best interests. In the absence of proof of something more, that does not amount to "unclean hands" or to conduct which would deprive either of them of the right to come before the court seeking equitable relief.

## Conclusion

103. In conclusion, whilst it might have been preferable to make an order of relief on the unfair prejudice principles, the proposals in that regard that are before the Court are not acceptable. Taking all the circumstances into account, I am persuaded that it would be just and equitable

to order that the Company be placed in compulsory liquidation, being the only other relief available to the Court.

**EXHIBIT F**

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Browne-Wilkinson V.-C.

Grant v. Edwards (C.A.)

[1986]

of the house will of course be an important factor in many cases. But in other cases, contributions by way of the labour or other unquantifiable actions of the claimant will also be relevant.

A

Taking into account the fact that the house was intended to be the joint property, the contributions to the common expenditure and the payment of the fire insurance moneys into the joint account, I agree that the plaintiff is entitled to a half interest in the house.

B

*Appeal allowed with costs.*

*Order for costs not to be enforced without leave of court.*

*Plaintiff to have half beneficial interest in house pending sale and in net proceeds of sale when house sold.*

C

*Legal aid taxation of both parties costs.*

*Leave to appeal refused.*

*Solicitors: Livingston Solomon; Singh Karran & Co., Southall, Middlesex.*

D

S. H.

E

[COURT OF APPEAL]

*In re BIRD PRECISION BELLOWS LTD.*

F

1985 July 1, 2, 3

Oliver and Purchas L.JJ.

*Company—Oppression—Conduct of affairs—Quasi-partnership private company—Exclusion of two directors from participation—Order for purchase by majority of minority shares—Price to be determined by court—Whether shares to be valued pro rata or at market value as minority holding—Companies Act 1980 (c. 22), s. 75(1)(3)(4)(d)*

G

The company was formed in August 1975 in order to combine B.'s expertise in the manufacturing of precision bellows with the general experience of A. and N. in financial, commercial and industrial matters. At the first meeting of directors A. was appointed chairman, N. was appointed financial director and company secretary, neither of them receiving remuneration as directors, and B. was appointed as managing director, with a yearly salary. The company's capital was so arranged that the petitioners, A. and N. and N.'s family, held 26 per cent. of the issued share capital. Restrictions were placed by the articles of

H

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1 Ch. In re Bird Precision Ltd. (C.A.) 141

A association on the transfer of shares. Between 1975 and mid-1980 the company's affairs worked smoothly, and the company began to prosper, but thereafter the relationship of mutual confidence became impaired and in April 1981, at an extraordinary general meeting, A. and N. were removed as directors. The petitioners presented their petition, under section 75 of the Companies Act 1980,<sup>1</sup> for an order that their shares should be purchased by the respondent majority shareholders at their fair value. Vinelott J. ordered, by consent, pursuant to section 75 of the Act that the majority shareholders should purchase the petitioners' shares "at such price as the court shall hereafter determine." The order gave liberty to all parties to apply for, inter alia, "directions as to the payment of the purchase price and interest if appropriate." On the hearing to determine the appropriate purchase price of the shares Nourse J. found that the company constituted a quasi-partnership and that the exclusion of A. and N. from the company had been unjustified and amounted to conduct unfairly prejudicial to the petitioners' interests; and he held that, that being so, the fair basis for valuing the petitioners' shares was to fix the price pro rata according to the value of the shares of the company as a whole without any discount because they represented a minority holding. The judge further held that the petitioners were not entitled to interest on the purchase price for any period before it had been determined.

D On appeal by the majority shareholders and cross-appeal by the petitioners on the issue of interest:—

E *Held*, (1) dismissing the appeal, that section 75 of the Companies Act 1980 conferred on the court a wide discretion to do what was fair and equitable in all the circumstances so as to put right the unfair prejudice to a petitioner and cure it for the future; that that discretion extended to the terms of an order for the purchase of a petitioner's shares under section 75(4)(d), so that the proper price for a petitioner's shareholding was the price which the court, pursuant to that discretion, determined to be proper in all the circumstances of the case; that, on its true construction, the consent order entitled the court to exercise in full its discretion under section 75; and that, in so doing, the judge was right in concluding that it was appropriate to treat the company as a quasi-partnership and value its shares as a whole and the petitioners paid the proportionate part of that value which corresponded to their shareholding and not its market value as a minority shareholding (post, pp. 669D–F, G–H, 673H–674B, 677F, 678F–H, 679B–C).

F *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324, H.L.(Sc.); *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194 and *In re Westbourne Galleries Ltd.* [1973] A.C. 360, H.L.(E.) applied.

G (2) Dismissing the cross-appeal, that the liberty to apply for directions in the consent order was provided to enable the court to order payment of interest on the purchase price after the court had fixed the price should it remain unpaid; and that, accordingly, the judge was right in rejecting the claim for interest (post, pp. 677C–E, F, 679C, D–F).

H Decision of Nourse J. [1984] Ch. 419; [1984] 2 W.L.R. 869; [1984] 3 All E.R. 444 affirmed.

<sup>1</sup> Companies Act 1980, s. 75: see post, p. 665D–F.

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The following cases are referred to in the judgment: A  
*Dean v. Prince* [1954] Ch. 409; [1954] 2 W.L.R. 538; [1954] 1 All E.R. 749, C.A.  
*Jermyn Street Turkish Baths Ltd., In re* [1970] 1 W.L.R. 1194; [1970] 3 All E.R. 57  
*Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324; [1958] 3 W.L.R. 404; [1958] 3 All E.R. 66, H.L.(Sc.)  
*Westbourne Galleries Ltd., In re* [1973] A.C. 360; [1972] 2 W.L.R. 1289; [1972] 2 All E.R. 492, H.L.(E.) B

The following additional cases were cited in argument:  
*Company (No. 002567 of 1982), In re A* [1983] 1 W.L.R. 927; [1983] 2 All E.R. 854  
*House Property & Investment Co. Ltd. v. James Walker, Goldsmith and Silversmith Ltd.* [1948] 1 K.B. 257; [1947] 2 All E.R. 789 C  
*Purcell v. F.C. Trigell Ltd.* [1971] 1 Q.B. 358; [1970] 3 W.L.R. 884; [1970] 3 All E.R. 671, C.A.  
*Sudbrook Trading Estate Ltd. v. Eggleton* [1983] 1 A.C. 444; [1982] 3 W.L.R. 315; [1982] 3 All E.R. 1, H.L.(E.)  
*Talbot v. Talbot* [1968] Ch. 1; [1967] 3 W.L.R. 438; [1967] 2 All E.R. 920, C.A.  
*Ward v. James* [1966] 1 Q.B. 273; [1965] 2 W.L.R. 455; [1965] 1 All E.R. 563, C.A. D  
*Westminster Property Group Plc., In re* [1985] 1 W.L.R. 676; [1985] 2 All E.R. 426, C.A.

APPEAL from Nourse J.

The respondents, Philip Arthur Bird, Mrs. E. M. Bird, Stanley Rowden and Pipe-Chem Holdings Ltd., to a petition dated 12 October 1981 by Ernest Armstrong Stanley David Nin, his wife Edith Nin and his three children, appealed from the judgment of Nourse J. dated 28 October 1983 whereby the judge determined, pursuant to section 75 of the Companies Act 1980, that the fair price at which the respondents, as majority shareholders ("the majority shareholders"), should buy the petitioners' shares in Bird Precision Bellows Ltd. was £18.25 per share, making a total price of £142,350. The majority shareholders sought an order that a fair price at which they ought to purchase the petitioners' shares should be determined at £10.04 per share, making a total price of £78,312. E

The grounds of appeal were that (1) the judge was wrong in law in disregarding the market price of the shares (which, according to the evidence of both valuers was to be fixed by taking the value of the company as a whole, calculating the pro rata price for the shares in question, and discounting the price by 45 per cent.) by reason of the fact that, as the judge decided, the company was a quasi-partnership; (2) the judge failed to take account of the parties' rights as set out in the articles of association of the company which provided the only, or the only fair, basis for valuing the shares, and which basis would have produced a value of £10.04 per share; (3) the judge made a distinction which was valid neither in law nor in logic between the fair value to be ascribed to the petitioners' shares if they wished to sell their shares voluntarily (when a discount was to be applied) and if they wished to G  
H

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In re Bird Precision Ltd. (C.A.)

- A sell their shares because they had been unfairly prejudiced by the way in which the company was run (when no discount was to be applied); (4) if that distinction was correct, the judge was wrong in law in applying it to the present case (i) in the light of the compromise of the petition by the parties without any admission of any oppression or unfair prejudice or any ground entitling the petitioners to present a petition, and (ii) in which the company was a respondent; (5) in failing to apply the discount to the price of the shares in accordance with the evidence of both parties' valuers, and in the circumstances of the instant case, the judge was effectively giving damages to the petitioners, notwithstanding that (a) he had no power so to do in the absence of evidence to the effect that the value of the company had been reduced by any acts of the majority shareholders, (b) the petitioners, by their counsel, at the outset of the hearing before the judge, abandoned any claim for damages and (c) the petition had been compromised without any admission of wrongdoing by the majority shareholders or any of them, and the judge's function merely involved determination of a price; (6) the judge failed to determine a fair price for what was effectively a piece of property in the hands of the petitioners, but rather sought to compensate them for some uncertain and unqualified loss; and (7) in the light of the judge's findings as to the petitioners' conduct, alternatively Mr. Nin's conduct, in relation to an agreement as to the sale of Pipe-Chem (Holdings) Ltd.'s shares in the company, the judge was wrong in failing to apply a discount on the basis that the petitioners had constructively offered their shares, or Mr. Nin had constructively offered his shares, for sale or on the basis that by reason of such conduct, it would be unfair not to apply a discount.

- E By a respondent's notice dated 29 December 1983 the petitioners sought to have the judge's order affirmed on the following additional grounds that (1) on the true construction of the articles of association of the company the value to be attributed to a share of the company was a rateable proportion of the value of the shares of the company as a whole; (2) a valuation of shares pursuant to section 75 of the Act of 1980 should not be less favourable to the petitioners than a valuation pursuant to the articles; (3) the consent order dated 23 November 1981 precluded the majority shareholders from contending that that was not an appropriate case for relief under the section and/or from relying on the petitioners' conduct.

- G The petitioners further contended, by way of cross-appeal, that in addition to £18.25 per share awarded to them they should be awarded interest, or its equivalent, on the total purchase price of £142,350 at the short term investment rate from time to time from 23 November 1981 until payment (or at such other rate and for such other period as the Court of Appeal should think fit) and that the judge was wrong to refuse to make such an award in his further judgment given on 25 November 1983.

- H The grounds of the cross-appeal were that (1) the judge failed to exercise his discretion to award interest, or its equivalent; (2) the judge should have held (in so far as he did not) that the court had power to award interest, or its equivalent, under section 75 of the Act of 1980 and

should further have held that it was appropriate to award interest, or its equivalent, at the rate and over the period aforesaid; (3) the judge wrongly characterised the petitioners' claim for interest, or its equivalent, as "damages;" (4) the judge wrongly held that the majority shareholders might not have had sufficient opportunity to deal with the claim for interest, or its equivalent, having regard to (a) the liberty to apply reserved to the parties in the order of 23 November 1981, (b) the fact that the hearing as regards interest was adjourned and that the majority shareholders took the opportunity to adduce evidence on that point either during the trial itself or at the adjourned hearing and (as regards the adjourned hearing) did so; (5) the sum awarded to the petitioners, amounting to £142,350, was in excess of any offer the majority shareholders had made and in particular exceeded the sums of (a) £120,000, which the petitioners had been prepared to accept in satisfaction of all or any claims prior even to the commencement of proceedings herein, and (b) £115,000, offered by the majority shareholders in full settlement prior to the hearings.

The facts are stated in the judgment of Oliver L.J.

*Charles Sparrow Q.C.* and *I. E. Jacob* for the appellant majority shareholders. There is, here, an agreement between the parties clothed in the consent order: *Purcell v. F. C. Trigell Ltd.* [1971] 1 Q.B. 358. Since that order the case has depended on the true interpretation of that agreement which provides directly and simply for the purchase of the minority shares by the majority shareholders. "Purchase" is an ordinary word and courts have consistently given to its ordinary meaning which is "purchase for an ordinary and reasonable price." The courts have assessed reasonable price as a fair price and fair valuation: *Sudbrook Trading Estate Ltd. v. Eggleton* [1983] 1 A.C. 444; *In re Westminster Property Group Plc.* [1985] 1 W.L.R. 676 and *Talbot v. Talbot* [1968] Ch. 1.

Nourse J. expressly held [1984] Ch. 419, 426F, that there was no "rule of universal application" that the value of a minority holding had always to be fixed pro rata according to the value of the company's shares as a whole or that the price of a minority holding had always to be discounted. It follows, therefore, that such valuation should be, throughout, an exercise of expert principles that determine value as a fact and the judge was wrong in regarding this issue as "a question of law to be decided by the court:" [1984] Ch. 419, 436A. He was also wrong to regard such valuation as involving a "discounted" price. The valuation for which the majority shareholders contend does not involve "discounting" a price. It is directed to ascertaining a price of the minority shareholding: *In re A Company (No. 002567 of 1982)* [1983] 1 W.L.R. 927. It is true that the court has power to make an order for compensation. Such an order has to be to compensate for some loss: *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324. The order, here, is not an order of that nature.

As to valuation, the judge found that the petitioners did not deserve their exclusion from the company's management. It does not necessarily

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A follow that the measure of valuation should be valuation of the company's shares as a whole. That approach is inconsistent with ascertaining the actual value of the particular minority. It would amount to an extra element of consideration to the purchase price and is outside the consent order. [Reference was made to *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194.]

B *William Stubbs Q.C. and Charles Purle* for the petitioners. Vinelott J.'s order dated 23 November 1981 gave the court a complete discretion as to the criteria to be adopted for determining the price to be paid for the petitioners' shares. There is no justification for reading any limitation into the order. It was, in fact, a consent order and was expressly stated to be made "pursuant to section 75." In order to have jurisdiction to make any order under the section the court had to be satisfied that the petition is well founded: see section 75(3). Thus, the consent by the majority shareholders to the making of the order necessarily involved the admission by them that the petition was well founded, that is to say, there had been unfair prejudice to the interests of the petitioners. The express reference in the order of Vinelott J. to section 75 also confirms the intention that under section 75(4)(d) in determining the price to be paid for the petitioners' shares, the court was to have an unfettered discretion to impose upon the parties whatever settlement the court considered just and equitable. Accordingly, Nourse J. was to fix what he regarded to be a fair price on the basis of a rateable part of the value of the company's total issued share capital. [Reference was made *Ward v. James* [1966] 1 Q.B. 273.]

E An appellate court will only interfere with the exercise of this discretion if it was plainly wrong. That general principle also applies to appeal on the question of valuation. [Reference was made to *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324.] Nourse J. was not wrong. He postulated a general rule that where in the case of a quasi-partnership company, a minority shareholder's interest have been unfairly prejudiced by the manner in which the affairs of the company have been conducted by the majority and an order under section 75(4)(d) for the purchase of the minority shareholder's interests is made then the correct course is to fix the price pro rata according to the value of the shares as a whole and without any discount. In the context of section 75 the expression "just and equitable" is very wide: see Lord Wilberforce in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 374–375, 379, about the same words in section 222(f) of the Companies Act 1948. The nature of the just and equitable solution to be imposed under section 75(4)(d) of the Act of 1980 cannot depend merely on objective concepts of value. It is appropriate for the court to take into account the underlying nature of the company, the agreed basis on which it was established by the shareholders, and of the conduct of the parties prior to the presentation of the petition. Only by doing this can the court enable a minority shareholder to obtain a proper price for his shareholding: see Lord Cross of Chelsea in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 385. *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324 also supports Nourse J.'s approach.

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Nourse J. appears to be of the view [1984] Ch. 419, 431G-H, that, A  
even outside the context of an order under section 75, the fair price,  
payable for shares in a quasi-partnership, would normally be a pro rata  
one. That view is correct. The pro rata basis is the normal basis  
provided for in articles of partnership in respect of a voluntary  
retirement, and is also the basis often adopted in quasi-partnership  
companies where, as not infrequently happens, the quasi-partners make  
express contractual provisions. Such an approach is consistent with that B  
adopted by the House of Lords to quasi-partnerships in *In re Westbourne  
Galleries Ltd.* [1973] A.C. 360.

If it is accepted that the court has a very wide discretion under  
section 75(4)(d) of the Act of 1980 it can fix a higher price than that  
which, under the relevant company's pre-emption articles, a majority  
would be required to pay on a transfer notice voluntarily given by the  
minority. As a general rule however it cannot be right for the price so  
fixed to be lower than the price payable under the articles. On the true  
construction of the pre-emption provisions of the company's article 21  
any valuation by the auditor must be a pro rata valuation: *Dean v.  
Prince* [1954] Ch. 409, 427-428, 430-431. C

On cross-appeal, section 75(3) of the Act of 1980 gives power to the  
court to grant such relief as it thinks fit. That power is wide enough to  
cover the award of interest on the purchase price of the shares to the  
shareholders whose shares are being bought under a court order.  
Nourse J. was wrong not to award such interest. [Reference was made  
to *House Property & Investment Co. Ltd. v. James Walker, Goldsmith  
and Silversmith Ltd.* [1948] 1 K.B. 257.] Furthermore, Vinelott J's  
order, on its true construction, gives liberty to apply in effect for all the  
things the petitioners complained of, including the question of damage  
caused to them. D

*Sparrow Q.C.* in reply. Section 75(3) of the Act of 1980 cannot apply  
unless the court is satisfied that the petition under the section is well  
founded. The order of 23 November 1981 was a consent order without  
any admission on the part of the majority shareholders that the petition  
was well founded. The subsection, thus, cannot be invoked. The  
petitioners cannot be entitled to interest for a further reason that there  
was no principal until the price was fixed by the court and, thus, no  
interest can be charged on it. E

OLIVER L.J. This is an appeal against an order of Nourse J. made on  
28 October 1983 determining, pursuant to an order previously made by  
Vinelott J. on 23 November 1981, that shares in a private company  
which were to be purchased by the appellants in this appeal, who were  
the respondents to a petition, at a price of £18.25 each. I read at this  
stage only the last three lines of the judge's judgment [1984] Ch. 419,  
436: G

"I value the shares of the company as a whole at £547,500. I  
determine the price at which the respondents are jointly and  
severally to purchase the shares of the petitioners at £18.25 each." H

The way in which this matter came before the court was this. The  
company was a private company, Bird Precision Bellows Ltd., which

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A had been incorporated in 1975. The petitioners, Mr. Armstrong and Mr. Nin, were the holders of some 7,800 shares out of the total issued capital of 30,000 shares. The judge found that the company had been incorporated in the first instance as a sort of quasi-partnership between the petitioners and the respondents who were the majority shareholders, for the exploitation of certain processes with which the principal shareholder, Mr. Bird, was very much concerned and in which he was very expert. The two petitioners were there substantially, I think, in the role of consultants and gave their services to the company in the early stages of its career at very much less than the value which was properly to be attributed to those services.

B  
C It is unnecessary to go in any great depth into the facts. The parties fell out in August 1981. The petitioners were then removed from the board of directors of the company and in October 1981 they presented a petition under section 75 of the Companies Act 1980, in which they claimed that they should be bought out. There was also at that stage, although it was subsequently dropped by amendment, an alternative claim to have the company wound up.

D I think I should read the material parts of section 75, because that section has some bearing on what subsequently occurred:

E “(1) Any member of a company may apply to the court by petition for an order under this section on the ground that the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself) or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial. . . . (3) If the court is satisfied that a petition under this section is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of. (4) Without prejudice to the generality of subsection (3) above, an order under this section may”—and then there are various things which can be done, terminating with—“(d) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company’s capital accordingly.”

G What happened in this case was that there appears to have been considerable correspondence between the parties with regard to the possibility that the majority shareholders should buy out the petitioners and there was some disagreement as to how the price of a purchase ought to be arrived at. Ultimately, when the matter came before the Companies Court, as it did on 23 November 1981, it was dealt with by agreement and a consent order (although it is not expressed as such) was made by Vinelott J. on that day. The order recites the petition and the evidence which had been filed on it up to that point, and it went on:

H “This court doth order pursuant to section 75 of the Companies Act 1980 that the respondents”—and then it names them—“do jointly and severally purchase the 3,900”—it is common ground that that was a mistake for 7,800—“shares of the company registered in the

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In re Bill Precision Ltd. (C.A.) (1986)

name of the petitioners”—and then it names the petitioners—“at such price as the court shall hereafter determine provided that such purchases may subject to the approval of this court be effected by means of a reduction of the share capital of the company. And it is ordered that on the question of the appropriate purchase price for the said shares the evidence of the petitioners be filed within 14 days of the date of this order the evidence of the respondents be filed within 21 days thereafter discovery by exchange of lists do take place on or before 11 January 1982 with inspection within 14 days thereafter and exchange of reports by experts within 28 days after inspection.”

A  
B

There is a paragraph as regards costs, which I need not read, which provides in effect that the respondents, the majority shareholders, should pay the petitioners’ costs of the petition down to and including the foot of the order. Then there is a final paragraph:

C

“Liberty to all parties to apply (1) for further and better particulars of the allegations in the affidavits (2) for directions as to the payment of the purchase price and interest if appropriate and (3) generally.”

D

Following that order there was a substantial amount of evidence filed; experts were engaged and their reports were, as I understand it, duly exchanged and the matter came on for hearing before Nourse J. It appears to have proceeded, up to the date of the hearing before Vinelott J. and at least for a month or so thereafter, with commendable celerity, but thereafter it adopted a somewhat molasses-like speed, and it finally terminated in the matter coming before the court on 25 November 1983. The judge, having considered all the evidence and the reports of the valuers, concluded in the way which I have read [1984] Ch. 419, 436. The basis of the judge’s valuation is to be found in two passages from the judgment, at pp. 429 and 430: and there is a further passage at p. 431. The judge said, at pp. 429–430:

E

“Although both sections 210”—which of course was the predecessor of section 75—“and 75 are silent on the point, it is axiomatic that a price fixed by the court must be fair. While that which is fair may often be generally predicated in regard to matters of common occurrence, it can never be conclusively judged in regard to a particular case until the facts are known. The general observations which I will presently attempt in relation to a valuation of shares by the court under section 75 are therefore subject to that important reservation. Broadly speaking, shares in a small private company are acquired either by allotment on its incorporation or by transfer or devolution at some later date. In the first category it is a matter of common occurrence for a company to be incorporated in order to acquire an existing business or to start a new one, and in either event for it to be a vehicle for the conduct of a business carried on by two or more shareholders which they could, had they wished, have carried on in partnership together. Although it has been pointed out on the high authority to which I will soon refer that the

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G

H

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- A description may be confusing, it is often convenient and it is certainly usual to describe that kind of company as a quasi-partnership. In the second category, irrespective of the nature of the company, it is a matter of common occurrence for a shareholder to acquire shares from another at a price which is discounted because they represent a minority holding. It seems to me that some general observations can usefully be made in regard to each of these examples.”

Nourse J. then referred to the well known passage from the speech of Lord Wilberforce in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 379, and went on:

- C “His Lordship, having observed that it is not enough that the company is a small one, or a private company, identified three typical elements, one, or probably more, of which will characterise the company as a quasi-partnership. They are, first, an association formed or continued on the basis of a personal relationship involving mutual confidence; secondly, an agreement or understanding that all or some of the shareholders shall participate in the conduct of the business; and, thirdly, restrictions on share transfers. No doubt these three elements are the most familiar, and perhaps the most important, but they were not intended to be exhaustive. In my view there may be other typical and important elements, in particular the provision of capital by all or some of the participants.”

Next comes a passage which I think has assumed some importance in the argument, so perhaps it is worth reading:

- E “I would expect that in a majority of cases where purchase orders are made under section 75 in relation to quasi-partnerships the vendor is unwilling in the sense that the sale has been forced upon him. Usually he will be a minority shareholder whose interests have been unfairly prejudiced by the manner in which the affairs of the company have been conducted by the majority. On the assumption that the unfair prejudice has made it no longer tolerable for him to retain his interest in the company, a sale of his shares will invariably be his only practical way out short of a winding up. In that kind of case it seems to me that it would not merely not be fair, but most unfair, that he should be bought out on the fictional basis applicable to a free election to sell his shares in accordance with the company’s articles of association, or indeed on any other basis which involved a discounted price. In my judgment the correct course would be to fix the price pro rata according to the value of the shares as a whole and without any discount, as being the only fair method of compensating an unwilling vendor of the equivalent of a partnership share. Equally, if the order provided, as it did in *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194, for the purchase of the shares of the delinquent majority, it would not merely not be fair, but most unfair, that they should receive a price which involved an element of premium.”

Then, Nourse J. said, at p. 431:

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“Next, I must consider the example from the second category of cases in which, broadly speaking, shares in a small private company are acquired. It is not of direct relevance for present purposes, but I mention it briefly in order finally to refute the suggestion that there is any rule of universal application to questions of this kind. In the case of the shareholder who acquires shares from another at a price which is discounted because they represent a minority it is to my mind self-evident that there cannot be any universal or even a general rule that he should be bought out under section 75 on a more favourable basis, even in a case where his predecessor has been a quasi-partner in a quasi-partnership. He might himself have acquired the shares purely for investment and played no part in the affairs of the company. In that event it might well be fair—I do not know—that he should be bought out on the same basis as he himself had bought, even though his interests had been unfairly prejudiced in the meantime. A fortiori, there could be no universal or even a general rule in a case where the company had never been a quasi-partnership in the first place.”

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Nourse J. said, in summary, that there is no general rule and then comes the passage to which particular criticism has been directed:

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“On the other hand, there is a general rule in a case where the company is at the material time a quasi-partnership and the purchase order is made in respect of the shares of a quasi-partner. Although I have taken the case where there has in fact been unfairly prejudicial conduct on the part of the majority as being the state of affairs most likely to result in a purchase order, I am of the opinion that the same consequences ought usually to follow in a case like the present where there has been an agreement for the price to be determined by the court without any admission as to such conduct. It seems clear to me that, even without such conduct, that is, in general, the fair basis of valuation in a quasi-partnership case, and that it should be applied in this case unless the respondents have established that the petitioners acted in such a way as to deserve their exclusion from the company.”

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The judge went on to conclude that the petitioners had not in fact deserved their exclusion on the facts of this case.

I have read those passages because they serve to indicate the approach of the judge to the problem with which he was confronted under the terms of the order. That approach has been criticised by Mr. Sparrow on two grounds: first of all, on the general ground that it was a wrong order in any event, or a wrong approach in any event, under section 75; and, secondly, on the ground that it was a wrong order, or a wrong approach, having regard to the specific terms of the consent order in this case which, as Mr. Sparrow rightly says, has to be looked at as a contract between the parties agreeing to the consent order.

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What Mr. Sparrow suggests is this. I take the two points which he makes in inverse order, that is to say, I am taking his second point first. He suggests that an order made under section 75(4) is simply an order for a purchase, without any discretion in the court to give directions

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- A which might have the effect of increasing or reducing the value of the shares in the open market, as shares in a private company. If the shares with which the purchase order is concerned are a majority holding, they are to be valued as such; if they are a minority holding they are to be valued as such, and in his submission the court is not entitled to look behind the company and to reflect, in the order for purchase or for sale, the actual relationship between the parties. According to this approach,
- B any agreement which has been made between the parties as to the basis upon which they were to participate in the company's affairs, or as to the way in which the company's affairs were to be conducted, any contribution which the petitioner may have made to the company's success, any absence of any contribution at all by the respondent, apart from the mere fact of his shareholding, is to be ignored. The court, in
- C other words, is to be rigidly restricted, if it is to make an order under section 75(4)(d) at all, to making an order for a purchase at a market price of the holding being purchased, to be arrived at only by the ordinary valuation principles, which will take into account the proportionate size of the holding in relation to the issued capital as a whole and to the control of the company.

- D For my part I find myself quite unable to accept this submission. It seems to me that the whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company; and I
- E find myself quite unable to accept that that discretion in some way stops short when it comes to the terms of the order for purchase in the manner in which the price is to be assessed. It has been pointed out, and I mention it again, that section 75(4) is merely a collection of possible methods of giving effect to section 75(3), and it is expressed to be without prejudice to the generality of subsection (3), which gives the court a very wide discretion as to the granting of relief in general terms
- F in respect of the matters of which complaint has been made.

We have been referred to the speech of Lord Cross of Chelsea in *In re Westbourne Galleries Ltd.* [1973] A.C. 360, 385, where he said in a very short passage, to which Mr. Stubbs drew attention:

- G "What the minority shareholder in cases of this sort really wants is not to have the company wound up—which may prove an unsatisfactory remedy—but to be paid a proper price for his shareholding."

- H It is on the question of a "proper" price that the parties here divide. So, Mr. Sparrow's second submission, which I have dealt with first, I find myself quite unable to accept. In my judgment, the "proper" price is the price which the court in its discretion determines to be proper having regard to all the circumstances of the case.

I come now to Mr. Sparrow's first submission, namely, that as a matter of interpretation of the order which, as he says and as I mention again, is a consent order, there is to be implied a contractual obligation

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that the shares should be purchased at the market value as a minority holding. The basis for this submission is that the consequence which I have outlined is one which flowed simply from the use in the order of the word "purchase;" and it is said that "purchase" ordinarily means purchase at market value, and therefore one reads into the order the words "a purchase at market value to be determined by the court." I confess that I am entirely unable to see why that should be. In my judgment, "purchase" ordinarily means no more than purchase for a money consideration; what that consideration is is at large and the order is one which only makes sense, and indeed can only be given any operative life, if the purchase price is fixed in the exercise of the full discretion vested in the court by section 75. The court has no jurisdiction, as it seems to me, to act as a sort of arbitrator between experts, and if Vinelott J. had been told that that was what was intended, and that all that was intended was simply that there should be submitted to the court the decision of the issue of what was the market value of the petitioners' holding, I confess that I doubt very much whether he would have made the order in that form, or indeed would have considered that he had any jurisdiction to do so.

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Essentially what is suggested is that in assessing the price Nourse J. was wrong to consider the evidence which had been filed in support of the petition, and indeed subsequently, or to enter into any consideration of the merits of the case, the inception of the relationships between the parties and so on. I would find that a difficult submission to accept in any event, but the submission might have had more force, I think, if, as might at first be supposed from the terms of the order, the court was simply being asked to embark on an inquiry into the value of the shares on the assumption that it had been conceded in some unspecified way that the petitioners had been subjected to unfair prejudice and that it was therefore irrelevant to consider the manner in which they had in fact been unfairly prejudiced.

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But it is the majority shareholders' own case, and it was so put to the judge, that no such admission had in fact been made. As I have pointed out, the terms of section 75(3) are perfectly clear. They simply provide that if the court is satisfied that a petition under this section is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of. If of course it is not so satisfied, then it has no jurisdiction to give the relief which is referred to in section 75(3) or in section 75(4). As it seems to me, this only has to be read for it to be seen straight away that the court, in making a valuation of the shares, can only do so if it is satisfied that the petition is well founded.

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The judge therefore had to go into these questions, because it was expressly said that there was no admission of any unfair prejudice, and so the judge had to go into the question of whether there had been unfair prejudice to the petitioners and how it had taken place, in order to see whether he had any jurisdiction at all to embark on the inquiry which he was invited to undertake. The judge referred to the question of whether he ought to inquire into these matters as follows [1984] Ch. 419, 426:

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A “The first question which arose was whether the respondents, by consenting to the order of 23 November 1981 and, I suppose, by agreeing to pay the petitioners’ costs to date, had effectively admitted that they had been conducting the affairs of the company in a manner unfairly prejudicial to the petitioners as members. There was some disagreement between counsel as to what was or was not said on the respondents’ side at the hearing before  
B Vinelott J., but on what I saw and heard I was satisfied that there had been no admission to that effect. The respondents had merely agreed to buy out the petitioners at a price to be determined by the court. Assuming that unfair prejudice might sometimes affect the price which ought to be paid for the shares, I was nevertheless unable to see how, in the absence of some explicit statement of the  
C respondents’ position, they could be taken to have made any admission as to that matter.”

He went on, at p. 427:

D “It was unfortunate that the hopes and expectations of both sides for a shorter hearing should have been disappointed, but that was made inevitable by my decision on the first of the preliminary points and by the positions which the parties adopted in regard to the second and third. I myself suggested certain ways in which the hearing might be shortened by agreement, but without success. In future, parties who wish to limit the issues or the evidence in a case of this kind would be well advised to go further than a mere agreement that the price of the shares shall be determined by the  
E court.”

Then he said, at p. 434:

F “I have to say that I regard the evidence of both Mr. Bird and Mr. Rowden on the bribery question as having been extremely unsatisfactory. If it had been necessary for me to make any finding on that question, I would have rejected their evidence in its entirety and accepted that of Mr. Nin and Mr. Armstrong. Having said that, I do not think that it is either necessary or desirable that I should go into this or any of the many other matters which were made the subject of allegations and counter allegations between the parties, both at the time and in evidence in this court. Having considered all the material evidence, I am satisfied that the exclusion of Mr.  
G Armstrong and Mr. Nin was wrongful and that in that and certain other respects into which I need not go, the affairs of the company were conducted in a manner unfairly prejudicial to the interests of them and the other petitioners as members. That finding, although strictly speaking unnecessary on the view which I take of the case, is one which I feel that I ought to make, if only in fairness to Mr. Armstrong and Mr. Nin and after a full and exhaustive investigation  
H of the merits.”

If I have any criticism of the judge’s judgment, it is only that he based his inquiry on the supposition that the merits might affect only the question of the basis of the valuation of the shares, as indeed in my

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judgment they clearly can. But it was, I think, much more fundamental than that. Unless unfair prejudice was proved, the court was simply being asked to undertake a sort of arbitration in vacuo, which it had no jurisdiction to do. It seems to me quite unarguable that the judge, having perforce considered the merits and having heard evidence from the parties, should be expected, or indeed required, by the terms of this order, then to put that entirely out of his mind when it came to the question of the terms of the purchase.

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We have been referred to a number of authorities, first of all to a decision of Pennycuik J. in *In re Jermyn Street Turkish Baths Ltd.* [1970] 1 W.L.R. 1194, 1208, and I read an extract from his judgment:

“Section 210 gives the court an unlimited judicial discretion to make such order as it thinks fit with a view to bringing to an end the matters complained of, including an order for buying out one faction by the other. It is not disputed on behalf of the respondents that in prescribing the basis on which the price of such a sale is to be calculated the court can in effect provide compensation for whatever injury has been inflicted by the oppressors.”

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In *Scottish Co-operative Wholesale Society Ltd. v. Meyer* [1959] A.C. 324, 369, Lord Denning said:

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“One of the most useful orders mentioned in the section—which will enable the court to do justice to the injured shareholders—is to order the oppressor to buy their shares at a fair price: and a fair price would be, I think, the value which the shares would have had at the date of the petition, if there had been no oppression. Once the oppressor has bought the shares, the company can survive. It can continue to operate. That is a matter for him. It is, no doubt, true that an order of this kind gives to the oppressed shareholders what is in effect money compensation for the injury done to them: but I see no objection to this. The section gives a large discretion to the court and it is well exercised in making an oppressor make compensation to those who have suffered at his hands.”

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What I think is being suggested here is that these citations in some way support the arguments of the majority shareholders, because it is said that what in effect the judge was seeking to do was to compensate the oppressed shareholders, and that that was not within the terms of the order. I do not read what the judge did as doing that at all. Speaking for myself, I have been quite unable to see why these two authorities should be supposed to support the arguments which the majority shareholders have advanced. They seem to me to be entirely against them because, as it seems to me, they indicate as clearly as can be the wide discretion which the court has in directing the basis on which shares should be valued for the purpose of a purchase ordered under this section. It may be true that it can be compensatory, but what the court is required to do, in the exercise of its very wide discretion, is that which is just and equitable between the parties.

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It does not seem to me in any event that the matter ends simply with the mere fact that the order, to be effective as an order under section 75

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A necessarily has to invoke the discretionary jurisdiction of the court, because there are in fact, as it seems to me, positive pointers in the order that that is exactly what was intended.

B Going back to the terms of the order, it starts with the words “this court doth order pursuant to section 75 of the Companies Act 1980.” I have already said that I do not for a moment think that the mere use of the word “purchase” which then follows—“that the respondents . . . do jointly and severally purchase”—contains any implication at all that they should purchase necessarily at market value. It seems to me that quite the contrary is imported by the words “pursuant to section 75.” What they are doing is purchasing pursuant to section 75, and it is pursuant to that section that the court is to determine price. That brings in, as it seems to me, by necessary implication the general discretion of the court to do what is fair and equitable.

C Secondly, one wonders, if all that was being asked for was an order for purchase at market price, what the purpose was, as Mr. Stubbs says, of involving the court in the matter at all. A market price could quite easily be determined outside the court by arbitration, or by submitting the matter to two valuers and their umpire. It seems to me to be quite evident from the first paragraph of the order that what was intended was that the matter should be approached in the full sense as an application under section 75 of the Act, and that the court was expected, in arriving at the price to be paid, to take into account all the circumstances of the case.

D That, as it seems to me, is underlined by the next part of the order, where it goes on with the question of the “appropriate” purchase price for the shares, and proceeds with directions as to evidence. The evidence is quite clearly intended to be general evidence with regard to all the circumstances—there are provisions for discovery. So far as the accountancy aspect is concerned, that is dealt with by the last words of this section of the order: “and exchange of reports by experts within 28 days after inspection.” So quite clearly, as it seems to me, the whole concept of the order was that there would be a full investigation into the circumstances, with evidence filed on both sides, and, indeed, that is what took place.

F Finally we come to the liberty to apply:

G “Liberty to all parties to apply (1) for further and better particulars of the allegations in the affidavits (2) for directions as to the payment of the purchase price and interest if appropriate and (3) generally.”

So the parties were to have liberty to apply for further and better particulars, and again it seems to me that that could only be on the footing that the judge was to inquire fully into the circumstances of the case and into the affidavits that were directed to be filed.

H Speaking for myself, I am quite satisfied, as a matter of construction of the terms of the order, that the judge was entitled to exercise in full his discretion under section 75(3) and (4). Those subsections give him a very wide discretion, and I am quite satisfied that no ground has been shown for interference by this court with the actual manner in which the

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judge in fact exercised the discretion which was vested in him by the section, and by which he concluded that this was a quasi-partnership case, and that being so it would be appropriate that the shares of the company should be valued as a whole and that the petitioners should then simply be paid the proportionate part of that value which was represented by their shareholding, without there being made a discount for the fact that this was a minority shareholding.

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In my judgment, the judge was perfectly entitled to arrive at the conclusion at which he did. I think that I myself, certainly on a reading of the judgment and on such material as we have had, would not have come to any other conclusion, and I am fortified in the view that I have taken by an additional point which Mr. Stubbs takes on the articles of association of the company. This company, as one might expect, had articles of association which contained a pre-emption provision in the ordinary form. It was one which had this perhaps unusual feature, that it had a specific provision relating to the way in which a transfer notice was to be treated. I can read the relevant paragraphs very simply; it is the usual form of article which enables shares to be transferred to other members, or to members of their family, and then provides that apart from that no share shall be transferred until the pre-emption rights have been exhausted. Article 21(c) provides:

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“Except where the transfer is made pursuant to subarticle (a) hereof, the person proposing to transfer any share (hereinafter called ‘the proposing transferor’) shall give notice in writing (hereinafter called ‘the transfer notice’) to the company that he desires to transfer the same, and such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale of the share to any member of the company (or to any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership) at the price so fixed or, at the option of the purchaser, at the fair value to be fixed by the auditor in accordance with subarticle (e) of this article.”

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Then there is this important sentence: “The transfer notice may include two or more shares, and in such case shall operate as if it were a separate notice in respect of each.” In paragraph (e) we have the valuation:

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“In case any difference arises between the proposing transferor and the purchaser as to the fair value of a share the auditor shall, on the application of either party, certify in writing the sum which in his opinion is the fair value, and such sum shall be deemed to be the fair value, and in so certifying the auditor shall be considered to be acting as an expert and not as an arbitrator; and accordingly the Arbitration Act 1950 shall not apply.”

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Mr. Stubbs has referred us to two passages in *Dean v. Prince* [1954] Ch. 409. Denning L.J. said, at pp. 427-428:

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“*The right to control the company.* Harman J. said that the auditor should have taken into account the fact that the 140 shares were a majority holding and would give a purchaser the right to control the

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A company. I do not think that the auditor was bound to take that fact into account. Test it this way: Supposing it had been Prince who had died, leaving only 30 shares. Those 30 shares, being a minority holding, would fetch nothing in the open market. But does that mean that the other directors would be entitled to take his shares for nothing? Surely not. No matter which director it was who happened to die, his widow should be entitled to the same price per share, irrespective of whether her husband's holding was large or small. It seems to me that the fair thing to do would be to take the whole 200 shares of the company and see what they were worth, and then pay the widow a sum appropriate to her husband's holding. At any rate if the auditor was of opinion that that was a fair method, no one can say that he was wrong. The right way to see what the whole 200 shares were worth, would be to see what the business itself was worth: and that is what the auditor proceeded to do."

Wynn-Parry J. refers to a particular article in the company's articles in these terms, at pp. 430-431:

D "the fair value shall be the auditor's valuation of the current worth of the company's shares.' That language appears to me to preclude the auditor from placing any extra value on a block of shares because it constitutes, or will in the hands of the particular transferee constitute, a controlling interest."

E It is of course true that in the instant case the articles did not contain that rather important provision; but they did have this extraordinary provision for each share to be treated separately, as if it had been comprised in a separate transfer notice. As I have said, one does not have an express provision to value the company's shares as a whole, but one has an express provision that, if a transfer notice is given in respect of more than one share, it is to be treated as a separate notice in respect of each. So the valuer has, theoretically, to go through the process of ascertaining the value separately in relation to each share concerned, and I am bound to say that it is difficult to see then how there could be any room for any account to be taken of whether the shares comprised in a transfer notice as a whole formed a minority or a majority holding. Without expressing any concluded view on the matter, I am very much inclined to the view that the valuation of a share under the pre-emption articles in this case ought to be on the same basis as that held by this court to be appropriate in *Dean v. Prince* [1954] Ch. 409, and that if the valuer was unwise enough to give his reasons for valuation, and to indicate that in those reasons he had taken into account the fact that all the shares which were being offered by all the deemed separate transfer notices together constituted a majority or minority holding, I think his valuation could be upset. But, as I say, it is unnecessary to express any concluded view on the matter, because in a sense this is a makeweight submission. If it is right it would, to say the least, have a very odd result if the effect of an order designed to enable the court to do what is just and equitable between the parties under section 75 should result in a minority

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holding being bought out at a price which is less than that which it would be expected to achieve on a sale under the articles of association. A

For all the reasons I have given, therefore, I have no hesitation in dismissing the appeal.

I turn now to the petitioners' cross-appeal, which arises in this way. Under the last paragraph of the order there was liberty to apply in relation to interest and, the judge having determined the price at which the shares were to be bought out, application was then made for an award of interest on the amount of the purchase price when ascertained, as from a date which I think was not actually specified at that time, because argument then proceeded as to whether in principle interest could or could not be awarded. That argument was adjourned and it came before the judge again on 25 November 1983, when he determined that there could be no award of interest on the purchase money. B C

The petitioners challenge that, and they seek an order that interest should be paid up to 9 December 1983. There was, as the result of a hearing before the judge, an agreed order as to the way in which, subject to this appeal, the purchase was to be carried into effect, and that provided for interest; no question of interest arises after 9 December 1983. But by their notice of cross-appeal the petitioners asked for interest, either from 31 August 1980 or, if that is rejected, from the date of the presentation of the petition, which was 12 October 1981; or, if that is rejected, from the date of the judge's order; or again, if that be wrong, from Vinelott J.'s order, and if that be wrong, from 7 August 1981, when the petitioners were removed from the board. D

The judge rejected the claim on two grounds. First of all it was argued that, although it was conceded, I think, that there was no orthodox ground for payment of interest, nevertheless interest could be paid under the general discretion which is contained in section 75(3), in effect as a means of awarding damages in respect of matters which had occurred in the course of the carrying on of the company's business constituting the unfair prejudice. The judge rejected that, saying [1984] Ch. 419, 437: E F

"I have never heard of interest being payable before there is an obligation to pay principal. On analysis, it appears that what Mr. Purle is really saying is that the court has power under section 75(3) to award something equivalent to interest. That must, I think, be damages for loss of the use of the purchase moneys during a period when they ought to have been in hand. As will appear, the view which I take of this case makes it unnecessary for me to express a view on that point and I do not do so." G

He then went on to what was the real ground of his decision:

"In the present case there was an agreement that the respondents should buy out the petitioners on a certain basis, i.e., at such price as the court should determine. That price was held to be a sum equivalent to the fair value of the shares. There was no agreement that the price should bear interest from some date prior to its determination or, indeed, from any date. An agreed H

A liberty to apply for directions as to the payment of interest, if appropriate, is not an agreement that the price should bear interest. There was no agreement that the petitioners should receive damages for loss of the use of the purchase moneys. Moreover, even if, which I emphatically refute, such an agreement could be implied, it is far too late to make that claim. A claim for damages, even of that limited character, would have entitled the respondents to adduce evidence and make submissions to the effect that the petitioners' loss was by no means what it might have seemed. Mr. Purle says that the order has not yet been drawn up. That may be so, but it is no reason for allowing the petitioners to re-open the trial under the guise of a claim for interest. I am of the clear opinion that there is no case for interest, or so-called interest, before judgment in the present case, and I therefore do not propose to enter into any questions of date or rate."

D Mr. Stubbs, on behalf of the petitioners, has submitted that the true construction of the order, in giving liberty to apply for interest, is giving liberty to apply on the hearing before the judge, in effect for damages for all the things of which the petitioners complain and that therefore the judge was wrong in refusing to entertain, as he did, the claim as being in effect a sort of disguised claim for damages.

E I find myself quite unable to accept that submission. It seems to me as plain as can be that the liberty to apply for directions as to payment of interest on the purchase price was simply inserted for the purpose of enabling the court, when it fixed the terms of the purchase, to provide, if the purchase price was not paid, for interest to be paid on it as from a certain date. It seems to me that the judge was perfectly right in refusing to allow any question to be ventilated as to the payment of interest, as it were, in lieu of damages. I would therefore dismiss the cross-appeal.

F So in my judgment the appeal fails, and so does the cross-appeal.

PURCHAS L.J. I agree that this appeal should be dismissed. Out of respect to the able argument of Mr. Sparrow, I propose to add a few words of my own.

G The short issue raised is whether, in valuing the shares that were to be transferred, the valuer should apply a discount in recognition of the fact that the holdings being transferred were minority holdings in the company. The starting point is an order made by Vinelott J. on 23 November 1981. The material parts of that order have already been cited by Oliver L.J., but I propose for the sake of convenience to repeat the critical words only:

H "This court doth order pursuant to section 75 of the Companies Act 1980 that the respondents"—who are there named—"do jointly and severally purchase the [7,800 shares] of the company registered in the name of the petitioners . . . at such price as the court shall hereafter determine . . ."

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Mr. Sparrow submits that the phrase "at such price as the court shall hereafter determine" can only mean the price, being the fair market price, which would have been agreed between a willing buyer and a willing seller in the open market, including the discount which stems from the very nature of the holding being sold. It must ignore the concept of the authority to which Oliver L.J. has already referred in *Dean v. Prince* [1954] Ch. 409.

A

It would also exclude the basis upon which the powers under section 75 of the Act of 1980 arise as defined in subsection (1), and further would exclude the whole basis upon which the parties came together in the commercial enterprise and upon which the petitioners accepted their respective minority shareholdings. The judge found that the basis of this was fairly described as a "quasi-partnership" as considered in the leading case, *In re Westbourne Galleries Ltd.* [1973] A.C. 360 and in particular in the part of the speech of Lord Wilberforce, at p. 379.

B

C

Mr. Sparrow submits that to do otherwise would in effect be to award compensation either in respect of the prejudicial conduct which was the basis, albeit not admitted by the majority shareholders, of the jurisdiction under section 75, and/or the determination of the quasi-partnership; that is, the loss of the continuing rights, if they were of any value, attributable to the minority shareholders for the loss of their future participation.

D

Mr. Sparrow submitted that to grant such an extra element of consideration to the purchase price would therefore be outside the terms of the consent order itself. Put another way, his submission was that under the terms of that consent order the function of the judge, or the court, envisaged in the future by that order, would be merely one of an arbitrator, namely, to determine the quantum of the price regardless of the other aspects which would be considered by the court were it acting in the ordinary way under the provisions of section 75 of the Act.

E

I think Mr. Sparrow conceded that had this petition been fought through, rather than concluded, partly at least, by consent under the provisions of section 75, and particularly subsection (3), the relief ordered by the court in its discretion could have been such as to effect the transfer of shares as a consideration valued on a pro rata distribution of the whole value of the company. But whether he made that concession or not, I am for my part quite unable to make the distinction which Mr. Sparrow attempted to import into the existence of the consent order in the terms restricting the power of the court to section 75(4) as Mr. Sparrow would interpret that section; that is, the purchase of the shares at a market value.

F

G

I agree with all that has been said by Oliver L.J., that the effect of section 75(4) is merely to expand the wide powers granted under section 75(3), and not in any way to restrict them. Moreover, the use of the expression in the consent order "the purchase of the shares" is not, in my judgment, intended in any way to restrict the powers otherwise enjoyed by the court. If it were, as Mr. Stubbs has submitted and as Oliver L.J. has already commented, the purpose of the order and the purpose of the future involvement of the court would be negated.

H

I Ch. In re Bird Precision Ltd (C.A.) Purchas L.J.

A In my judgment, the proper interpretation of this order importing, as it does, the consent between the parties was to leave in the discretion of the court the full jurisdiction which it would have enjoyed had the matter been fought, and the effect of the consent order was merely to exclude the earlier part of the process under section 75 and to select the means by which the court, being certainly hypothetically satisfied of the sound basis of the petition for this purpose—and of course, that is the only basis upon which the court could act—that it would chose the particular course provided by section 75(4)(d) to give relief in the terms of section 75(3) in respect of the matters complained of in the petition.

B For those reasons, in my judgment, the judge was right to accept the submission that the powers were unfettered and that, therefore, taking into account the quasi-partnership nature of the interests held by the petitioners in this particular instance, the method of valuation should be on a pro rata basis.

C For these reasons and those already given by Oliver L.J., I agree that this appeal should be dismissed.

I also agree that, so far as the cross-appeal is concerned, that also should be dismissed. I echo only the words of the judge [1984] Ch. 419, 437:

D “The first point to be made is that in a normal section 75 case, where there has been no agreement of any kind, I cannot see how there can be any question of interest being payable before a purchase order is made.”

and the order is not complete in this case until the judgment of the court, which is the judgment at present under appeal.

E The reliance placed by Mr. Stubbs on the final paragraph of the order made by Vinelott J., in my judgment, takes his submission no further. The liberty to apply which was given to all parties was clearly for the further carrying out of the order, and certainly could not form the basis of a jurisdiction, or a consent, on the part of the parties that the court should proceed to calculate an award of interest as a matter of general jurisdiction.

F For those reasons I also agree that the cross-appeal should be dismissed.

*Appeal and cross-appeal dismissed.  
Petitioners’ appeal on costs below  
allowed so that they were entitled  
to costs of hearing before Nourse J.  
Costs of appeal and cross-appeal to  
be taxed. Appellants to pay five-  
sixths of petitioners’ costs.  
Leave to appeal refused.*

G

*Solicitors: Goldberg Blackburn & Howards, Manchester; Knight and Sons, Newcastle under Lyme.*

H

A. R.

**EXHIBIT G**

## Re Little Olympian Each-Ways Ltd

CHANCERY DIVISION

LINDSAY J

28 MARCH, 20, 21 APRIL, 5 MAY 1994

*Minority oppression – Appropriate parties to the petition – Jurisdiction of the court to make an order against a non-member – Companies Act 1985, ss 459, 461.*

The petitioner was a preference shareholder in the respondent company. The petitioner alleged that the affairs of the company had been conducted in a manner which was unfairly prejudicial to its interest as a member. Broadly it claimed that the company's business had been transferred to Newco at a gross undervalue. Initially there were six respondents to the petition. As a result of discovery, it was shown that the business of Newco had been transferred to Star Vacations Ltd (Star) which in turn had transferred it to Owners Abroad Group plc (OAG). In the present proceedings leave was sought to add OAG as respondents to the petition. The relief sought was inter alia that OAG should with the other respondents purchase the shares of the petitioner. The question before the court was twofold: (a) whether the court had jurisdiction to join OAG in that OAG was not a member of the company and was not alleged to be a wrongdoer (*the jurisdiction point*), and (b) if the court did have such jurisdiction, whether this was an appropriate case in which it should exercise it to join Newco (*the discretion point*).

**Held** – As regards the *jurisdiction point*, the court had jurisdiction and as regards the *discretion point*, this was not an appropriate case in which the jurisdiction should be exercised.

(1) The language of ss 459 and 461 conferred the widest jurisdiction on the court as regards parties against whom relief could be sought. In an appropriate case, relief can be sought against a non-member, or against a person not involved in the conduct complained of (at least if that person could be affected by the relief sought), and in appropriate cases a person could be made a respondent even though no relief was sought against that person. However, the court could strike out a petition, even against a person who had been involved in the allegedly unfairly prejudicial conduct, if no remedy was sought against that person. There may be circumstances where the prospects of an order being made were perfectly hopeless and hence where it would be an abusive use of the process to require the respondent to remain as such or to be added as such.

(2) On the facts, no court would make the buy-out order sought against OAG and accordingly the court would not exercise its discretion to join OAG as a respondent.

### Cases referred to in judgment

*Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] 2 All ER 409,

[1986] 1 AC 965, [1986] 2 WLR 1051, HL.

*Baltic Real Estate Ltd, Re, (No 1)* [1993] BCLC 498.

[1994] 2 BCLC 420

e 19-34054-sgj11 Doc 1057-2 Filed 09/11/20 Entered 09/11/20 21:36:04 Page

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Ch D                      Re Little Olympian Each-Ways Ltd (Lindsay J)                      421

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*BSB Holdings Ltd, Re* [1993] BCLC 246.

- a *Bovey Hotel Ventures Ltd, Re* (31 July 1981, unreported), Slade J.  
*Company, Re a (No 005287 of 1985)* [1986] BCLC 68.  
*Company, Re a (No 007281 of 1986)* [1987] BCLC 593.  
*Noble (RA) & Sons (Clothing) Ltd, Re* [1983] BCLC 273.

**Application**

- b The petitioner, Supreme Travel Ltd, who had, on 30 August 1991, presented a petition under s 459 of the Companies Act 1985 in the matter of Little Olympian Each-Ways Ltd (the company) against various respondents, applied to the court to amend its petition to add, as eighth respondent, Owners Abroad Group plc (OAG), the amended petition claiming, inter alia, by way of relief, an order that the respondents, including OAG, should buy the petitioners' preference shares in the company on described bases. OAG had never been a shareholder in, or a director, nor manager or person responsible for the conduct of the company whose affairs were said to have been conducted in a manner unfairly prejudicial to the interests of the petitioner, nor was it alleged to be a wrongdoer. The facts are set out in the judgment.
- c
- d *Robin Potts QC* and *David Mabb* (instructed by *Withers*) for the petitioner. *Richard Snowden* (instructed by *Taylor Joynson Garrett*) for the respondents. *Charles Aldous QC* and *Alastair Walton* (instructed by *Herbert Smith*) for OAG.

e *Cur adv vult*

5 May 1994. The following judgment was delivered.

- f LINDSAY J. I have before me an application which, amongst other issues, raises questions as to the boundaries of ss 459 and 461 of the Companies Act 1985. A petitioner under a s 459 petition seeks here to amend its petition to add a respondent and to include amongst the relief sought an order against that new respondent, Owners Abroad Group Plc (OAG). OAG has never been a shareholder in, nor a director or manager or person responsible for the conduct of, the company whose affairs are said to have been conducted in a manner unfairly prejudicial to the interest of the petitioner. Nor is OAG
- g alleged to be a wrongdoer. None the less, if the relief claimed were to be granted, OAG would become obliged, with others, to buy from the petitioner the petitioner's shares in that company. Does s 459 confer a jurisdiction so broad that such an order could be made against such a respondent? Even if it does, should leave for such joinder and amendment here be granted?
- h I shall first outline the position as it is before the amendment which is sought. On 30 August 1991, Supreme Travel Ltd, a company incorporated in Jersey (the petitioner) presented a petition to the Companies Court under s 459 of the Companies Act 1985 in the matter of Little Olympian Each-Ways Ltd (the company). The company was incorporated under the Companies Act 1948 and its registered office is in London. The petitioner describes itself
- i in the petition as holding 1,017,472 preference shares in the capital of the company and as having held the same for more than the necessary six months.

[1994] 2 BCLC 420

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLEE RECORD  
VOLUME 11**



**APPELLEE’S AMENDED SUPPLEMENTAL  
 DESIGNATION OF RECORD ON APPEAL**

Appellee Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its amended supplemental designation of the record in the appeal filed by The Dugaboy Investment Trust and Get Good Trust (together, the “Appellants”) from the *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788] entered by the United States Bankruptcy Court for the Northern District of Texas on January 21, 2021 in the above-captioned chapter 11 bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

**I. Supplemental Items Designated from the Docket in the Bankruptcy Case**

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellants:

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol. 10 002202	April 8, 2020	Proof of Claim No. 143	HarbourVest 2017 Global Fund L.P. Claim No. 143
002211	April 8, 2020	Proof of Claim No. 147	HarbourVest 2017 Global AIF L.P. Claim No. 147
002220	April 8, 2020	Proof of Claim No. 149	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149
002229	April 8, 2020	Proof of Claim No. 150	HarbourVest Dover Street IX Investment L.P. Claim No. 150
002238	April 8, 2020	Proof of Claim No. 153	HV International VIII Secondary L.P. Claim No. 153
002247	April 8, 2020	Proof of Claim No. 154	HarbourVest Skew Base AIF L.P. Claim No. 154

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol 10 002256	July 30, 2020	906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
002279 thru Vol. 12	September 11, 2020	1057	HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
Vol. 12 002896	October 18, 2020	1208	Declaration of Michael Pugatch
002900	October 18, 2020	1207	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan
			Highland CLO Funding Portfolio Management Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
			Highland CLO Funding Subscription and Transfer Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
Vol. 13 002919	November 24, 2020	1473	Liquidation Analysis
			All exhibits necessary for impeachment and/or rebuttal purposes

II. Docket Items from Case 18-30264-sgj11

003097	April 13, 2018	118	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264- sgj11, (Bankr. N.D. Tex. Apr. 13, 2018))
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Vol. 13

January 31, 2019

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Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan (*In re Acis Capital Mgmt.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019))

003150

Appellee reserves the right to designate additional items depending on the arguments made by Appellants on appeal.

*[Remainder of Page Intentionally Left Blank]*

Dated: February 25, 2021.

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The original petition was relatively short – some nine pages. It described the only shareholders of ordinary shares in the company as being Olympic Vacations Ltd (OVL) (51%) and a Mr George Michalias (49%) and said that the company and OVL were members of a group of companies known as the Olympic Holidays Group, of which the ultimate holding company was said to be Star Vacation Ltd (Star), a company incorporated in Cyprus. The directors of the company were described as being Mr Pylotis, Mr Michalias and Mr Christoforou, each of whom was a director of OVL. It is not necessary for me to set out, even in summary, all the matters complained of in the original petition but, in outline, one material complaint ran as follows:

(1) on 24 November 1990 2,448,000 preference shares in the company were transferred to a company referred to as Newco, which was owned by Star and Mr Christoforou;

(2) on 21 March 1991 at an extraordinary general meeting of the company it was purportedly approved that the business and goodwill of the company should be transferred to Newco in return for which Newco would take over the company's liabilities and would be obliged to pay the company £1;

(3) that resolution was implemented on 30 April 1991;

(4) the company was thereafter left as a shell. It ceased to trade;

(5) the consideration given by Newco was grossly inadequate;

(6) there were breaches of pre-emption provisions which should have operated in the petitioner's favour as a holder of existing preference shares and breaches, too, of provisions requiring notice to have been given to the petitioner of the extraordinary general meeting;

(7) those and other matters led to an allegation that the affairs of the company had been conducted in a manner unfairly prejudicial to the interests of the petitioner.

The petition was intended to be served on the company itself, on OVL, on the three individuals I have mentioned – Mr Michalias, Mr Pylotis and Mr Christoforou (referred to as the trio) and also on Olympic Holdings Ltd, the name assumed by Newco, but which I shall continue to call Newco.

In due course affidavits were sworn in support of and in opposition to the petition and there was a very substantial discovery. The story emerging from this mass of paper was, the petitioner began to see, a story going well beyond the bare bones of the original petition. For various reasons, counsel originally instructed by the petitioner could not continue with their case and a new team, Mr Potts QC and Mr Mabb were instructed in their place to consider the mass of new information.

In the result, on 1 March 1994 a summons was issued by the petitioner addressed to the six persons on whom the original petition had been served (whom I shall call together the original respondents), who appear before me by Mr Snowden. The summons asks, inter alia, that the petitioner should have leave to amend the petition by adding Star as a seventh respondent and OAG as eighth respondent. Leave is sought for a comprehensive amendment to the petition. The proposed amended petition is now a creature of some 94 pages in length. Again, I do not need to summarise all of it but the story now alleged (so far as material for immediate purposes) alleges far more complicated wrongdoings than the relatively simple sale of the company's assets to Newco for what was said to be the grossly inadequate consideration of £1 plus assumption by Newco of the company's liability as alleged in the original

petition. In broadest outline the most material allegations in the amended petition (as I shall call it for convenience, although leave to amend is not yet given and is resisted) are as follows:

a (i) the company of whom the trio were directors sold the business and goodwill of the company for a grossly inadequate consideration to Newco, a company of which the trio were directors, and the capital of which was owned by Star, a company in which the trio were shareholders;

b (ii) the company was thus reduced to a shell and the shares in it not held by the petitioner were next sold for £1 to Star;

(iii) Star then sold the shares in Newco (which by then represented the value of the erstwhile business and goodwill of the company and, says the petitioner, nothing else) to OAG for a variable price likely to reach £10m.

c The basic complaints in the original petition remain. The petitioner is left with a holding in a shell company whilst the trio and some others have shared a substantial jackpot no part of which has come to the petitioner. Leaving aside how far various heads of relief asked for need to be alternative to one another, the amended petition claims by way of relief, inter alia, that the respondents (that is to say including OAG) should buy the petitioner's preference shares in the company on described bases which I apprehend are intended to reflect the true value of the shares had there been no wrongdoing; that Newco, now a subsidiary of OAG, should account for certain benefits to the company as constructive trustee; that Newco should make certain payments to the company and that the transfer of assets from the company to Newco should be declared voidable.

e The first question I have to decide is whether, as Mr Potts and Mr Mabb argue for the petitioner, the court has *jurisdiction* to add OAG as the eighth respondent. It is common ground OAG is not a member of the company but it is, urges Mr Potts, a person against whom relief is properly sought in the amended petition. It is, he says, also a person involved in the misdeeds alleged in the amended petition and a person affected by the relief claimed against others in the amended petition in that the position of its wholly-owned subsidiary Newco would be radically affected were the relief there claimed against Newco, or even some of it, to be granted. If I have the jurisdiction to add OAG, then the question becomes whether I should, in the exercise of the discretion conferred on me by the rules as to amendment and as to the joinder of parties, exercise it to join OAG and to allow the amendment against OAG. Mr Aldous QC and Mr Walton for OAG argue that the court does not have the necessary jurisdiction and further, even if it had, that in point of discretion the joinder and amendment so far as concerns OAG should be refused.

h I shall first look at the question as to jurisdiction and, initially, shall do so without reference to the authorities that have been cited to me. The relevant sections are ss 459 and 461 of the 1985 Act. I shall not set out either in full. I go first to s 461 which begins by conferring on the court by sub-s (1) a power to give relief in very wide terms. If the court is satisfied that the petition under s 459 is well founded, then 'it may make such order as it thinks fit for giving relief in respect of the matters complained of.'

i The relief does not, for example, necessarily have to compensate for or prohibit the recurrence of the matters complained of. The only nexus required between relief and complaint is that the former has to be 'in respect of' the latter.

Then s 461(2) opens with the words 'Without prejudice to the generality of sub-s (1) the court's order may' and it goes on in paras (a) to (d) to give examples of relief within the wider generality which is not to be prejudiced. Mr Potts argues that the two sections, ss 459 and 461, read together are an example of a practice exemplified by the provisions considered in the well known case of *Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] 2 All ER 409, [1986] 1 AC 965 whereby Parliament confers an exceptionally wide jurisdiction and leaves it to the courts or to a rule-making body or to both to find for themselves boundaries, not to the jurisdiction proper, but, by way of the exercise of the discretion in individual cases, to the areas in which and the manner in which, in practice, the jurisdiction would be likely, save in exceptional circumstances, to lead to relief.

I do not think it profitable to determine how far *Aiden Shipping Co Ltd v Interbulk Ltd* is or is not a wholly acceptable analogy but I do see force in Mr Potts' submission which, in my view, is supported also by the legislative history of s 459 and its predecessors. As to that history, a precursor of s 459, s 210 of the Companies Act 1948, was reported on in 1960 by the Jenkins Committee as appearing not to have produced the results expected of it, and it was given in evidence to that committee that the section needed amendment if effective protection was to be given to minorities in the circumstances in which it had been intended that it should be (see the Jenkins Report 1960, para 200).

Section 210 was then superseded by s 75 of the Companies Act 1980, but s 75, which required that the prejudice should be suffered by 'some part of the members', inevitably led to doubts and discussion as to whether the section afforded relief in cases where the prejudice was suffered by the whole membership. There was thus, once again, the need to widen the statutory provision. Although the width of the jurisdiction conferred by ss 459 and 461 is, of course, a matter of the construction of the language Parliament has used, the earlier sequences of statutory provision, construction by the court, a dawning recognition of shortcomings later followed by a statutory extension is at least consistent with there having been engendered in the legislature by 1985 a sense that the thing to do was to give a very wide jurisdiction and to let the courts get on with it.

The broad provisions of the Companies (Unfair Prejudice Applications) Proceedings Rules 1986, SI 1986/2000 are examples of the same view. In relation to who is to be respondent, those rules provide that on the return date 'the court shall give such directions as it thinks appropriate with respect to . . . (a) service of the petition on any person' (see r 5) and for a day upon which 'unless the court otherwise directs, the petitioner and any respondent . . . shall attend before the registrar . . . for directions to be given in relation to the procedure on the petition.' (see r 3(3)).

The impression given both in the sections and in the rules is that the greatest possible flexibility was intended by the legislature to be given to the courts. Thus s 459 does not, for example, require that it is by a respondent or by the respondents to the petition that the company's affairs are being or have been conducted in the manner complained of. It does not require that the respondents to the petition should be limited to members of the company or to its directors or to those conducting its affairs and, of course, it is a familiar practice that the company itself should be a respondent (see r 4(1)).

I am unable to find in s 459 itself any language which points to who may be, who has to be or who cannot be respondents to a petition under its terms.

a Those are subjects which it does not attempt to address.

Mr Aldous and Mr Snowden argue that some restrictions in the jurisdiction have to be read in. For example, they say that there is no jurisdiction to require a person to be a respondent where no relief is claimed against him and where he is not affected by any relief which is sought. A distinction needs to be drawn, says Mr Aldous, between the conduct and position of those who are in control of the company or who are members, on the one hand, and, on the other, the position and conduct of third parties, 'outsiders', as he calls them, in respect of whom the company has no cause of action and whose involvement may be no more than that, innocent of any intent to prejudice anyone and innocent also of any foresight that anyone might be prejudiced, they are, as third parties, concerned in the activity complained of as being prejudicial. That some distinctions will in some cases need to be drawn is, I accept, likely enough, but I cannot find any warrant in the language of ss 459 and 461 for introducing them as matters of jurisdiction.

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Leaving aside what the authorities I next turn to require of me, I do not feel able to decline the joinder of OAG and to refuse the proposed amendment of the petition against OAG on the ground that the petition, if so amended, would be trespassing outside the statutory jurisdiction. It may be material to add that a decision to exclude as a matter of jurisdiction would have the result not only of excluding respondents, such as OAG, who wish not to be joined, but also of excluding those who, in a corresponding position, would wish to be joined as, or to continue as, respondents.

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I now turn to the authorities cited to find out what guidance I am given. First in time of the cases cited to me was *Re RA Noble & Sons (Clothing) Ltd* [1983] BCLC 273 per Nourse J. It was cited by Mr Aldous only so as to lead to the citation in it (at 290) from *Re Bovey Hotel Ventures Ltd* (31 July 1981, unreported) of a passage in which Slade J held, in relation to s 75 of the 1980 Act, that the test of unfairness was an objective one; it was not necessary for the petitioner to show that those who had de facto control of the company acted in the conscious knowledge that what they were doing or omitting to do was unfair to the petitioner. Mr Aldous argues that it would be remarkable if a person, a stranger to the company, could properly find himself a respondent to a s 459 petition without, as *Re Bovey Hotel Ventures Ltd* indicates, the least conscious knowledge that he was being, or was likely to be, unfair to anyone, but simply because he was involved in some transaction which was unfairly prejudicial to the petitioner. I see the force of that but, as I have said, I cannot find any words, either in or necessarily to be implied into ss 459 and 461, which would aid in excluding a respondent as a matter of jurisdiction in such a case. Whilst I would not quarrel with a line of *Re Bovey Hotel Ventures Ltd*, I do not see it as restrictive of the jurisdiction conferred by s 459.

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The next authority was *Re a company (No 005287 of 1985)* [1986] BCLC 68, a decision of Hoffmann J in a case where the erstwhile controlling shareholder of the company, H, sought to strike out a petition which was under s 459 and, alternatively, for the winding up of the company. H had, it was alleged, conducted the company in breach of his fiduciary duties and in a manner unfairly prejudicial to the petitioners. Negotiations began before

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a petition was presented but, when it was found that H had transferred his shares to an offshore company, the petitioners then issued their petition under s 459 requiring H to account for payments of company money made without authority. The petitioners found a little later that H had left this jurisdiction and had sold the company's assets for cash. The petitioners then sought to make amendments to the petition and to include a request for an order that H and the offshore company should jointly and severally buy the petitioners' shares. Unabashed, H argued that in respect of the original relief it was only the offshore company that should have been respondent (see at 70). There was no justification, he argued, for extending relief to relief against persons, the company itself apart, who had ceased to be members (see at 71), but the petitioner could, it was argued, proceed against H by derivative shareholders' action. Hoffmann J thought that would be inconvenient, and he went on to say (at 71):

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'I would be reluctant to come to the conclusion that this form of duplication was necessary unless it was clear that the jurisdiction under ss 459 and 461 did not permit the whole matter to be dealt with on the petition. It seems to me that although it is true that s 461(2) shows that the normal order under s 461 will be an order against the company or another member, there is no reason why the words of s 461(1) should not be given their full effect and allow the court to give relief in respect of a complaint that the company's affairs have been conducted in a manner unfairly prejudicial to the interests of members, even when this would involve giving relief against a respondent who is no longer a member. For that reason, I am not willing to strike out H as a party to the petition.'

f  
Turning to H's opposition to the buy-out relief sought to be added by amendment and in response to H's argument that no such order could be made against a non-member, Hoffmann J said (at 71):

g  
h  
i  
'Section 461(2)(d), which I have already read, provides for such an order being made against members of the company but says nothing about the order being made against a non-member. Counsel for the petitioners, on the other hand, says that there are cases in which a person may be, for the purposes of giving relief, identified with a company which he controls and that it may be possible to obtain an order to that effect against H either under the broad jurisdiction of s 461(1) or by identifying H with the Gibraltar company [the offshore company I have mentioned]. It is not necessary for me to express any view on whether that can be done because I do not think it would be right to strike out the paragraph seeking such relief unless I was satisfied that the possibility of obtaining it was perfectly hopeless. I do not feel in a position at the moment to say that and I do not think it would prejudice H very greatly if the paragraph seeking that relief were to remain in the petition, given that in the light of the conclusion to which I have already come he will remain as a respondent to the petition in respect of the relief sought under para 2.'

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a It is notable that, despite his reading ss 459 and 461 together (he speaks (at 71) of 'the jurisdiction under ss 459 and 461') Hoffmann J sees no reason why the words of s 461(1) should not be given their full effect. Mr Aldous can point to the judge's more cautious approach to the buy-out jurisdiction but, even there, where he is saying 'I do not think it would be right to strike out . . . relief unless I was satisfied that the possibility of obtaining it was perfectly hopeless' his words look to me more the language of a judge who

b considered that there might well be jurisdiction (but one which it was urged was hopeless in point of its exercise) rather than that of a judge who is indicating his concluded views on whether or not there was a jurisdiction.

Mr Aldous points to the facts that H had been a controller of the company, a person responsible for the unfair conduct alleged, had been a member of the company, was personally accused of wrongdoing and could have been the

c object of a derivative action. I can see that *Re a company (No 005287 of 1985)* thus falls well short of deciding the case before me but I nonetheless attach some importance to the fact that Hoffmann J, upon his reading the two sections together, had seen no reason why the words of s 461(1) should not be given their full effect and accordingly had permitted the addition of a claim for a buy-out against a non-member.

d Next in time was *Re a company (No 007281 of 1986)* [1987] BCLC 593, a decision of Vinelott J. An investment company, 3i, which had provided working capital, held cumulative convertible participating preferred ordinary shares and cumulative redeemable preference shares in the company. The company's articles had elaborate provisions as to pre-emption rights. One of

e the directors was voted off the board. He found the other directors had set up a rival group of companies and had stripped the company of its assets, so he presented a petition under s 459. 3i was a respondent to the petition notwithstanding that it was not said that it had taken any part in or had been concerned in any way in the unfairly prejudicial conduct. No relief was sought against it. The primary relief sought was the purchase of the petitioner's

f shares by the three other directors but the petition asked, alternatively, for such other relief under s 461 as the court should think just. Vinelott J held that as 3i was a member of the company and was affected by the relief sought in that an order for a buy-out by the three directors of the petitioner's shares would override 3i's pre-emption rights, it was right that it should remain a

g respondent. He said ([1987] BCLC 593 at 598-599):

h 'A petition under s 459 is not analogous to litigation in which the issues raised affect only those against whom allegations are made by the plaintiff. A closer analogy is an administration action, where all beneficiaries having an interest in the relief sought should be made parties or represented. The practice that has so far been followed in the Companies Court is to require that all members of the company whose interests would have been affected by the misconduct alleged or who would be affected by an order made by the court under the very wide powers conferred by s 461 are to be made respondents to a petition or served with it. In practice, this means that in the case of a small, private

i company every member ought to be joined.'

Then, a little later he said ([1987] BCLC 593 at 599):

[1994] 2 BCLC 420

'In my judgment, 3i is clearly affected by the relief sought in the petition which, amongst other things, would override its rights under the pre-emption provisions. 3i also has voting control over the company in general meeting, and would be directly concerned if any order were made regulating the future conduct of the company pending the acquisition of the petitioner's shares. In these circumstances I think that 3i was properly made a respondent and should not now be struck out.'

Mr Aldous is, of course, able to stress that there 3i was, firstly, a member of the company and, secondly, a person affected by the relief claimed. But the case does show that it is not a necessary condition of joinder that a respondent should have been involved in any way as a wrongdoer in the events complained of.

In *Re BSB Holdings Ltd* [1993] BCLC 246 a similar problem came again before Vinelott J. The petitioner complained that the business of 'Holdings', the company in which it held shares, had been hived down to B Sky B which was at first a wholly owned subsidiary of Holdings but which later then passed into the control and ownership of the respondents in a way which was alleged unfairly to prejudice the petitioner. The petitioner sought an order that the respondents, or some of them, should transfer their shares in B Sky B back to Holdings or direct to the petitioner. No relief was sought against B Sky B itself, which was not a member of Holdings, and it applied that the petition should be struck out as against it.

The 3i case was cited to Vinelott J who took the view that, despite B Sky B not being a member of Holdings, it was clearly affected by the relief sought in that the order sought was that there should be a transfer and registration of its shares. The body of its corporators would change (see [1993] BCLC 246 at 253). But the judge added that its joinder could be justified on another ground, namely that it was directly concerned in the transactions of which complaint was made (see [1993] BCLC 246 at 254). It was a party, and a necessary party, to one of the agreements which was complained of. Vinelott J held that B Sky B was properly joined because it was an actor and played a central role in the transactions of which complaint was made (see [1993] BCLC 246 at 255).

Finally on the authorities, in *Re Baltic Real Estate Ltd (No 1)* [1993] BCLC 498 Knox J had before him an application in relation to a s 459 petition of a majority (51%) shareholder in a company. The second and third respondents to the petition were the former directors of that company who, the petitioner alleged, had committed breaches of fiduciary duty as directors. The second and third respondents were also its former shareholders as to 49% but had held their shares only briefly before transferring them to the fourth and fifth respondents (persons out of the jurisdiction, not served by the time of the hearing before Knox J and in respect of whom leave to serve out was needed). There were allegations that the fourth and fifth respondents, the registered holders of the 49%, were either controlled by the second and third respondents or held the 49% of the shares in the company in trust for the second and third respondents. The petitioner sought as his principal relief an order that the second and third respondents, alternatively the fourth and fifth respondents, should be ordered to sell or procure the sale of the 49% of the shares in the

company registered in the name of the fourth and fifth respondents to the petitioner at such price as the court should think fit.

- a* It was argued on behalf of the second and third respondents that as they were not present members they were not proper respondents and, as they were not parties to the relief sought either, the petition should be struck out as against them as not disclosing any reasonable cause of action and as being an abuse of process. That argument succeeded not, as I see it, because the second and third respondents were not members of the company, but because, as Knox J put it (at 502):

‘It seems to me that the proper parties to this relief are the shareholders in whom the shares in question are vested and with whom the court, in dealing with the rights of members, is primarily concerned.’

- c* There is no discussion in the judgment of the jurisdiction under s 459. Knox J plainly took the view that the fact (as alleged) that the fourth and fifth respondents were but trustees for the second and third respondents or were controlled by the second and third respondents was not, on its own, enough to justify the second and third respondents, being necessary parties. But there were some other arguments which Knox J indicated had failed to persuade him that the second and third respondents should continue to be respondents. Firstly, that they were the persons against whom the breach of duty was alleged and, secondly, that, under the rubric of ‘such other relief as the court should think fit’, the relief eventually granted by the court might be other than the sale of shares to the petitioner, which was the principal relief sought, and might more involve the second and third respondents than would that sale.

- d* That concludes a look at the authorities cited to me. Whilst I would be very willing to following a pattern that emerged from the earlier cases at first instance, I do not regard any clear pattern as having yet emerged, and I have certainly found nothing conclusive that suggests that the words of ss 459 and 461 should not be given their full effect. From the existing authorities cited it can be seen that in an appropriate case relief can be sought against a non-member other than the company itself, or against a person not involved in the acts complained of (at least if that person would be affected by the relief sought) and that a person against whom no relief is in terms sought cannot necessarily escape being a respondent, whilst, on other facts, it can be right to strike out a petition, even as against those whose acts are complained of, so long as no relief is sought against such a person.

- e* This summary suggests to me that in point of jurisdiction the wide language of ss 459 and 461 is not to be cut down. None the less, cases may arise where, notwithstanding that the claim cannot be clearly said to be outside that wide jurisdiction, the likelihood of the court’s discretion being exercised so as to lead to relief against, or relief having any material effect upon, a given respondent can be seen to be so remote that the case can fairly be described as ‘perfectly hopeless’, to use Hoffmann J’s phrase, and hence that it would be abusive to require that respondent to remain as such or to be added as such. Is this such a case?

- f* It is best first to look at the likelihood or otherwise of OAG being ordered, with the other respondents, to buy the petitioner’s shares – the only substantive relief sought against OAG in the amended petition. Prima facie, when a

litigant's case against a person is within the relevant jurisdiction he should be permitted, if he so chooses, to pursue his case against that person. Thus I framed the question at the end of the last paragraph in the way that I did, rather than by reference to RSC Ord 15, r 6, because, on the facts of this case, where no blame can be laid at the petitioner's door for not including OAG from the outset or for delay in applying to amend, it seems appropriate to look at the petitioner's position more as it would be on an application for a strike out by OAG than where the petitioner comes cap in hand, as it were, asking for leave to amend. However, it is also to be borne in mind that it is plainly abusive to press a person into hopeless litigation, litigation which cannot succeed. Quite apart from other vexation inherent in litigation, even a party who recovers an order for his costs against a solvent party on an indemnity basis may well be left substantially out of pocket at the end of a s 459 petition, a type of proceeding known neither for its speed nor its economy.

At this point in the argument, Mr Aldous redeploys on the discretionary side of things many of the arguments used unsuccessfully (as I have held) on the jurisdiction. OAG is not and never has been a member of the company. OAG is not said to have controlled the company or its board or even to have had a nominee on the company's board. True it is that its wholly owned subsidiary, Newco, is a respondent but, as did Knox J in *Re Baltic Real Estate Ltd (No 1)*, I see it as no reason, sufficient in itself, for the joinder of a person as a further party that an existing respondent is owned by or controlled by that person. Newco can respond for itself and were there a principle that shareholders in or directors or controllers of a corporate respondent could, without more, be required to be parties in addition to that corporate respondent itself, then s 459 would indeed be oppressive.

I thus see neither OAG's ownership of Newco nor the potential effect of the petition on Newco as being reason for OAG's joinder. It is said that beyond the buy-out required of it, OAG is affected by the relief sought in that its wholly owned subsidiary Newco may find itself holding its assets on constructive trust for, and may be liable to account to, others, but, again, the simple answer is, as I see it, that Newco, already a party, is able fully to deal with that, and if it sufficed, without more, to require a company to be respondent that the assets of a company in which it held shares might be affected by the relief sought that would, again, be a needlessly oppressive burden on corporations.

Mr Aldous emphasises that no substantive relief is sought against OAG in the petition save that it is sought that with six others (other than the company itself, and on the basis that Star is added) it should be a joint purchaser of the petitioner's shares in the company. There is no suggestion in evidence that the addition of OAG is necessary if there is to be a purchaser able to pay the price required or that the other respondents are of straw. There is nothing to suggest that a buy-out without OAG as a joint or several buyer is impracticable or impossible or that such an order against the original respondents would be worthless or nugatory. As the original respondents include persons who are alleged to be the wrongdoers in relation to the acts complained of and who are said to have profited in substantial amounts from those acts, then if they, if ordered to do so, would be able to buy – and it is nowhere said they would not be so able – Mr Aldous urges that no court is likely to find it necessary to join with them as a co-purchaser a party, OAG,

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a against whom nothing wrong is urged. It is a strong course, he says, to require a party at what is likely to be considerable expense and against its will to become a shareholder in a company, a shell company, and to do so when the party is not said to have done anything wrong and where there are others who are wrongdoers and who are available as alternative purchasers. So to order, Mr Aldous urges, would be remarkable, unprecedented and unnecessary. He goes on to show that the petition contains no allegation of any wrong done by OAG to the company; it is nowhere said the company has a cause of action against OAG.

b Against this Mr Potts took me to the provisions of the amended petition. As early as December 1990, well before the sale of the company's assets to Newco, OAG and its solicitors were involved in discussions for the grant to OAG of an option to acquire the issued capital of Newco. Mr Potts says that c from the outset a number of related steps were planned to lead to the conclusion that was ultimately arrived at and of which the petitioner complains and that OAG was party to the planning from that outset. He says that OAG was involved in proposals as to a loan to the company which was made with the intent of being lent-on by the company to discharge an individual's debts and that OAG was concerned in carrying through such a d proposal. OAG, the amended petition alleges, was party to an option agreement of 21 December 1990 whereunder it would be able to acquire the capital of Newco for a price strangely expressed as –

e 'subject to a maximum sum of £8 million or as might otherwise be agreed between Star and OAG with a maximum of £10 million and an overall minimum of £1 million.'

f It was, says Mr Potts and as the amended petition alleges, the intention of OAG throughout in relation to the option agreement that the company would hive up its business and goodwill to Newco in return for an indemnity and for nothing else of any real worth and that only after that would the option be exercised by OAG. OAG knew and approved the price paid on the hive up to Newco and was conscious of at least the possibility of that transaction being at a substantial undervalue, as it demonstrated by way of its solicitors pressing for and obtaining an undertaking that no steps would be taken for at least two years to put the company into voluntary winding up. The g acquisition of Newco's shares by OAG was an acquisition improperly given financial assistance by the company in breach of s 151 of the 1985 Act, the company at the time being a subsidiary of Newco. In these ways, says Mr Potts, as para 107 of the amended petition states, OAG 'was directly concerned in transactions of which complaint is made herein'. It is in this h context that Mr Potts says that the petitioner's complaint is (and I use his words) that there is here a 'con' and that OAG is 'in it up to its neck'. However, I think I need to be a little more analytical than that. Mr Potts's strong language is surely that of, at worst, conspiracy or, at least, of OAG having knowledge – actual, imputed or constructive knowledge – that its activities or omissions were or might represent 'unfair prejudice to the petitioner or that OAG committed some other material wrongs. But i no such an allegation is anywhere to be found in the petition. Such wrongs, if there were any, under s 151 are not said to be wrongs by OAG. It is

[1994] 2 BCLC 420

nowhere said that what OAG acquired was acquired for less than full market consideration, and the matters pleaded suggest, if anything, that it has paid or will pay a little over the odds for what it received. Mr Potts gave me a list of the paragraphs in the amended petition said to show OAG's involvement in the matters complained of, and para 107 of the amended petition gives a similar but not identical list. I hope I have not overlooked anything material in the 94 pages of the body of the petition but I have not found any reference to anything done or omitted by OAG being alleged to have been wrongful or unlawful or in breach of some duty or obligation upon OAG. Whilst it is undoubtedly the case that OAG was, in a sense, concerned in transactions of which complaint is made, I cannot in the circumstances alleged in the amended petition see that concern as amounting to anything material. Both Mr Aldous and Mr Snowden made the valid point that if a person against whom no wrong doing is alleged, whose involvement, such as it is, has been paid for at 100p in the pound, and who is not a member, can be required against his will to be a respondent who may be ordered to buy shares, then no trading company could feel safe that it would not be expensively drawn into the internal disputes of its customers and of others with whom it might deal.

Mr Aldous next argues that all the attacks made on the hive up agreement are attacks not on anything done or omitted by OAG but by the trio and that the company and the petitioner (by way of derivative action) have full causes of action in respect thereof. The specially adjusted price which the petitioner claims should be paid for the petitioner's shares is, in respect of any suggested adjustment, to be adjusted by reason of complaints against the trio, not against OAG. To require OAG to pay some special price for the petitioner's shares not only involves adjusting the price to be paid by OAG by reference to someone else's wrongs but, as OAG has paid full value already for what it had received, would involve it in paying more than once over for the very same assets, a step which, however possible against a wrongdoer, would be unprecedented against a party not said to be in breach of any duty or obligation whatsoever.

None of these points put by OAG and by the original respondents is devoid of weight. I do not need to ascribe to each a separate force, but I do say that together their weight is such that, in my judgment, it can fairly be said that if the proposed amendments were allowed the petitioner would be quite unable on the amended petition to obtain the only relief, the buy-out, which it seeks against OAG.

Although the court *could*, if it chose, make a buy-out order against OAG of the kind which the petitioner seeks, it is on the case put in the amended petition, even if wholly true, plain and obvious, in my judgment, that no court *would* make such an order. Had OAG been a respondent from the start it could, in my view, have successfully moved to have the buy-out provisions and its role as a respondent struck out. It not yet being a respondent, it would be an abuse of process were it to be required, against its will, to be a respondent obliged to resist relief which would in practice never be granted.

Once that has emerged, so far as concerns the buy-out relief, the rest of the matter is readily determinable by reference to RSC Ord 15, r 6, which is made to apply by r 2(2) of the 1986 Rules. So far as material, Ord 15, r 6 provides at para (2) that the court may:

a                      ‘(b) order any of the following persons to be added as a party, namely  
 – (i) any person who ought to have been joined as a party or whose  
 presence before the Court is necessary to ensure that all matters in  
 dispute in the cause or matter may be effectually or completely determined  
 and adjudicated upon, or (ii) any person between whom and any party  
 to the cause or matter there may exist a question or issue arising out of  
 or relating to or connected with any relief or remedy claimed in the cause  
 b                      or matter which in the opinion of the Court it would be just and  
 convenient to determine as between him and that party as well as  
 between the parties to the cause or matter.’

c                      Once it is recognised that no buy-out relief will be ordered against it,  
 OAG’s presence is not necessary for the purpose specified in (i), nor is there  
 any question or issue between OAG and the petitioner such that it would be  
 just and convenient to hear that matter alongside the petition. Given, as I  
 have already indicated, that OAG’s ownership or control of Newco is, in my  
 view, no reason to require the joinder of OAG, I see no reason either why  
 OAG is a person who ‘ought to have been joined’ within (i). Once the  
 buy-out relief falls away as a possibility, Ord r 5, r 6 requires, in my judgment,  
 d                      a conclusion that OAG should not be joined as a respondent at all, and I so  
 rule.

e                      However, the summons before me raises questions other than the one that  
 I have so far dealt with and concerns respondents other than OAG. Subject  
 to my first being addressed on the costs so far and any other questions  
 involving OAG, I shall, once OAG has withdrawn, go on to hear the  
 remaining issues on this summons and on the summons as to security for costs  
 later in the day.

[His Lordship then heard argument on costs]

f                      LINDSAY J. So far as concerns the costs of OAG, I am concerned only with  
 their costs of 28 March and of the longer later two day hearing. The costs  
 of OAG of and incidental to the summons in relation to those two hearings  
 should be paid by the petitioner, to be taxed and paid forthwith.

g                      So far as concerns the costs of the original respondents other than the  
 company which, as it transpires, has taken no part, it seems to me that their  
 costs of three occasions are in issue: those before Mr Registrar Buckley on  
 22 March, those before me on 28 March, and the later fuller hearing of two  
 days or so. The argument has, all along, even on the part of the original  
 respondents, principally concerned the original respondent’s wish that OAG  
 h                      should not be required to be a respondent and it seems to me that the original  
 respondents were entitled to take that view, just as much as OAG was entitled  
 to take that view and, moreover, the original respondents have in that respect  
 succeeded. Mr Potts argues that they would have been before the court in any  
 event, even if OAG’s addition had not been sought, but it seems to me that  
 the battle would have been then a very much simpler one and might indeed  
 i                      not have taken place.

I think the appropriate order for the costs of the original respondents other  
 than the company is that those costs should be taxed on a standard basis (not

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forthwith) and that they should be required to be paid in any event by the petitioners to the original respondents other than the company.

a

*Order that OAG should not be joined as a respondent.*

Jacqueline Metcalfe Barrister.

**EXHIBIT H**

CAUSE NO. DC-17-15244

JOSHUA N. TERRY,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
ACIS CAPITAL MANAGEMENT, L.P. and	§	
ACIS CAPITAL MANAGEMENT GP, LLC,	§	
	§	
Defendants.	§	44 <sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF’S APPLICATION  
FOR TEMPORARY RESTRAINING ORDER**

Plaintiff Joshua N. Terry (“Mr. Terry”) files this Application for Temporary Restraining Order against Defendants Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP”) (collectively “Acis”), and shows the Court as follows:

**SUMMARY OF APPLICATION**

Acis is in the midst of an audacious scheme to transfer *all* of its assets to Cayman affiliates to avoid satisfaction of Mr. Terry’s judgment. Acis fought hard to avoid post-judgment discovery because it had something big and bad to hide. Starting shortly after the \$8 million arbitration award was entered against it, Acis has **fraudulently transferred assets in excess of \$16.6 million** to several affiliated entities in the Cayman Islands, including:

- A \$10 million promissory note from an affiliate, Highland Capital Management, L.P. (“Highland”), to a Cayman affiliate (14 days after the Final Award);
- An interest in several entities worth in excess of \$6.6 million (the day after the Court entered the Judgment).

Based on documents produced two days ago by Acis pursuant to Court order, it is clear that Acis is poised to fraudulently transfer its most significant assets: management contracts worth well in excess of \$30 million, again to another Cayman affiliate. If that transfer occurs, Acis will

have few, if any, assets. Mr. Terry requests the Court enter a temporary restraining order restraining Acis from taking any further action to transfer the management contracts, or any of Acis' other assets.

#### RELEVANT FACTS

1. From September 6-15, 2017, an arbitration panel consisting of Hon. Harlan Martin (former), Hon. Glen M. Ashworth (Ret.), and Hon. Mark Whittington (Ret.) (the "Arbitration Panel") held a final hearing in Dallas County.

2. On October 20, 2017, the Arbitration Panel issued its Final Award in the Arbitration (the "Final Award") against Acis.

3. On October 24, 2017 (4 days after the Panel issued the Final Award), an employee of Highland and representative of Acis, Frank Waterhouse, executed an agreement for Acis which reflects a sale of Acis' interest in its risk retention vehicle, Acis Loan Funding, Ltd. ("Acis Loan Funding"). A true and correct copy of that agreement is attached hereto as **Exhibit 1**.

4. On October 27, 2017 (7 days after the Panel issued the Final Award), James Dondero signed an agreement transferring management of Acis Loan Funding from Acis to Highland HCF Advisor Ltd., a Cayman entity ("Highland Cayman 1") for *no consideration*. That transfer deprived Acis of the value to which it was entitled. A true and correct copy of that agreement is attached hereto as **Exhibit 2**. When Mr. Terry was a partner in Acis, Acis was the portfolio manager of Acis Loan Funding. That contractual arrangement between Acis and Acis Loan Funding was a valuable asset of Acis, as was Acis' ownership interest in Acis Loan Funding.

5. On October 31, 2017, counsel for Acis, Jamie Welton, called Rogge Dunn on the telephone. *See* Declaration of Rogge Dunn attached hereto as **Exhibit 3**. In that call, Mr. Welton stated that Acis is "judgment proof."

6. On the same day, October 31, 2017 (11 days after the Panel issued the Final Award), Dondero caused a filing in the Registry of the island nation of Guernsey (one of the Channel

Islands in the English Channel). In that filing, Acis Loan Funding was renamed “Highland CLO Funding, Ltd.”

7. On November 3, 2017, Acis, Highland, and Highland CLO Management Ltd., another Cayman entity (“Highland Cayman 2”), entered into an Agreement for Assignment and Transfer of Promissory Note (the “Note Transfer”), a true and correct copy of which is attached hereto as **Exhibit 4**. The Note Transfer affected a \$10 million promissory note by Highland in favor of Acis, a true and correct copy of which is attached hereto as **Exhibit 5** (the “Highland Note”). Among other things, the Note Transfer transferred the Highland Note, for *no consideration*, from Acis to Highland Cayman 2.

8. Significantly, the Note Transfer also purports to initiate the transfer of management contracts to Highland Cayman 2 for the CLOs listed on Schedule A to a prior agreement, a true and correct copy of which is attached as **Exhibit 6** (the “Management Contracts”). Acis is to receive *no* consideration for transferring its most significant assets, the Management Contracts.

9. On November 6, 2017, Terry filed this action to confirm the Final Award.

10. When Terry was a partner in Acis a year and a half ago, Acis had assets in excess of \$40 million, and *no* liabilities or liens against its property.

11. On November 22, 2017, Mr. Terry filed his Motion for Expedited Discovery.

12. On December 18, 2017, the Court entered its (i) Order Confirming Arbitration Award, (ii) Final Judgment, and (iii) Order Granting Expedited Discovery.

13. On December 19, 2017, Acis transferred \$6.6 million of additional assets to Highland CLO Holdings, Ltd., another Cayman entity (“Highland Cayman 3”), purportedly in exchange for forgiveness of a receivable. A true and correct copy of that agreement is attached hereto as **Exhibit 7**.

14. Also on December 19, 2017, the partners of Acis transferred their partnership interest to yet another Cayman entity, Neutra, Ltd. (“Highland Cayman 4”). A true and correct copy of that agreement is attached hereto as **Exhibit 8**.

15. On January 22, 2018, Acis produced documents and answered discovery that revealed much of the foregoing.

### ARGUMENT & AUTHORITY

Post-judgment injunctive relief is provided for in the Texas Civil Practices and Remedies Code and the Texas Rules of Appellate Procedure. TEX. CIV. PRAC. & REM. CODE § 52.006(e); TEX. R. APP. P. 24.2(d).

The standard for post-judgment injunctive relief is simple: a determination of “whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment.” *Emeritus Corp. v. Ofczarzak*, 198 S.W.3d 222, 227 (Tex. App.—San Antonio 2006, no pet.); *Sargeant v. Al Saleh*, 512 S.W.3d 399, 409 (Tex. App.—Corpus Christi 2016, no pet.) (“In the post-judgment context, the question is only whether the judgment debtor is likely to dissipate or transfer its assets to avoid satisfaction of the judgment.”) (internal quotations omitted). “Evidence of the actual dissipation or transfer of assets is *not* necessary to meet this standard.” *Sargeant*, 512 S.W.3d at 409 (emphasis added); *Miga v. Jensen*, 02-11-00074-CV, 2012 WL 745329, at \*11 (Tex. App.—Fort Worth Mar. 8, 2012, no pet.).

Attached as **Exhibit 9** is the Declaration of Joshua N. Terry, which details the following, among other things:

- Mr. Terry ran Acis’ day-to-day operations from 2011 until he was wrongfully terminated in June 2016;
- Mr. Terry is well-versed in the CLO industry, where he worked since 2005. Mr. Terry has earned the right to use the Chartered Financial Analyst designation. From my experience, education, and training, I became familiar with the common and legitimate business practices of CLO managers in the industry, as well as the value of CLO management contracts.

- In 2015, Mr. Terry valued Acis in excess of \$70 million, a conclusion that was accepted by David Klos, a Highland employee;
- On February 28, 2012, Highland sold four European CLO management contracts to The Carlyle Group for \$43.6 million in an arms-length transaction. Those four CLO management contracts are *less* valuable than the five Management Contracts Acis owns and which it now seeks to transfer for *no* consideration;
- The Management Contracts are the most substantial asset of Acis and are valued in excess of \$30 million;
- There is no legitimate business purpose for Acis to transfer the Management Contracts for no consideration;
- There is no legitimate business purpose for Acis to transfer the Highland Note for no consideration;
- It is not in the normal course of Acis' business to transfer all of its Management Contracts for no consideration, or to transfer the Highland Note for no consideration;
- If Acis transfers the Management Contracts, Acis will not have assets adequate to satisfy the Judgment.<sup>1</sup>

The standard for post-judgment injunctive relief is not only met in this case, but is far exceeded. Indeed, there is direct and compelling evidence that Acis *actually* transferred and dissipated assets, and intends to transfer more. Consequently, Mr. Terry clearly met his burden to show transfers or dissipation is “likely.” The Court should enter a temporary restraining order pending a hearing on a temporary injunction.

### CONCLUSION

Counsel for Acis represented to the Court and to counsel for Mr. Terry that Acis had not, and was not, transferring assets. The documents Acis produced two days ago—which they fought so hard to withhold—tell a very different story. This Court has the “inherent power to enforce its judgments.” *Harleaux v. Harleaux*, 154 S.W.3d 925, 928 (Tex. App.—Dallas 2005, no pet.). One

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<sup>1</sup> If and when Acis attempts to supersede the Judgment, Terry will request the Court include all of the fraudulently-transferred assets in any calculation of Acis' net worth.

means by which a Court can enforce its judgment is through injunctive relief, and injunctive relief is certainly appropriate under the circumstances. Mr. Terry requests the Court enter a temporary restraining order prohibiting Acis from taking any further action to transfer the Management Contracts and any other assets, set a hearing on a preliminary injunction, and for such other relief to which Mr. Terry is entitled.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFF  
JOSHUA N. TERRY**

L.R. 2.02 CERTIFICATION

I hereby certify that at or near the time I file this Application, I am notifying Defendants via ECF that Mr. Terry intends to present his Application for Temporary Restraining Order and Proposed Order at least 2 hours before they are to be presented to the Court. I also certify that to the best of my knowledge, this case is not subject to transfer under Local Rule 1.06.



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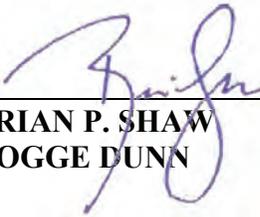
BRIAN P. SHAW

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing instrument was served on all counsel of record on the 24th day of January, 2018 as follows:

Gary Cruciani  
Michael P. Fritz  
Nicholas Mathews  
Carson D. Young  
McKool Smith  
300 Crescent Court  
Suite 1500  
Dallas, Texas 75201

- VIA ECF**
- VIA OVERNIGHT**
- VIA REGULAR MAIL**
- VIA HAND DELIVERY**
- VIA FAX:**
- VIA EMAIL:**

  
\_\_\_\_\_  
**BRIAN P. SHAW**  
**ROGGE DUNN**



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**Acis Loan Funding, Ltd. (the Company)**

**Registration number 60120**

**Written resolutions of the shareholders of the Company passed in accordance with section 175(2)(b) of the Companies (Guernsey) Law, 2008 (the Law)**

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**PLEASE READ THE NOTES AT THE END OF THIS DOCUMENT BEFORE SIGNING YOUR APPROVAL OF THE RESOLUTIONS SET OUT BELOW.**

Pursuant to section 182 of the Law, the directors of the Company propose that the resolutions set out below be passed as **special resolutions** of the Company and, accordingly, we resolve that:

1. **THAT**, in accordance with section 314(2) of the Companies (Guernsey) Law, 2008, as amended, the Company be and is hereby specifically empowered, authorised and directed to acquire 966,679 ordinary shares of no par value in the capital of the Company for an aggregate sum of USD 991,180.13, pursuant to the terms of the contract (a copy of which is attached to this resolution) (the **Contract**) to be entered into between the Company and Acis Capital management, L.P. acting by its general partner Acis Capital Management GP, LLC following the passing of this special resolution, the form of which Contract be and is hereby approved. The authority conferred by this special resolution shall expire on 30 October 2017.

The following definitions apply in, and form part of, the above resolutions.

**Circulation Date** means the date on which copies of these written resolutions are sent to shareholders (or, if copies are sent to shareholders on different days, the first of those days).

We are the shareholders of the Company on the Circulation Date.

**Signatures**



.....  
Grant Scott, Director, for and on behalf of  
**CLO HoldCo, Ltd.**

.....  
Frank Waterhouse, Treasurer, for and on behalf of  
**Acis Capital Management, L.P.**  
acting by its general partner,  
Acis Capital Management GP, LLC

Shares voted in favour: ALL

Shares voted in favour: ALL

Date: 24 October 2017

Date: .....

Location: Raleigh, NC

Location: .....

We are the shareholders of the Company on the Circulation Date.

**Signatures**



.....  
Grant Scott, Director, for and on behalf of  
**CLO HoldCo, Ltd.**

.....  
Frank Waterhouse, Treasurer, for and on behalf of  
**Acis Capital Management, L.P.**  
acting by its general partner,  
Acis Capital Management GP, LLC

Shares voted in favour: ALL

Shares voted in favour: ALL

Date: .....

Date: 24 October 2017

Location: .....

Location: Dallas, TX

**Notes to the written resolutions**

1. If you agree to the above resolutions, please signify your agreement by signing and dating this document where indicated above, indicating either the number of shares that you vote in favour of the above resolutions or that you vote all shares in favour of the above resolutions, and returning it to the Company within 28 days from the Circulation Date, as follows:
  - (a) by delivering it by hand or by posting it to First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ marked for the attention of Mr Timothy Wilson; and
  - (b) by sending it as an attachment to an e-mail at [tim.wilson@ais.statestreet.com](mailto:tim.wilson@ais.statestreet.com).A shareholder's agreement to a written resolution, once signified, may not be revoked.
2. If you do not agree to the above resolutions you do not need to do anything.
3. A written resolution is passed when the requisite majority of eligible shareholders have signified their agreement to it and will lapse if it is not passed by the end of the 28 day period from and including the Circulation Date.
4. In the case of joint holders of shares, only the vote of the holder whose name appears first in the register of members will be counted by the Company.
5. These written resolutions may be signed in counterpart.



PORTFOLIO MANAGEMENT AGREEMENT

THIS PORTFOLIO MANAGEMENT AGREEMENT (this "*Agreement*"), dated to be effective from 27 October 2017 (the "*Effective Date*") is entered into by and between **Acis Loan Funding, Ltd.**, a closed-ended investment company limited by shares incorporated under the laws of Guernsey with registered number 60120, (the "*Company*") and **Highland HCF Advisor, Ltd.**, a company organized under the laws of the Cayman Islands (the "*Portfolio Manager*" or "*Highland*"). Acis Capital Management, L.P., a limited partnership organized under the laws of the State of Delaware (the "*Predecessor Portfolio Manager*"), joins in the execution and delivery of this Agreement solely for the purpose of consenting and agreeing to Section 1 hereof.

RECITALS

WHEREAS, the Company and the Predecessor Portfolio Manager entered into that certain Portfolio Management Agreement, dated to be effective from December 22, 2016 (the "*Predecessor Portfolio Management Agreement*"); and

WHEREAS, the Company desires to supersede and replace the Predecessor Portfolio Management Agreement in its entirety with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Termination of the Portfolio Services Agreement. Effective as of the Effective Date, (x) the Predecessor Portfolio Management Agreement is hereby cancelled and terminated in its entirety and shall have no further force or effect; (y) each party thereto releases the other party from all claims, suits or causes of action arising out of or relating to the Predecessor Portfolio Management Agreement and (z) each party hereby ratifies all prior transactions effected in accordance with the Predecessor Portfolio Management Agreement.

2. Appointment of the Portfolio Manager. The Portfolio Manager shall act as the investment manager to the Company and shall manage the investment and reinvestment of the

cash, Financial Instruments (as defined in Section 5 below) and other properties comprising the assets and liabilities of the Company, in each case, subject to and in accordance with the investment policy of the Company (the "*Investment Policy*").

3. Additional Portfolio Services. The Portfolio Manager shall discuss with the directors of the Company (the "*Directors*") the investment objectives of the Company and assist the Directors to develop, monitor and update the Company's Investment Policy; shall identify and present information to the Directors with respect to potential investments available to the Company in furtherance of the Investment Policy, including (without limitation) credit and market research and analysis in connection with the origination or acquisition of such investments; shall provide such assistance with respect to the administration and valuation of the Company's investment portfolio as the Directors shall reasonably require; and shall make available to the Company such personnel and resources as are necessary in connection with the foregoing services.

4. Custody. The Financial Instruments (as defined in Section 5 below) shall be held in the custody of State Street Custodial Services (Ireland) Limited or one or more banks selected by the Company (each such bank, a "*Custodian*"). The Company will notify the Portfolio Manager promptly of the proposed selection of any other Custodians. The Custodian shall at all times be responsible for the physical custody of the Financial Instruments; for the collection of interest, dividends, and other income attributable to the Financial Instruments; and for the exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by the Company. At no time shall the Portfolio Manager have possession of or maintain custody over any of the Financial Instruments. The Portfolio Manager shall not be responsible for any loss incurred by reason of any act or omission of the Custodian.

5. Authority of the Portfolio Manager. Subject at all times to (i) provisions of applicable law, and (ii) the Investment Policy, the Portfolio Manager shall have the authority for and in the name of the Company to:

(a) invest, directly or indirectly, on margin or otherwise, in all types of securities and other financial instruments of United States and non-U.S. entities, including, without limitation, capital stock; all manner of equity securities (whether registered or unregistered, traded

or privately offered, American Depository Receipts, common or preferred); physical commodities; shares of beneficial interest; partnership interests, limited liability company interests and similar financial instruments; secured and unsecured debt (both corporate and sovereign, bank debt, vendor claims and/or other contractual claims); bonds, notes and debentures (whether subordinated, convertible or otherwise); currencies; interest rate, currency, equity and other derivative products, including, without limitation, (i) senior secured loans, (ii) notes representing tranches of debt ("*CLO Notes*") issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a "*CLO*"), (iii) preference shares, income notes or other equity instruments issued by CLO issuers, (iv) equity interests or loans in asset management companies, (v) future contracts (and options thereon) relating to stock indices, currencies, United States Government securities, securities of non-U.S. governments, other financial instruments and all other commodities, (vi) swaps and contracts for difference, options, swaptions, rights, warrants, when-issued securities, caps, collars, floors, forward rate agreements, and repurchase and reverse repurchase agreements and other cash equivalents, (vii) spot and forward currency transactions and (viii) agreements relating to or securing such transactions; leases, including, without limitation, equipment lease certificates; equipment trust certificates; mortgage-backed securities and other similar instruments (including, without limitation, fixed-rate, pass-throughs, adjustable rate mortgages, collateralized mortgage obligations, stripped mortgage-backed securities and REMICs); loans; credit paper; accounts and notes receivable and payable held by trade or other creditors; trade acceptances and claims; contract and other claims; executory contracts; participations; mutual funds, exchange traded funds and similar financial instruments; money market funds and instruments; obligations of the United States, any state thereof, non-U.S. governments and instrumentalities of any of them; commercial paper; certificates of deposit; bankers' acceptances; trust receipts; letters of credit; choses in action; puts; calls; other obligations and instruments or evidences of indebtedness of whatever kind or nature; and real estate and any kind of interests in real estate; in each case, of any person, corporation, government or other entity whatsoever, whether or not publicly traded or readily marketable (each of such items, "*Financial Instruments*"), and the sale of Financial Instruments short and covering such sales;

(b) engage in such other lawful Financial Instruments transactions as the Portfolio Manager may from time to time determine;

(c) provide credit and market research and analysis in connection with the investments and ongoing management of the Company and direct the formulation of investment policies and strategies for the Company;

(d) purchase Financial Instruments and hold them for investment;

(e) enter into contracts for or in connection with investments in Financial Instruments;

(f) invest in other pooled investment vehicles, which investments shall be subject in each case to the terms and conditions of the respective governing document for each such vehicle;

(g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by the Company and/or its subsidiaries;

(h) lend, either with or without security, any Financial Instruments, funds or other properties of the Company, including by entering into reverse repurchase agreements, and, from time to time, undertaking leverage on behalf of the Company;

(i) open, maintain and close accounts, including margin and custodial accounts, with brokers and dealers, including brokers and dealers located outside the United States;

(j) open, maintain and close accounts, including custodial accounts, with banks, including banks located outside the United States, and drawing checks or other orders for the payment of monies;

(k) combine purchase or sale orders on behalf of the Company with orders for other accounts to which the Portfolio Manager or any of its affiliates provides investment services ("*Other Accounts*") and allocate the Financial Instruments or other assets so purchased

or sold, on an average-price basis or in any other manner deemed fair and equitable to the Portfolio Manager in its sole discretion, among such accounts:

(l) enter into arrangements with brokers to open "average price" accounts wherein orders placed during a trading day are placed on behalf of the Company and Other Accounts and are allocated among such accounts using an average price;

(m) organize one or more corporations and other entities formed to hold record title, as nominee for the Company (whether alone or together with the Other Accounts), to Financial Instruments or funds of the Company;

(n) cause the Company to engage in (i) agency, agency cross, related party principal transactions with affiliates of the Portfolio Manager and (ii) cross transactions with Other Accounts, in each case, to the extent permitted by applicable laws;

(o) engage and/or provide personnel, whether part-time or full-time, and attorneys, independent accountants or such other persons (including, without limitation, finders, consultants, investment bankers and any human resources as may be necessary for the Company to conduct any matters related to its portfolio of assets on behalf of or for the Company);

(p) provide certain support and assistance (including back office and middle office functions) to the Company; and

(q) vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

6. Policies of the Company. The activities engaged in by the Portfolio Manager shall be subject to the policies and control of the Company, including (without limitation) the Investment Policy.

The Portfolio Manager shall submit such periodic reports, recommendations, research and analytic material to the Company regarding the Investment Policy, the Company's investment portfolio and the Portfolio Manager's activities hereunder as the Company may

reasonably request and a representative of the Portfolio Manager shall be available to meet with the Company (whether in person or by telephone) as reasonably requested by the Company.

In furtherance of the foregoing, the Company hereby appoints the Portfolio Manager as the Company's attorney-in-fact, with full power of authority to act in the Company's name and on its behalf with respect to the matters set forth in Section 5 above.

7. Status of the Portfolio Manager. The Portfolio Manager shall, for all purposes, be an independent contractor and not an employee of the Company, and nothing herein shall be construed as making the Company a partner, member or co-venturer with the Portfolio Manager or any of its affiliates or clients. The Portfolio Manager shall have no authority to act for, represent, bind or obligate the Company except as specifically provided herein.

8. Reimbursement by the Company. The Portfolio Manager may retain, in connection with its responsibilities hereunder, the services of others to assist in the investment advice to be given to the Company with respect to the Company and/or its subsidiaries (any such appointee, a "*Sub-Services Provider*"), including, but not limited to, any affiliate of the Portfolio Manager, but payment for any such services shall be assumed by the Portfolio Manager, and the Company shall not have any liability therefor, *provided, however*, that the Portfolio Manager, in its sole discretion, may retain the services of independent third party professionals, including, without limitation, attorneys, accountants and consultants, to advise and assist it in connection with the performance of its activities on behalf of the Company, and the Company shall bear full responsibility therefor and the expense of any fees and disbursements arising therefrom, including any irrecoverable VAT arising on such costs and expenses.

9. Expenses.

(a) The Company shall pay or reimburse the Portfolio Manager and its affiliates for all expenses related to the services hereunder, including, but not limited to, investment-related expenses, brokerage commissions and other transaction costs, expenses related to clearing and settlement charges, professional fees relating to legal, auditing or valuation services, any governmental, regulatory, licensing, filing or registration fees incurred in compliance with the rules of any self-regulatory organization or any federal, state or local laws, research-

related expenses (including, without limitation, news and quotation equipment and services, investment and trading-related software, including, without limitation, trade order management software (i.e., software used to route trade orders)), accounting (including accounting software), tax preparation expenses, costs and expenses associated with reporting and providing information to the Company, any taxes imposed upon the Company (including, but not limited to, any irrecoverable VAT arising on such costs and expenses), fees relating to valuing the Financial Instruments, and extraordinary expenses. In no event shall any of the foregoing costs or expenses include any salaries, occupational expense or general overhead of the Portfolio Manager. For the avoidance of doubt, (i) the cost of all third party expenses incurred in connection with this Agreement shall not exceed standard market rates (which may include standard soft dollar arrangements) and (ii) to the extent any of the foregoing expenses were incurred on behalf of, or benefit of a number of Portfolio Manager's advised accounts, such expenses shall be allocated pro rata among such accounts.

(b) To the extent that expenses to be borne by the Company are paid by the Portfolio Manager or by any Sub-Services Provider, the Company shall reimburse the Portfolio Manager (or the relevant Sub-Services Provider, as applicable) for such expenses so long as such expenses are determined on an arm's length basis.

10. Exculpation; Indemnification.

(a) Whether or not herein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Portfolio Manager, its managers, directors, officers, partners, shareholders, agents and employees, or any of their respective affiliates and their respective managers, directors, officers, partners, shareholders, agents and employees (including parties acting as agents for the execution of transactions) (each, a "**Covered Person**" and collectively, "**Covered Persons**") shall be subject to the provisions of this Section.

(b) To the fullest extent permitted by law, no Covered Person shall be liable (whether directly or indirectly, in contract or in tort or otherwise) to the Company or any of its subsidiaries or anyone for liabilities incurred by the Company as a result of or arising out of or in connection with the performance by the Portfolio Manager under this Agreement, or for any

losses or damages resulting from any failure to satisfy the Standard of Care (including but not limited to (i) any act or omission by any Covered Person in connection with the conduct of the business of the Company, that is determined by such Covered Person in good faith to be in or not opposed to the best interests of the Company, (ii) any act or omission by any Covered Person based on the suggestions of any professional advisor of the Company or any of its subsidiaries whom such Covered Person believes is authorized to make such suggestions on behalf of the Company, (iii) any act or omission by the Company, or (iv) any mistake, negligence, misconduct or bad faith of any broker or other agent of the Company selected by Covered Person with reasonable care), unless any such liabilities were incurred by reasons of acts or omissions constituting bad faith, fraud, willful misconduct or gross negligence (with such term given its meaning under New York law) or reckless disregard of the duties and obligations of the Portfolio Manager (as determined by a non-appealable judgment of a court of competent jurisdiction), (a "*Portfolio Manager Breach*").

(c) Covered Persons may consult with legal counsel or accountants selected by such Covered Person and any act or omission by such Covered Person on behalf of the Company or in furtherance of the business of the Company in good faith in reliance on and in accordance with the advice of such counsel or accountants shall be full justification for the act or omission, and such Covered Person shall be fully protected in so acting or omitting to act if the counsel or accountants were selected with reasonable care.

(d) To the fullest extent permitted by law, the Company shall indemnify and hold harmless Covered Persons, from and against any and all claims, liabilities, damages, losses, costs and expenses ("*Losses*"), including amounts paid in satisfaction of judgments, in compromises and settlements, as fines and penalties and legal or other costs and expenses of investigating or defending against any claim or alleged claim, of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by any Covered Person and arise out of or in connection with the business of the Company, any investment made under or in connection with this Agreement, or the performance by the Covered Person of Covered Person's responsibilities hereunder and against all taxes, charges, duties or levies incurred by such Covered Person in connection with the Company, provided that a Covered Person shall not be entitled to indemnification hereunder to the extent the Covered Person's conduct constitutes a Portfolio

Manager Breach. The termination of any proceeding by settlement, judgment, order or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Covered Person's conduct constituted a Portfolio Manager Breach.

(c) Expenses incurred by an Covered Person in defense or settlement of any claim that shall be subject to a right of indemnification hereunder, shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Covered Person to repay the amount advanced to the extent that it shall be determined ultimately that the Covered Person is not entitled to be indemnified hereunder.

(f) The right of any Covered Person to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which the Covered Person may otherwise be entitled by contract or as a matter of law or equity and shall be extended to the Covered Person's successors, assigns and legal representatives.

(g) The provisions of this Section are expressly intended to confer benefits upon Covered Persons and such provisions shall remain operative and in full force and effect regardless of the expiration or any termination of this Agreement.

(h) In no event shall any Covered Person be liable for special, exemplary, punitive, indirect, or consequential loss, or damage of any kind whatsoever, including without limitation lost profits.

(i) No Covered Person shall be liable hereunder for any settlement of any action or claim effected without its written consent thereto.

(j) Pursuant to the exculpation and indemnification provisions described above, the Portfolio Manager and each Covered Person will generally not be liable to the Company for any act or omission (or alleged act or omission), absent a Portfolio Manager Breach, and the Company will generally be required to indemnify such persons against any Losses they may incur by reason of any act or omission (or alleged act or omission) related to the Company, absent a Portfolio Manager Breach. As a result of these provisions, the Company (not the Portfolio Manager or any other Covered Person) will be responsible for any Losses resulting

from trading errors and similar human errors, absent a Portfolio Manager Breach or the inability to waive or limit such Losses under applicable law. Trading errors might include, for example, keystroke errors that occur when entering trades into an electronic trading system or typographical or drafting errors related to derivatives contracts or similar agreements. Given the volume of transactions executed by the Portfolio Manager and its affiliates on behalf of the Company, the Company acknowledges that trading errors (and similar errors) will occur and that the Company will be responsible for any resulting Losses, even if such Losses result from the negligence (but not gross negligence) of the Portfolio Manager or its affiliates.

11. Activities of the Portfolio Manager and Others. The Portfolio Manager, and its affiliates may engage, simultaneously with their portfolio servicing and management activities on behalf of the Company, in other businesses, and may render services similar to those described in this Agreement to other individuals, companies, trusts or persons, and shall not by reason of such engaging in other businesses or rendering of services for others be deemed to be acting in conflict with the interests of the Company. Notwithstanding the foregoing, the Portfolio Manager and its affiliates shall devote as much time and resources to the performance of its obligations hereunder as the Portfolio Manager deems necessary and appropriate. In addition, the Portfolio Manager or any of its affiliates, in their individual capacities, may engage in securities transactions which may be different than, and contrary to, any guidance provided by the Portfolio Manager to the Company. The Portfolio Manager may give advice and recommend securities to, or buy securities for, accounts and other clients, which advice or securities may differ from guidance given to, or securities recommended for, the Company, even though their investment objectives may be the same or similar. The Portfolio Manager may recommend transactions in securities and other assets in which the Portfolio Manager has an interest, including securities or other assets issued by affiliates of the Portfolio Manager. The Company acknowledges that it has received a copy of Part 2 of the Portfolio Manager's Form ADV, which further describes conflicts of interest, including the Portfolio Manager, its affiliates and their respective advised accounts.

12. Standard of Care. Under this Agreement, the Portfolio Manager agrees to perform its obligations hereunder, with reasonable care (a) using a degree of skill and attention no less than that which the Portfolio Manager exercises with respect to comparable assets

that it manages for itself and others having similar investment objectives and restrictions, and (b) to the extent not inconsistent with the foregoing, in a manner consistent with the Portfolio Manager's customary standards, policies and procedures (the "*Standard of Care*"); provided that the Portfolio Manager shall not be liable for any loss or damages resulting from any failure to satisfy the Standard of Care except to the extent any act or omission of the Portfolio Manager constitutes a Portfolio Manager Breach. The Standard of Care may change from time to time to reflect changes by the Portfolio Manager to its customary standards, policies and procedures provided that such customary standards, policies and procedures are at least as rigorous as the foregoing.

13. Term; Termination.

(a) This Agreement shall remain in effect through an initial term concluding August 10, 2018 and shall be automatically extended for additional three-year terms thereafter, *provided, however,* this Agreement may be terminated in the event of: (A) the Company determining in good faith that the Company or the portfolio has become required to register as an investment company under the provisions of the Investment Company Act of 1940, as amended (the "*Investment Company Act*") (where there is no available exemption), and the Company has given prior notice to the Portfolio Manager of such requirement, (B) the date on which the portfolio has been liquidated in full and the Company's financing arrangements have been terminated or redeemed in full, (C) such other date as agreed between the Company and the Portfolio Manager and (D) under subsection (b) of this Section 13 or Section 14 of this Agreement.

(b) Notwithstanding any other provision hereof to the contrary but subject to the provisions of clause (d) below, this Agreement may be terminated without cause by the Portfolio Manager, and the Portfolio Manager may resign, upon at least ninety (90) days' (or such shorter notice as is acceptable to the Company) written notice to the Company. The resignation shall not be effective until the date as of which a successor adviser has been appointed. The Portfolio Manager may immediately resign by providing written notice to the Company upon the failure of the Company to comply in any material respect with any investment policy or investment objective to which it is bound to comply, a willful breach or knowing violation by the Company

of a material provision of this Agreement or the occurrence of insolvency proceedings in respect of the Company.

(c) Notwithstanding the provisions of clause (b) above, no resignation or removal of the Portfolio Manager or termination of this Agreement pursuant to such clause shall be effective until the date as of which a successor Portfolio Manager shall have been appointed and approved in accordance with Section 13(d) and has accepted all of the Portfolio Manager's duties and obligations pursuant to this Agreement in writing and has assumed such duties and obligations.

(d) Any termination, removal or resignation of the Portfolio Manager shall be effective only upon (a) the appointment by the Company of a successor Portfolio Manager that is an established institution which (i) has demonstrated an ability to professionally and competently perform duties reasonably comparable to those imposed upon the Portfolio Manager hereunder, (ii) is legally qualified and has the capacity to act as successor to the Portfolio Manager under this Agreement in the assumption of all of the responsibilities, duties and obligations of the Portfolio Manager hereunder and under the terms of the offering memorandum dated August 10, 2015 (as amended from time to time, the "*Offering Memorandum*") applicable to the Portfolio Manager, (iii) shall not cause the Company to become required to register under the provisions of the Investment Company Act and (iv) shall not result in the imposition of any entity-level or withholding tax on the Company or cause any other material adverse tax consequences to the Company and (b) written acceptance of appointment by such successor Portfolio Manager. The Company shall use its commercially reasonable efforts to appoint a successor Portfolio Manager to assume the duties and obligations of the removed or resigning Portfolio Manager. The Company, the Custodians and the successor Portfolio Manager shall take such action (or cause the outgoing Portfolio Manager to take such action) consistent with this Agreement and the terms of the Offering Memorandum applicable to the Portfolio Manager, as shall be necessary to effectuate any such succession. In the event that a successor has not been appointed or has not assumed the duties of the Portfolio Manager in writing within a 60-day period the Portfolio Manager or the Company may petition a court of competent jurisdiction for the appointment of a successor Portfolio Manager, which appointment will not require the consent of, or be subject to the approval or

disapproval of, the Company (so long as such court appointed successor meets the requirements of clauses (a)(i) through (iv) above).

(e) In the event of removal of the Portfolio Manager pursuant to this Agreement, the Company shall have all of the rights and remedies available with respect thereto at law or equity, and, without limiting the foregoing, the Company may by notice in writing to the Portfolio Manager as provided under this Agreement terminate all the rights and obligations of the Portfolio Manager under this Agreement (except those that survive termination pursuant to Section 13(d) above). Upon resignation or removal of the Portfolio Manager in accordance with this Section 13 or Section 14 of this Agreement, as applicable, and upon acceptance by a successor Portfolio Manager of appointment, all authority and power of the Portfolio Manager under this Agreement and the Offering Memorandum, shall automatically and without further action pass to and be vested in the successor Portfolio Manager.

(f) For so long as Highland HCF Advisor, Ltd. or an Affiliate thereof is the Portfolio Manager, the Company shall be permitted to use the "Highland" name; provided that, if the Portfolio Manager ceases to be Highland HCF Advisor, Ltd. or an Affiliate thereof, the Company shall use commercially reasonable efforts to change its name to remove all reference to the name "Highland" therefrom. In addition, the Portfolio Manager, without the consent of the Company, may change the name of the Portfolio Manager.

14. Termination by the Company for Cause. This Agreement may be terminated, and the Portfolio Manager may be removed for Cause (as defined below) by the Company upon ten (10) days' prior written notice to the Portfolio Manager. No such termination or removal shall be effective until the date as of which a successor Portfolio Manager shall have agreed in writing to assume all of the Portfolio Manager's duties and obligations pursuant to this Agreement and as specified in the Offering Memorandum. "Cause" shall mean any one of the following events:

(a) the Portfolio Manager willfully violates, or takes any action that it knows breaches any material provision of this Agreement or the Offering Memorandum applicable

to it in bad faith (not including a willful and intentional breach that results from a good faith dispute regarding reasonable alternative courses of action or interpretation of instructions);

(b) the Portfolio Manager breaches in any respect any provision of this Agreement or any terms of the Offering Memorandum applicable to it (other than as covered by clause (a) and except for any such violations or breaches that have not had, or could not, either individually or in the aggregate, reasonably be expected to have, a material adverse effect on the Company) and fails to cure such breach within 30 days of the Company receiving notice of such breach, unless, if such breach is remediable, the Portfolio Manager has taken action that the Portfolio Manager believes in good faith will remedy such breach, and such action does remedy such breach, within sixty (60) days after the Company receives notice thereof;

(c) the Portfolio Manager is wound up or dissolved or there is appointed over it or a substantial portion of its assets a receiver, administrator, administrative receiver, trustee or similar officer; or the Portfolio Manager (i) ceases to be able to, or admits in writing its inability to, pay its debts as they become due and payable, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, its creditors generally, (ii) applies for or consents (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, trustee, assignee, custodian, liquidator or sequestrator (or other similar official) of the Portfolio Manager or of any substantial part of its properties or assets, or authorizes such an application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against the Portfolio Manager and continue undismissed for sixty (60) days; (iii) authorizes or files a voluntary petition in bankruptcy, or applies for or consents (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency or dissolution, or authorizes such application or consent, or proceedings to such end are instituted against the Portfolio Manager without such authorization, application or consent and are approved as properly instituted and remain undismissed for sixty (60) days or result in adjudication of bankruptcy or insolvency; or (iv) permits or suffers all or any substantial part of its properties or assets to be sequestered or attached by court order and the order remains undismissed for sixty (60) days;

(d) the occurrence of an act by the Portfolio Manager that constitutes fraud or criminal activity in the performance of its obligations under this Agreement (as determined pursuant to a final adjudication by a court of competent jurisdiction), or the Portfolio Manager being indicted for a criminal offense materially related to its business of providing asset management services; or

(e) any senior executive officer of the Portfolio Manager (in the performance of his or her investment management duties) is convicted for a criminal offense materially related to the business of the Portfolio Manager providing asset management services and continues to have responsibility for the performance by the Portfolio Manager hereunder for a period of ten (10) days after such conviction.

If any of the events specified in the definition of "Cause" in this Section 14 shall occur, the Portfolio Manager shall give prompt written notice thereof to the Company upon the Portfolio Manager's becoming aware of the occurrence of such event. The Company may waive any event described in (a), (b), (d), or (e) above as a basis for termination of this Agreement and removal of the Portfolio Manager under this Section 14.

15. Miscellaneous

(a) Notices. Any notice, consent or other communication made or given in connection with this Agreement shall be in writing and shall be deemed to have been duly given when delivered by hand or facsimile or five days after mailed by certified mail, return receipt requested, as follows:

If to the Portfolio Manager, to:

Highland HCF Advisor, Ltd.  
Maples Corporate Services Limited  
PO Box 309  
Ugland House  
Grand Cayman, KY1-1104  
Cayman Islands

If to the Company, to:  
Acis Loan Funding, Ltd.

1st Floor  
Dorey Court Admiral Park St Peter Port  
Channel Islands  
Guernsey  
GY1 3BG  
Attention: Sharon Wrench  
Telephone Number: +44 (0) 1481 704543  
Facsimile Number: +44 (0) 1481 715602

(b) Entire Agreement. This Agreement contains all of the terms agreed upon or made by the parties relating to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter.

(c) Amendments and Waivers. No provision of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by the parties. No amendment to this Agreement may be made without first obtaining the required approval from the Company. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the Company, the Portfolio Manager, each Covered Person and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (e.g., officers, partners and personnel of the Portfolio Manager and others who are entitled to indemnification hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. No party to this Agreement may assign (as such term is defined under the U.S. Investment Advisers Act of 1940, as amended) all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other parties to this Agreement; *provided, however,* that the Portfolio Manager may assign all or any portion of its rights, obligations and liabilities hereunder to any of its affiliates at its discretion.

(c) Governing Law. Notwithstanding the place where this Agreement may be executed by any of the parties thereto, the parties expressly agree that all terms and provisions hereof shall be governed by and construed in accordance with the laws the Cayman Islands that are applicable to contracts made and entirely to be performed therein, without regard to the place of performance hereunder. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement and all contemplated transactions, in any forum other than the courts sitting in the Cayman Islands, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in such courts.

(g) Headings. The headings contained in this Agreement are intended solely for convenience and shall not affect the rights of the parties to this Agreement.

(h) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement.

(i) Survival. The provisions of Sections 8, 9, 10 and 15 hereof shall survive the termination of this Agreement.

(j) Pronouns. All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons' firm or company may require in the context thereof.

(k) Arm's-Length Agreement. The Company has approved this Agreement and reviewed the activities described in Section 11 and in Highland Capital Management, L.P.'s Form ADV and the risks related thereto.

*[Signature Page to Follow]*

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: [Signature]  
Name: MANUEL S. SANTI  
Title: Director

HIGHLAND HCF ADVISOR, LTD.

By: \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, L.L.C. its General Partner

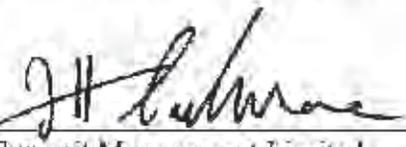
By: \_\_\_\_\_  
Name: James DiMadero  
Title: President

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: \_\_\_\_\_  
Name:  
Title: Director

HIGHLAND HCF ADVISOR, LTD.

By:  \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed to be effective from the date first written above.

ACIS LOAN FUNDING, LTD.

By: \_\_\_\_\_  
Name:  
Title: Director

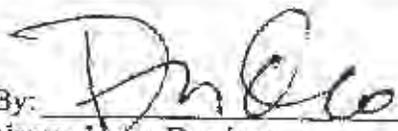
HIGHLAND HCF ADVISOR, LTD.

By: \_\_\_\_\_  
Name: Summit Management Limited  
Title: Director

CONSENTED AND AGREED:

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its General Partner

By:  \_\_\_\_\_  
Name: James Dondero  
Title: President



CAUSE NO. DC-17-15244

JOSHUA N. TERRY,

Plaintiff,

v.

ACIS CAPITAL MANAGEMENT, L.P. and  
ACIS CAPITAL MANAGEMENT GP, LLC,

Defendants.

§  
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§

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

44<sup>th</sup> JUDICIAL DISTRICT

**DECLARATION OF ROGGE DUNN**

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

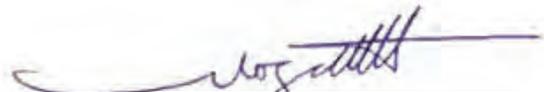
1. My name is Rogge Dunn.
2. I am both qualified and competent to give this declaration, and I have personal knowledge of the facts stated herein based upon my experience, as well as my personal involvement in the matters discussed herein. I have never been convicted of a felony.
3. I am counsel for Plaintiff in the above-referenced matter.<sup>1</sup>
4. On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone.

In that call, Mr. Welton stated that Acis is “judgment proof.”

**JURAT**

My name is Rogge Dunn. My date of birth is 1/22/57, and my address is 1201 Elm St., Suite 5200, Dallas, Teas 75270. I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed pursuant to Tex. Civ. Prac. & Rem. Code § 132.001, and any other applicable law authorizing use of an unsworn declaration.

Executed in Dallas County, State of Texas, on the 22nd day of November 2017.

  
\_\_\_\_\_  
Rogge Dunn, Declarant

<sup>1</sup> Plaintiff incorporates by reference the defined terms in his Motion for Expedited Discovery.



## ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF PROMISSORY NOTE (this "*Agreement*"), dated as of November 3, 2017, is entered into by and between ACIS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*Acis*"), HIGHLAND CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*HCM*") and HIGHLAND CLO MANAGEMENT, LTD., a Cayman Islands exempted company ("*HCLOM*", and together with HCM and Acis, the "*Parties*"). Capitalized terms used herein but not defined have the meanings ascribed thereto in the Agreement for Purchase and Sale of CLO Participation Interests between Acis and HCM dated as of October 7, 2016 (the "*Purchase Agreement*" and the promissory note therein, the "*Note*").

### RECITALS

Whereas, Acis is portfolio manager to certain collateralized loan obligations listed in Schedule A of the Purchase Agreement and is entitled to fee compensation in connection therewith as set forth therein (the "*CLOs*", the governing documents thereof, the "*CLO Documents*" and such fees, the "*Servicer Fees*");

Whereas, Acis and HCM entered into the Purchase Agreement, whereby Acis sold a portion of its future Servicer Fees to HCM in exchange for cash flows from HCM, in each case as set forth in the Note (such future Servicer Fees identified to be paid to HCM pursuant to the Purchase Agreement, the "*HCM Stabilization Fees*" and such cash flows from HCM, the "*Stabilization Payments*");

Whereas, HCM has notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis with respect to the CLOs (the "*Notification*");

Whereas, Acis has determined that the effect of the Notification is that it cannot fulfill its duties as portfolio manager of the CLOs, and in order to ensure the continued operation of such CLOs and protection for its stakeholders, it must assign its rights as portfolio manager in the CLOs to a qualified successor portfolio manager pursuant to the CLO Documents (a "*Successor Manager*");

Whereas, HCLOM, a qualified Successor Manager, irrevocably commits to be appointed as Successor Manager in consideration of Acis assigning to it the Note, subject to the conditions set forth in the CLO Documents and pursuant to the terms herein;

Whereas, Acis is expected to incur significant costs and expenses related to ongoing claims and litigation to which Acis is either a party or is otherwise obligated with respect to such costs and expenses (the "*Acis Legal Expenses*"); and

Whereas, Acis also is expected to have ongoing accounting and administrative expenses (the "*Acis Administrative Expenses*" and together with the Acis Legal Expenses, the "*Acis Expenses*").

## AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Succession.** Acis shall promptly provide the Controlling Class (as defined in each of the CLO Indentures) with notice requesting the appointment of HCLOM as Portfolio Manager pursuant to the requirements of the CLO Documents (each, a "*Notice*" and the period between the Notice and an Appointment (as such term is defined below), the "*Post-Notice Period*").
2. **Successor Manager.** Subsequent to the Notices, each of Acis and HCLOM shall promptly pursue Successor Manager appointment of HCLOM in respect of each CLO, including but not limited to achieving all conditions precedent required by the CLO Documents in such respect (consummation of HCLOM's appointment as Portfolio Manager of a given CLO, an "*Appointment*").
3. **Assignment and Transfer of the Promissory Note; Stabilization Payments.**
  - a. Effective immediately upon execution of this Agreement by the Parties, all right, title and interest of Acis under the Note, including the right to any and all Stabilization Payments not yet paid to Acis, are hereby irrevocably assigned and transferred by Acis to HCLOM, it being understood that from the date of such assignment, HCLOM shall become the "Payee" thereunder.
  - b. For so long as Acis shall receive Servicer Fees following the date hereof, Acis shall remit to HCM the HCM Stabilization Fees pursuant to the Note Purchase Agreement.
  - c. For so long as HCLOM receives any Servicer Fees following any Appointment, then HCLOM shall remit to HCM any portion of such fees that would otherwise have constituted HCM Stabilization Fees pursuant to the Note Purchase Agreement if Acis was the recipient of such fees.
  - d. HCLOM shall sign a joinder to Note Purchase Agreement upon HCM's written notice thereof.
4. **Expense Support.** In the event Acis delivers written notice to HCLOM that Acis is unable to pay when due any Acis Expenses, then HCLOM shall promptly pay to Acis, or at Acis' written request, to Acis' creditors, the amount of such shortfall, provided that in no event shall HCLOM's obligations under this paragraph exceed greater than \$2 million of Acis Legal Expenses in the aggregate, or greater than \$1 million of Acis Administrative Expenses in the aggregate.
5. **Indemnity.** Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or

unliquidated (“*Claims*”), that my accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys’ fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a “*Proceeding*”), whether civil or criminal (all of such Claims, amounts and expenses referred to therein are referred to collectively as “*Damages*”), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. “*Covered Person*” means each of HCLOM and HCM, as well as each and every one of their affiliates (other than Acis), and all of HCLOM’s and HCM’s respective managers, members, principals, partners, directors, officers, shareholders, employees and agents.

6. Miscellaneous.

- a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
- b. No Third Party Beneficiaries. For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
- c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

- c. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):
- i. If to Acis:
    - Acis Capital Management, L.P
    - 300 Crescent Court, Suite 700
    - Dallas, Texas 75201
    - Facsimile: 972-628-4147
  - ii. If to HCM:
    - Highland Capital Management, L.P
    - 300 Crescent Court, Suite 700
    - Dallas, Texas 75201
    - Facsimile: 972-628-4147
  - iii. If to HCLOM:
    - Highland CLO Management, Ltd.
    - PO Box 309
    - Ugland House
    - Grand Cayman KY1-1104
    - Cayman Islands
- h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and HCM shall be

entitled to such relief without the necessity of proving actual damages or posting a bond.

- i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection
- j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of November 3, 2017.

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

By: Strand Advisors, Inc., its General  
Partner

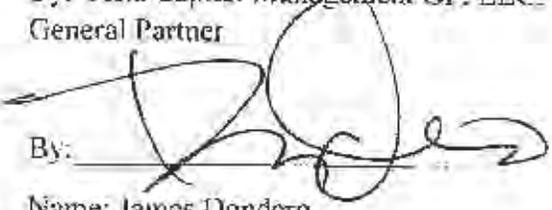
By: 

Name: James Dondero

Title: President

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its  
General Partner

By: 

Name: James Dondero

Title: President

HIGHLAND CLO MANAGEMENT, LTD.



For and on behalf of Summit Management,  
Limited

Director



Exhibit 1

PROMISSORY NOTE

\$12,666,446

October \_\_, 2016

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("Maker"), hereby promises to pay to the order of Acis Capital Management, L.P., a Delaware limited partnership ("Payee"), at its office at 300 Crescent Court, Suite 700, Dallas, Texas 75201 in lawful money of the United States of America, the principal sum of TWELVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND FOUR HUNDRED FORTY-SIX DOLLARS (\$12,666,446), together with interest on the outstanding principal balance thereof from day to day remaining at the rate of three percent (3%) per annum, as provided herein.

Payments

THE UNPAID PRINCIPAL HEREOF, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST THEREON, SHALL AUTOMATICALLY BE DUE AND PAYABLE IN FULL, WITHOUT NECESSITY OF DEMAND OR NOTICE, ACCORDING TO THE AMORTIZATION TABLE ATTACHED HERETO AS EXHIBIT A.

All past due principal and interest shall bear interest from and after the date when due at a rate equal to the rate equal to the lesser of (a) eighteen percent (18.0%) per annum or (b) the Maximum Rate (as defined herein).

Interest on the indebtedness evidenced by this Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed (including the first day but excluding the last day) unless such calculation would result in a rate that exceeds the maximum rate allowed by applicable law (such rate, the "Maximum Rate") in which case interest shall be calculated on the basis of a year of 365 or 366 days, as the case may be. If the regularly scheduled due date for any payment under this Note is not a Business Day, the due date for such payment shall be the next succeeding Business Day, and payment made on such succeeding Business Day shall have the same force and effect as if made on the regularly scheduled due date. "Business Day" means a day, other than a Saturday, Sunday or legal holiday, on which a bank in Dallas, Texas is open for business.

Maker shall have the right to prepay this Note, in whole or in part, at any time and from time to time without premium or penalty. Amounts borrowed and repaid hereunder may not be reborrowed.

Conditions Precedent

This Note shall not become effective and Payee shall have no obligation to make the advance hereunder until Payee has received each of the following in form and substance acceptable to Payee:

- (a) this Note executed by Maker;
- (b) the Agreement for Purchase and Sale of CLO Participation Interests dated of even date herewith (the "Purchase Agreement"), by and between Maker and Payee, and copies of all agreements, documents and instruments executed or delivered in connection therewith and evidence that all conditions to the effectiveness of the Purchase Agreement have been or will be fulfilled contemporaneously with the initial advance under this Note;
- (c) evidence that the execution, delivery and performance by Maker of this Note and all other documents and instruments related to this Note have been duly authorized by, or on behalf of, Maker; and

(d) such other agreements, documents, information, and other assurances as Payee may reasonably request.

#### **Events of Default**

Maker shall be in default under this Note upon the occurrence of any of the following events or conditions (each, an "Event of Default"):

(a) the failure of Maker to make any payment required to be made under this Note when such payment becomes due;

(b) Maker defaults in the performance of any obligation, covenant, or agreement now or hereafter made or owed by Maker to Payee, whether under this Note or any related document;

(c) any representation or warranty made by Maker to Payee in connection with this Note or any document executed or delivered in connection therewith, is false or misleading in any material respect when made;

(d) Maker shall commence a voluntary proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it or shall make a general assignment for the benefit of creditors or shall generally fail to pay its debts as they become due or shall take any corporate action to authorize any of the foregoing;

(e) any involuntary proceeding shall be commenced against Maker seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official for it or a substantial part of its property, in each case, that results in the entry of an order for any such relief or appointment that has not been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof;

(f) any lien, attachment, sequestration or similar proceeding against any of Maker's assets or properties other than liens in favor of Payee;

(g) any event or condition occurs that results in any indebtedness of Maker becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time, or both) the holder of such indebtedness to cause any of such indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; or

(h) the validity or enforceability of this Note shall be contested or challenged by Maker.

### Remedies

Should an Event of Default exist, Payee may but without any obligation to do so, at its option and at any time, and without presentment, demand, or protest, notice of default, dishonor, demand, non-payment, or protest, notice of intent to accelerate all or any part of the advances hereunder, notice of acceleration of all or any part of the indebtedness evidenced by this Note, or notice of any other kind, all of which Maker hereby expressly waives, except for any notice required by applicable statute which cannot be waived: (a) terminate Payee's commitment to make any advances under this Note; (b) declare the indebtedness evidenced by this Note, or any part thereof, immediately due and payable, whereupon the same shall be due and payable (provided, however, that upon the occurrence of any event described in clause (e) of the definition of "Event of Default", such indebtedness shall become immediately due and payable in full without demand or acceleration); (c) reduce any claim to judgment; (d) to the maximum extent permitted under applicable laws, set-off and apply any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Payee to or for the credit or the account of Maker against any and all obligations, whether or not Payee exercises any other right or remedy hereunder and whether or not such obligations are then matured; (e) may cure any Event of Default, or event of nonperformance under this Note and/or (f) exercise any and all rights and remedies afforded by this Note, or by law or equity or otherwise, as Payee deems appropriate. No failure or delay of the holder hereof to exercise any of its rights or remedies shall not constitute a waiver thereof.

If the holder hereof incurs any costs or expenses in any attempt to enforce payment of all or any part of this Note, or if this Note is placed in the hands of an attorney for collection, Maker agrees to pay all such costs fees and expenses incurred, including without limitation, reasonable attorneys' fees.

### Miscellaneous

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with the applicable law of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the indebtedness under this Note (or applicable United States federal law to the extent that it permits Payee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If such law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received with respect to this Note, or if any payment by Maker results in Maker having paid any interest in excess of the amount that is permitted by such law, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance hereof (or, if the principal balance has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible thereunder reduced, without the necessity of the execution of any new documents, so as to comply with all such applicable laws, but so as to permit the recovery of the fullest amount otherwise called for thereunder. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of money and other indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the applicable usury ceiling provided by such applicable law. Notwithstanding any provision contained herein to the contrary, the total amount of interest that Maker is obligated to pay and Payee is entitled to receive with respect to this Note shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate allowed by applicable law on principal amounts actually advanced hereunder to or for the account of Maker.

MAKER AND EACH SURETY, GUARANTOR, ENDORSER, AND OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE JOINTLY AND SEVERALLY WAIVE NOTICE, PRESENTMENT, DEMAND FOR PAYMENT, PROTEST, NOTICE OF PROTEST AND NON-PAYMENT OR DISHONOR, NOTICE OF ACCELERATION, NOTICE OF INTENT TO ACCELERATE, NOTICE OF INTENT TO DEMAND, DILIGENCE IN COLLECTING, GRACE, AND ALL OTHER FORMALITIES OF ANY KIND, AND CONSENT TO ALL EXTENSIONS WITHOUT NOTICE FOR ANY PERIOD OR PERIODS OF TIME AND PARTIAL PAYMENTS,

BEFORE OR AFTER MATURITY, AND ANY IMPAIRMENT OF ANY COLLATERAL SECURING THIS NOTE, ALL WITHOUT PREJUDICE TO THE HOLDER. Without limiting the foregoing, any notice or demand upon Maker in connection with this Note shall be in writing and shall become effective (a) upon personal delivery, (b) three (3) days after it shall have been mailed by United States mail, first class, certified or registered, with postage prepaid or (c) when properly transmitted by telecopy, in each case addressed to Maker's address for notice specified in connection with its signature below.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. THIS NOTE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS NOTE AGAINST MAKER OR ANY OTHER PARTY EVER LIABLE FOR PAYMENT OF ANY SUMS OF MONEY PAYABLE ON THIS NOTE MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN DALLAS COUNTY, TEXAS. MAKER AND EACH SUCH OTHER PARTY HEREBY IRREVOCABLY (I) SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURTS AND (II) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF PAYEE TO BRING ANY ACTION OR PROCEEDING AGAINST MAKER OR ANY OTHER PARTY LIABLE HEREUNDER OR WITH RESPECT TO ANY COLLATERAL IN ANY STATE OR FEDERAL COURT IN ANY OTHER JURISDICTION. ANY ACTION OR PROCEEDING BY MAKER OR ANY OTHER PARTY LIABLE HEREUNDER AGAINST PAYEE SHALL BE BROUGHT ONLY IN A COURT LOCATED IN DALLAS COUNTY, TEXAS.

MAKER AND PAYEE EACH IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS NOTE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY KIND BROUGHT BY EITHER AGAINST THE OTHER, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. MAKER AND PAYEE EACH AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT ITS RIGHT TO A TRIAL BY JURY IS WAIVED AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS NOTE OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, WHETHER OR NOT SPECIFICALLY SET FORTH THEREIN.

This Note embodies the final, entire agreement of Maker and Payee with respect to the indebtedness evidenced hereby and supersedes any and all prior commitments, agreements, representations and understandings, whether written or oral, relating thereto and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of Maker and Payee. There are no oral agreements between Maker and Payee.

Signed effective as of the date of this Note.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc., its general partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Maker's address for notice:

HIGHLAND CAPITAL MANAGEMENT, L.P.

300 Crescent Court

Suite 700

Dallas, TX 75201

Attention: Frank Waterhouse

Fax: 972-628-4147

EXHIBIT A

Amortization Schedule

Interest Rate 3.0%

Payment Date	Beg Principal	Interest	Principal	Payment	End Principal
10/7/2016	12,666,446				12,666,446
5/31/2017	12,666,446	245,694	3,125,000	3,370,694	9,541,446
5/31/2018	9,541,446	286,243	5,000,000	5,286,243	4,541,446
5/31/2019	4,541,446	136,243	4,541,446	4,677,690	-



Schedule A

Participation Interests

<b>CLO Issuer</b>	<b>Total Servicer Fee</b>	<b>Servicer Fee Retention Amount</b>	<b>Acis Participation Interests</b>
Acis CLO 2013-1, Ltd.	50 bps	20 bps	30 bps
Acis CLO 2014-3, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-4, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2014-5, Ltd.	40 bps	20 bps	20 bps
Acis CLO 2015-6, Ltd.	40 bps	20 bps	20 bps



## ASSIGNMENT AND TRANSFER AGREEMENT

THIS AGREEMENT FOR ASSIGNMENT AND TRANSFER OF INTERESTS (this "*Agreement*"), dated as of December 19, 2017 (the "*Effective Date*"), is entered into by and between ACTS CAPITAL MANAGEMENT, L.P., a Delaware limited partnership ("*Acis*"), and HIGHLAND CLO HOLDINGS, LTD., a Cayman Islands exempted company, ("*HICLOH*"), and together with Acis, the "*Parties*"). ACIS CLO MANAGEMENT, LLC, a Delaware series limited liability company ("*C-Moa*") joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Section 1.b., ACIS CLO Management, GP, LLC, a Delaware limited liability company ("*Holdings LP GP*"), joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Sections 1.c., 3.b.ii, and Acis CLO Management Intermediate Holdings II, LLC, a Delaware limited liability company ("*Acis Intermediate II*"), joins in the execution and delivery of this Agreement for the sole limited purpose set forth in Section 3.b.iii.

### RECITALS

Whereas, each of Acis and Highland Capital Management, L.P., a Delaware limited partnership ("*HCM*") are parties to that certain (i) Fourth Amended and Restated Shared Services Agreement dated March 17, 2017 (the "*Shared Services Agreement*") pursuant to which HCM provides certain back- and middle-office services as well as administrative, infrastructure and other services and (ii) Third Amended and Restated Sub-Advisory Agreement dated March 17, 2017 (the "*Sub-Advisory Agreement*") pursuant to which HCM provides certain services to assist Acis in performing its obligations under portfolio management agreements, investment management agreements and the like; in each case with respect to Acis' investment management business;

Whereas, pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, there is a total of \$3,814,186 in outstanding and unreimbursed amounts owing from Acis to HCM (the "*Outstanding Receivable*");

Whereas, in connection with HCM and HICLOH entering into a shared services agreement and sub-advisor agreement, attached hereto as Exhibits A and B, respectively, HCM has transferred and assigned to HICLOH \$3,804,870 of the Outstanding Receivable (the "*Transferred Receivable*");

Whereas, in satisfaction of the Transferred Receivable, Acis proposes to transfer to HICLOH 100% of Acis' ownership interest in the assets listed in Schedule A hereto (the "*Interests*") as payment-in-kind to HICLOH to satisfy Acis' Transferred Receivable liability (the "*Interests Transfer*");

Whereas, as a result of the Interests Transfer, and in connection with HCM having notified Acis that HCM is unwilling to continue to provide support personnel and other critical services to Acis in each case with respect to Acis CLO 2017-7, Ltd. ("*Acis CLO-7*"), and in order to ensure the continued management of Acis CLO-7, Acis desires to transfer to HICLOH, simultaneous with the Interests Transfer, all of Acis' right, title and interest in each of the (i) Master Sub-Advisory Agreement and (ii) Staff and Services Agreement; in each case dated March 17, 2017 by and between C-Moa and Acis (the "*Acis Sub-Advisory Agreement*" and "*Acis Shared Services Agreement*", respectively, and together, the "*Acis Contracts*"), and the Acis Contracts together with the Interests, the "*Assets*" and the transfer of such Assets to HICLOH as contemplated herein, the "*Assets Transfer*"); and

Whereas, HICLOH agrees to accept the Assets hereunder in satisfaction of the Transferred Receivable pursuant to the terms herein.

## AGREEMENT

Now, therefore, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Transfer of Assets; Approvals.** As of the Effective Date:
  - a. Acis hereby transfers 100% of Acis' right, title and interest in and to the Assets to HCLOH, and HCLOH hereby accepts all of Acis' right, title and interest in such Assets, and assumes of all of Acis' obligations, responsibilities and undertakings as specified therein as of the Effective Date;
  - b. C-Moa hereby approves the transfer of all of Acis' right, title and interest to HCLOH of the:
    - i. Acis Sub-Advisory Agreement; and
    - ii. Acis Shared Services Agreement;
  - c. Holdings LP GP, as general partner of Acis CLO Management Holdings, L.P., a Cayman Islands exempted limited partnership ("*Holdings LP*"), hereby approves transfer of all of Acis' right, title and interest in the limited partnership interest of Holdings, LP owned by Acis; and
  - d. the Parties agree to take all subsequent steps necessary, including but not limited to executing supporting and/or ancillary documents such as transfer confirmations and joinder agreements, in connection with the transfer of the Assets, it being understood, however, that irrespective of such subsequent actions, each of the Parties' undertakings herein are irrevocable and constitute a fully enforceable agreement.
  
2. **Agreement to be Bound.** HCLOH hereby acknowledges that it has received and reviewed a complete copy of each of the following agreements, and as of the Effective Date shall be fully bound by, and subject to, all of the covenants, terms and conditions set forth in the following agreements, in each case, as amended, modified or supplemented from time to time, as though it were an original party thereto:
  - a. Limited Liability Company Agreement of Acis CLO Management GP, LLC;
  - b. First Amended and Restated Exempted Limited Partnership Agreement of Acis CLO Management Holdings, L.P.; and
  - c. Limited Liability Company Agreement of Acis CLO Management Intermediate Holdings I, LLC, a Delaware limited liability company ("*Acis Intermediate I*").
  
3. **Withdrawals and Admissions.**
  - a. As of the Effective Date, Acis hereby withdraws as a:
    - i. Member and managing member of Holdings LP GP;
    - ii. Limited partner of Holdings LP; and
    - iii. Member and managing member of Acis Intermediate I.
  - b. As of the Effective Date, HCLOH is hereby admitted as:
    - i. The sole member and managing member of Holdings LP GP;
    - ii. A substitute limited partner of Holdings LP, and Holdings LP GP, in its capacity as the general partner of Holdings LP, hereby consents to such admission; and

- iii. A substitute member and the managing member of Acis Intermediate I, and Acis Intermediate II, in its capacity as a member of Acis Intermediate I, hereby consents to such admission.

4. **Representations and Warranties of Acis.** As of the Effective Date, Acis represents and warrants as follows:

- a. It has all requisite power, authority and capacity, corporate, limited partnership or otherwise, to execute, deliver and perform under this Agreement. Its execution, delivery and performance of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by Acis. This Agreement is a legal, valid and binding agreement of such party, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.
- b. The Assets are owned of record and beneficially by Acis, free and clear of any obligation, lien, claim, pledge, security interest, liability, charge, contingency or other encumbrance or claim of any nature. Acis has not assigned, pledged or otherwise in any manner whatsoever sold or transferred either by instrument in writing or otherwise, any right, title, interest or claim which it has or may have in the Assets or any matters arising out of, related thereto, or in connection therewith.
- c. Acis has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement.

5. **Representation and Warranties of HCLOH.** As of the Effective Date, HCLOH represents and warrants as follows:

- a. HCLOH has all requisite power, authority and capacity, corporate, individual or otherwise, to execute, deliver and perform under this Agreement. The execution, delivery and performance by HCLOH of this Agreement have been duly authorized by all necessary action. This Agreement has been duly executed and delivered by HCLOH. This Agreement is a legal, valid and binding agreement of HCLOH, enforceable against each in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer or conveyance or similar laws affecting the enforcement of creditors' rights generally and subject to general principles of equity.
- b. HCLOH has had access to all information as it deems necessary and appropriate in connection with its decision to enter into this Agreement.

6. **Indemnity.** Acis shall and hereby does, to the fullest extent permitted by applicable law, advance, indemnify and hold harmless any Covered Person (as defined below) from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings, judgments, assessments, actions and other liabilities, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated ("**Claims**"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may be threatened, relating to this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and attorneys' fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "**Proceeding**"), whether civil or criminal (all of such Claims, amounts and expenses referred to

therein are referred to collectively as "*Damages*"), except to the extent that it shall have been determined ultimately by a court of competent jurisdiction, in a final nonappealable judgment, that such Damages arose primarily from fraud, bad faith or willful misconduct of such Covered Person. The termination of any Proceeding by settlement, judgment, order, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that any Damages relating to such settlement, judgment, order, conviction or plea of nolo contendere or its equivalent or otherwise relating to such Proceeding arose primarily from fraud, bad faith or willful misconduct of any Covered Persons. "*Covered Person*" means each of HCL011, C-Moa, Holdings LP GP, Holdings LP, Acis Intermediate II and Acis Intermediate I, as well as each and every one of their current and future affiliates (other than Acis), including all of such Covered Person's respective current and future managers, members, principals, partners, directors, officers, shareholders, employees, agents and successors in interest (other than Acis).

## 7. Miscellaneous.

- a. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
- b. No Third Party Beneficiaries. Except for the Covered Persons, which shall be express third party beneficiaries for purposes of Section 6, and except as expressly set forth in Sections 7.h. and 7.m., for the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
- c. Terms Confidential. The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.
- e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.

- g. Notices. All notices, demands and requests required or permitted to be given hereunder shall be in writing and shall be delivered by hand or sent by telecopy (with confirmed transmission), or sent, postage prepaid, by registered, certified or express mail, or reputable overnight courier service, and shall be deemed given when so delivered by hand, or confirmed after telecopying, or if mailed, three (3) business days after mailing (one (1) business day in the case of express mail or overnight courier service), as follows (or to such other address or telecopy number as a party shall specify by notice as provided herein to the other party hereto):
- i. If to Acis:  
Acis Capital Management, LP  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Facsimile: 972-628-4147
  - ii. If to HICLOH:  
Highland CLO Holdings, Ltd.  
PO Box 309  
Ugland House  
Grand Cayman KY1-1104  
Cayman Islands
- h. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and each of HICLOH, C-Moa, Holdings LP, Holdings LP GP, Acis Intermediate II and Acis Intermediate I shall be entitled to such relief without the necessity of proving actual damages or posting a bond.
- i. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection with this Agreement and the transactions contemplated hereby.
- j. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Parties.
- k. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- l. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.

- m. Further Assurances. From and after the date of this Agreement, upon the reasonable request of HCLOEI, Holdings LP, C-Moa, Holdings LP GP, Acis Intermediate II or Acis Intermediate I, Acis shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

ACIS CAPITAL MANAGEMENT, L.P.

By: Acis Capital Management GP, LLC, its  
General Partner

By: 

Name: James Dondero

Title: President

HIGHLAND CLO HOLDINGS, LTD.

\_\_\_\_\_  
For and on behalf of Summit Management,  
Limited

Director

CONSENTED AND AGREED, solely for the purposes  
set forth in Section 1.b.:

ACIS CLO MANAGEMENT, LLC

By: Acis CLO Management Holdings, L.P., its  
Managing Member

By: Acis CLO Management GP, LLC, its General  
Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General  
Partner

By: 

Name: James Dondero

Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

ACIS CAPITAL MANAGEMENT, L.P.

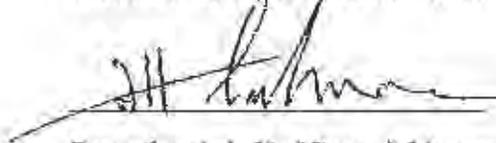
By: Acis Capital Management GP, LLC, its  
General Partner

By: \_\_\_\_\_

Name: James Dondero

Title: President

HIGHLAND CLO HOLDINGS, LTD.



For and on behalf of Summit Management,  
Limited

Director

CONSENTED AND AGREED, solely for the purposes  
set forth in Section 1.b.:

ACIS CLO MANAGEMENT, LLC

By: Acis CLO Management Holdings, L.P., its  
Managing Member

By: Acis CLO Management GP, LLC, its General  
Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General  
Partner

By: \_\_\_\_\_

Name: James Dondero

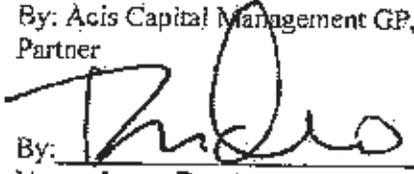
Title: President

CONSENTED AND AGREED, solely for the purposes set forth in Sections 1.c. and 3.b.ii.:

ACIS CLO MANAGEMENT GP, LLC

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General Partner

By: 

Name: James Dondero  
Title: President

CONSENTED AND AGREED, solely for the purposes set forth in Section 3.b.iii.:

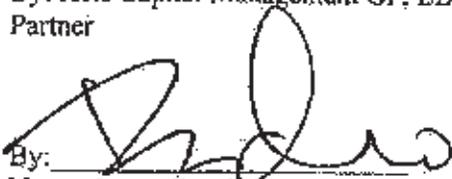
ACIS CLO MANAGEMENT INTERMEDIATE HOLDINGS II, LLC

By: Acis CLO Management Holdings, L.P., its Managing Member

By: Acis CLO Management GP, LLC, its General Partner

By: Acis Capital Management, L.P., its Sole Member

By: Acis Capital Management GP, LLC, its General Partner

By: 

Name: James Dondero  
Title: President

SCHEDULE A

1. Limited liability company interest in:
  - a. Acis CLO Management Intermediate Holdings I, LLC
  - b. Acis CLO Management GP, LLC
  
2. Limited partnership interest in Acis CLO Management Holdings, L.P.

**ASSIGNMENT, TRANSFER AND AMENDMENT AGREEMENT**

THIS ASSIGNMENT AND TRANSFER Agreement (this "*Agreement*"), dated as of December 19, 2017 (the "*Effective Date*"), is entered into by and among The Dugaboy Investment Trust, a Delaware trust ("*Dugaboy*"), Mark K. Okada, an individual ("*Mr. Okada*"), Neutra, Ltd., a Cayman Islands exempted company ("*Neutra*"), and Acis Capital Management GP, LLC, a Delaware limited liability company ("*Acis GP*"), and together with Dugaboy, Mr. Okada and Neutra, the "*Parties*"). Capitalized terms used but not defined herein shall have the meanings ascribed thereto in (i) that certain Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P., a Delaware limited partnership ("*Acis*"), dated to be effective as of January 21, 2011 (as amended, modified or supplemented from time to time, the "*LPA*"), or (ii) that certain Amended and Restated Limited Liability Company Agreement of Acis GP, dated to be effective as of January 21, 2011 (as amended, modified or supplemented from time to time, the "*LLC Agreement*"), as applicable.

**RECITALS**

WHEREAS, Dugaboy is the (i) sole member and holder of all outstanding membership interests of Acis GP (the "*Acis GP Interest*"), and (ii) the holder of a 74.9% Partnership Interest of Acis (the "*Dugaboy Acis Interest*");

WHEREAS, Mr. Okada is the holder of a 25.0% Partnership Interest of Acis (the "*Okada Acis Interest*"); and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, (i) Dugaboy desires to sell, transfer, assign and convey to Neutra, and Neutra desires to accept and assume from Dugaboy, the Acis GP Interest and the Dugaboy Acis Interest, and (ii) Mr. Okada desires to sell, transfer, assign and convey to Neutra, and Neutra desires to accept and assume from Mr. Okada, the Okada Acis Interest,

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, and in consideration of the mutual representations, warranties and covenants herein, intending to be legally bound hereby, the Parties agree as follows:

**AGREEMENT****1. Assignments and Transfers.** Effective as of the Effective Date:

- a. Dugaboy hereby irrevocably sells, transfers, assigns and conveys to Neutra, and Neutra hereby accepts and assumes from Dugaboy, all right, title and interest in, to and under the Acis GP Interest and the Dugaboy Acis Interest.
- b. Mr. Okada hereby irrevocably sells, transfers, assigns and conveys to Neutra, and Neutra hereby accepts and assumes from Mr. Okada, all right, title and interest in, to and under the Okada Acis Interest.

2. **Withdrawals and Admissions.** Effective as of the Effective Date:
- Dugaboy hereby irrevocably withdraws as a Member of Acis GP and Limited Partner of Acis.
  - Mr. Okada hereby irrevocably withdraws as a Limited Partner of Acis.
  - Neutra is hereby admitted as the sole Member and Managing Member of Acis GP and a Limited Partner of Acis.
3. **Agreement to be Bound.** Neutra hereby acknowledges that it has received and reviewed a complete copy of the LPA and the LLC Agreement, and shall be fully bound by, and subject to, all of the covenants, terms and conditions of LPA and LLC Agreement as though it were an original party thereto.
4. **Amendments.** Effective as of the Effective Date:
- Exhibit A of the LPA is hereby amended and replaced in its entirety with Exhibit A attached hereto.
  - The definition of "Member" set forth in Article 11 of the LLC Agreement is hereby amended and replaced in its entirety as follows:  
"Member" means Neutra, Ltd., a Cayman Islands exempted company.
5. **Consent to Transactions.** In accordance with the LPA, Acis GP hereby consents to each of the transaction contemplated hereby.
6. **Miscellaneous.**
- Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided however that no party hereto may assign or transfer any of its rights or obligation hereunder without the prior written consent of the other parties hereto.
  - No Third Party Beneficiaries.** For the avoidance of doubt, this Agreement is not intended to and does not confer any right to any person or entity other than the Parties hereto.
  - Terms Confidential.** The Parties agree that they will keep the terms, amounts, and facts of this Agreement completely confidential, and that they will not hereafter disclose any information concerning this Agreement to anyone except their respective attorneys or accountants. Notwithstanding the foregoing prohibition, the Parties shall not be prohibited from disclosing the terms, amounts and facts of this Agreement or this Agreement itself as may be requested by governmental entities or required by law.
  - Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, with exclusive jurisdiction in the courts of George Town, Grand Cayman.

- e. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Headings. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to articles, sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to articles, sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by reference.
- g. Specific Performance. The Parties agree that the rights created by this Agreement are unique and that the loss of any such rights is not susceptible to monetary quantification. Consequently, the Parties agree that an action for specific performance, including for temporary and/or injunctive relief) of the obligations created by this Agreement is a proper remedy for the breach of the provisions of this Agreement, and Parties shall be entitled to such relief without the necessity of proving actual damages or posting a bond.
- h. Costs, Expenses. The Parties shall each pay their own costs, fees and expenses in connection.
- i. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Seller and the Purchaser.
- j. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.
- k. Entire Agreement. This Agreement, together with all exhibits and schedules hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence, agreements, understandings, duties or obligations between the parties with respect to the subject matter hereof.
- l. Further Assurances. From and after the date of this Agreement, upon the reasonable request of the Purchaser, the Seller shall execute and deliver such instruments, documents or other writings as may be reasonably necessary or desirable to confirm and carry out and to effectuate fully the intent and purposes of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By:   
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

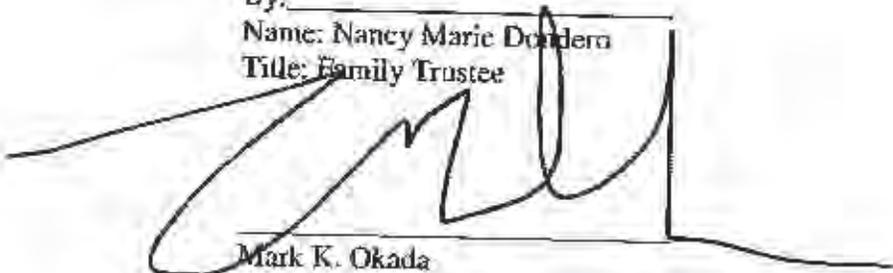
ACIS CAPITAL MANAGEMENT GP,  
LLC

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By: \_\_\_\_\_  
Name: Nancy Marie Dondora  
Title: Family Trustee



Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

ACIS CAPITAL MANAGEMENT GP, LLC

By: \_\_\_\_\_  
Name: James Dondora  
Title: President

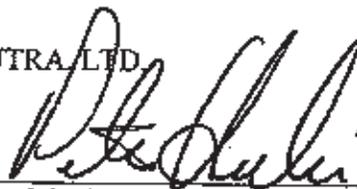
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

By: \_\_\_\_\_  
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA LTD.

By:  \_\_\_\_\_  
Name: MaplesFS Directors Limited  
Title: Director  
Peter Huber  
Authorised Signatory

ACIS CAPITAL MANAGEMENT GP,  
LLC

By: \_\_\_\_\_  
Name: James Dondero  
Title: President

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

THE DUGABOY INVESTMENT TRUST

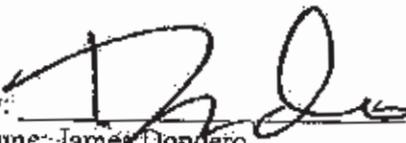
By: \_\_\_\_\_  
Name: Nancy Marie Dondero  
Title: Family Trustee

\_\_\_\_\_  
Mark K. Okada

NEUTRA, LTD.

By: \_\_\_\_\_  
Name: Maples Corporate Services, Ltd.  
Title: Director

ACIS CAPITAL MANAGEMENT GP,  
LLC

By:   
Name: James Dondero  
Title: President.



CAUSE NO. DC-17-15244

JOSHUA N. TERRY,

Plaintiff,

v.

ACIS CAPITAL MANAGEMENT, L.P. and  
ACIS CAPITAL MANAGEMENT GP, LLC,

Defendants.

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§

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

44<sup>th</sup> JUDICIAL DISTRICT

**DECLARATION OF JOSHUA N. TERRY**

STATE OF TEXAS

COUNTY OF DALLAS

§  
§  
§

1. My name is Joshua N. Terry.
2. I am both qualified and competent to give this declaration, and I have personal knowledge of the facts stated herein based upon my extensive experience as a partner in Acis Capital Management, L.P. (“Acis”), as well as my personal involvement in the matters discussed herein. I have never been convicted of a felony or crime of moral turpitude.
3. I give this declaration in conjunction with the filing of Plaintiff’s Application for Temporary Restraining Order (the “Application”), and all defined terms in the Application are incorporated herein.
4. Attached as Exhibits 1-2 and 4-8 are true and correct copies of documents produced by Acis pursuant to Court order or in the underlying arbitration proceeding.
5. I ran Acis’ day-to-day operations from 2011 until I was wrongfully terminated in June 2016. In my capacity as portfolio manager of Acis, I had involvement in all facets of Acis’ business operations, strategy, and finances.
6. I am well-versed in the CLO industry, where I have worked since 2005. I have earned the right to use the Chartered Financial Analyst designation. From my experience, education, and training, I became very familiar with the common and legitimate business practices of CLO managers in the industry, as well as the value of CLO management contracts.
7. In 2015, I valued Acis in excess of \$70 million, a conclusion that was accepted by David Klos, a Highland employee.
8. On February 28, 2012, Highland sold four European CLO management contracts to The Carlyle Group for \$43.6 million in an arms-length transaction. Those four CLO management

contracts are less valuable than the five Management Contracts Acis owns and which it now seeks to transfer for no consideration;

9. The Management Contracts are the most substantial asset of Acis and are valued in excess of \$30 million.

10. There is no legitimate business purpose for Acis to transfer the Management Contracts for no consideration. This transaction makes no business sense. Typically, CLO management contracts like these in the CLO industry would be transferred only for a significant amount of cash or other valuable consideration.

11. There is no legitimate business purpose for Acis to transfer the Highland Note for no consideration.

12. It is not in the normal course of Acis' business to transfer all of its Management Contracts for no consideration, or to transfer the Highland Note for no consideration.

13. If Acis transfers the Management Contracts, Acis will not have assets adequate to satisfy the Judgment.

**JURAT**

My name is Joshua N. Terry. My date of birth is 1/16/81, and my address is 25 Highland Park Village, Suite 100-848, Dallas Texas 75205. I declare under penalty of perjury that the foregoing is true and correct. This declaration is being executed pursuant to Tex. Civ. Prac. & Rem. Code § 132.001, and any other applicable law authorizing use of an unsworn declaration.

Executed in Dallas County, State of Texas, on the 23<sup>rd</sup> day of January 2018.

  
\_\_\_\_\_  
Joshua N. Terry, Declarant

**EXHIBIT I**



REPORTER'S RECORD

VOLUME \_\_\_ OF \_\_\_

TRIAL COURT CAUSE NO. DC-17-15244-B

1  
2  
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4  
5 JOSHUA N. TERRY, ) IN THE DISTRICT COURT  
6 Plaintiff, )  
7 VS. )  
8 ) OF DALLAS COUNTY, TEXAS  
9 ACIS CAPITAL MANAGEMENT, L.P. )  
10 and ACIS CAPITAL MANAGEMENT )  
11 GP, LLC, )  
12 Defendants. ) 44TH JUDICIAL DISTRICT

13 PLAINTIFF'S APPLICATION FOR  
14 TEMPORARY RESTRAINING ORDER  
15 which was heard on  
16 Wednesday, January 24, 2018

17  
18  
19 On the 24th day of January 2018, the following  
20 proceedings came on to be heard in the above-entitled  
21 and numbered cause before the Honorable Bonnie Lee  
22 Goldstein, Judge Presiding, held in Dallas, Dallas  
23 County, Texas.

24 Proceedings reported by machine shorthand  
25 utilizing computer-assisted realtime transcription.

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APPEARANCES:

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Texas State Bar No. 24053473  
Email: Shaw@ClouseDunn.com  
CLOUSE DUNN, LLP  
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Telephone: (214) 220-3888  
Facsimile: (214) 220-3833

ATTORNEYS FOR PLAINTIFF

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Facsimile: (214) 978-4044

ATTORNEYS FOR DEFENDANTS  
Acis Capital Management,  
L.P. and Acis Capital  
Management GP, LLC

\* \* \*

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INDEX TO THE  
  
PLAINTIFF'S APPLICATION FOR  
  
TEMPORARY RESTRAINING ORDER  
  
which was heard on  
  
Wednesday, January 24, 2018

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1 of these agreements.

2 THE COURT: All right. I tell you what.  
3 You all need to confer. I need to go get ahold of  
4 Jonathan, my court coordinator.

5 MR. SHAW: Thank you, Judge.

6 THE COURT: You're welcome. Off the  
7 record.

8

9 (There was a discussion off the record.)

10

11 THE COURT: Let's put this on the record,  
12 and then we will give you a date. Go ahead.

13 MR. SHAW: Judge, Brian Shaw on behalf of  
14 the plaintiff. The parties have agreed to an order for  
15 the Court.

16 The first agreement, which is -- when  
17 it comes to the order, is Acis agrees that it shall  
18 not make any change from Acis to another manager on  
19 any CLOs between now and a hearing on plaintiff's  
20 Application for Temporary Injunction, defined TI  
21 hearing.

22 Number two, Acis agrees that:

23 A. Any money received by Acis between  
24 now and the TI hearing will be preserved in an Acis  
25 bank account;

1           B. There shall be no changes to Acis'  
2 right to receive servicing fees between now and the  
3 TI hearing; and

4           C. Acis shall not divert any moneys owed  
5 to it between now and the TI hearing:

6           Plaintiff submits that is the Agreed  
7 Order that the plaintiff is submitting to the Court.

8           THE COURT: Okay. Are you going to get  
9 that to me in a document that I can actually sign?

10           MR. SHAW: We can do that. Do you have  
11 any problem with that?

12           MR. CRUCIANI: I would prefer it just  
13 be an order of the Court, as opposed to a contractual  
14 Rule 11 agreement. I agree that that is the agreement  
15 of the parties.

16           And if the Court would give its  
17 imprimatur of the agreement, that would be our  
18 preference.

19           MR. SHAW: And if we have an issue, then  
20 we will just go back and get the record.

21           THE COURT: Okay.

22           MR. SHAW: So that's fine with us.

23           THE COURT: It will be so ordered. Let's  
24 go off the record for a second.

25           (There was a discussion off the record.)

1 THE COURT: All right. This is what I'm  
2 going to allow. February 1st, you all are not coming  
3 in until 1:00. You have the morning to take the  
4 deposition briefly, two hours each side.

5 If the plaintiff chooses to retain an  
6 expert, you will have two hours with that retained  
7 expert. And then you can also have two hours with  
8 Mr. Terry so that we can go forward.

9 And you are not committed to the time at  
10 the court-ordered deposition. As soon as you can give  
11 him notification, as soon as you know you are going to  
12 have a retained expert.

13 The 29th is five days from now. Do you  
14 think you will have that by the 29th, do you believe?

15 MR. SHAW: I should. I will do  
16 everything I can to get that done by then.

17 THE COURT: All right. So if you can  
18 give them notice by the 29th, with the CV and  
19 everything that they would be entitled to.

20 MR. CRUCIANI: With the report. Right?

21 THE COURT: With the report.

22 MR. CRUCIANI: All right.

23 THE COURT: Okay. And we will set this  
24 for February 1st at 1:00 p.m., acknowledging that that  
25 gives you at least two hours and hopefully maybe a

1 little bit more than that.

2 MR. CRUCIANI: Okay.

3 MR. SHAW: Thank you for getting us in,  
4 Judge. I appreciate your time.

5 MR. CRUCIANI: We really do.

6 THE COURT: You're welcome. Thank you.  
7 We are off the record.

8

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12 (This completes the Reporter's Record  
13 of the Plaintiff's Application for  
14 Temporary Restraining Order which was  
15 heard on Wednesday, January 24, 2018.)

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**EXHIBIT J**

Office of the United States Trustee  
1100 Commerce St. Room 976  
Dallas, Texas 75242  
(214) 767-8967

Lisa L. Lambert,  
Assistant United States Trustee  
[lisa.l.lambert@usdoj.gov](mailto:lisa.l.lambert@usdoj.gov)

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

**IN RE:** §  
§  
**ACIS CAPITAL MANAGEMENT,** § **Case No. 18-30264-sgj-11**  
**L. P.,** §  
§  
§ **(Jointly Administered**  
§ **under Case No. 18-30264-sgj-11)**  
**Debtors.** §

**CHAPTER 11 NOTICE OF APPOINTMENT OF TRUSTEE  
AND OF AMOUNT OF BOND**

**TO:** ROBIN. PHELAN, PHELANLAW;  
4214 Woodfin Drive; Dallas, Texas 75220  
(214) 704-0222

Pursuant to 11 U.S.C. § 702, you are hereby appointed as Trustee in ACIS Capital Management, L.P.

Your bond is fixed at **\$10,000 personal recognizance.**

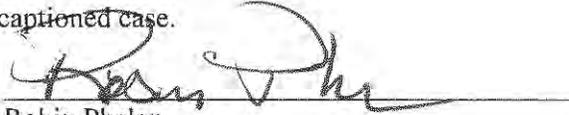
Pursuant to Federal Rule of Bankruptcy Procedure 2008, please signify your acceptance of this appointment by dating and signing this form as well as the required verified affidavit and returning it to the Office of the United States Trustee within five (5) days of the date of receipt. Pursuant to 11 U.S.C. § 322(a), you must insure that a bond in favor of the United States is filed with the Clerk of the Court within five (5) days of the date of your selection as Trustee. The bond must be filed before you begin to perform your official duties. In addition, you must submit the security clearance information requested by the Office of the United States Trustee within ten (10) working days of the date of this appointment.

DATED: May 14, 2018

/s/ William T. Neary,  
WILLIAM T. NEARY  
UNITED STATES TRUSTEE

I hereby accept my appointment as Trustee in the above-captioned case.

DATED: 5-14-18

  
Robin Phelan

**Certificate of Service**

I certify that on May 14, 2018, a copy of this notice of appointment has been served on the matrix with a copy of the contemporaneously-filed application to approve appointment of trustee. The parties and addresses are identified on the list attached to the application to approve appointment of trustee. I further certify that ECF notices were provided May 14, 2018.

/s/ Lisa L. Lambert  
Lisa L. Lambert

**EXHIBIT K**

Michael D. Warner (TX Bar No. 00792304)  
Benjamin L. Wallen (TX Bar No. 24102623)  
**COLE SCHOTZ P.C.**  
301 Commerce Street, Suite 1700  
Fort Worth, Texas 76102  
817-810-5250 Telephone  
817-810-5255 Facsimile  
**mwarn@coleschotz.com**  
**bwallen@coleschotz.com**

Gary Cruciani (TX Bar No. 05177300)  
Michael P. Fritz (TX Bar No. 24036599)  
**MCKOOL SMITH, P.C.**  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
214-978-4000 Telephone  
214-978-4044 Facsimile  
**gcruciani@mckoolsmith.com**  
**mfritz@mckoolsmith.com**

*Attorneys for Acis Capital Management, L.P. and Acis Capital Management GP, LLC*

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

<p>In re  ACIS CAPITAL MANAGEMENT, L.P.  Alleged Debtor.</p>	<p>Chapter 7  Case No. 18-30264-SGJ7</p>
<p>In re  ACIS CAPITAL MANAGEMENT GP, LLC  Alleged Debtor.</p>	<p>Chapter 7  Case No. 18-30265-SGJ7</p>

**JOINT OBJECTION OF ALLEGED DEBTORS TO  
EMERGENCY MOTION OF PETITIONING CREDITOR TO ABROGATE OR  
MODIFY 11 U.S.C. § 303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE,  
INTER ALIA, 11 U.S.C. § 363**

**TO THE HONORABLE STACEY G. C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Acis Capital Management, L.P. ("**Acis LP**") and Acis Capital Management GP, LLC ("**Acis GP**" and together with Acis LP, "**Acis**"), the alleged debtors in the above-captioned cases, hereby submit this Joint Objection (the "**Objection**") to the *Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and*

*Impose, inter alia, 11 U.S.C. 363* [Case No. 18-30264-SGJ7, Docket No. 3; Case No. 18-30265-SGJ7, Docket No. 3] (the “**303(f) Motion**”) filed by Joshua Terry (“**Terry**”). In support of this Objection, Acis respectfully states as follows:

**I.**  
**INTRODUCTION**

1. Terry holds a state-court judgment against Acis and is one of 18 creditors of Acis. Terry initiated these involuntary chapter 7 cases—acting alone as opposed to in concert with other creditors as required by Section 303(b)(1) of Title 11 of the United States Code (the “**Bankruptcy Code**”) - as a bad-faith litigation tactic and attempt at forum shopping in the context of his longstanding dispute with Acis. Terry filed his involuntary petition against Acis LP at 11:57 p.m. on January 30 and against Acis GP on January 31 at 12:00 a.m. (the “**Involuntary Petitions**”). On January 31, Acis filed a Joint Motion to Dismiss the Involuntary Petitions (the “**Motion to Dismiss**”) and a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(d) (the “**Creditor List**”). Acis’s Motion to Dismiss establishes that the Involuntary Petitions are fatally defective because Acis has more than 12 creditors, thereby requiring a minimum of 3 creditors to join in the filing of the Involuntary Petitions. Yet, Terry was the sole creditor to file.

2. The filing of the Involuntary Petitions filings was a transparent attempt to derail two imminent events. The first was a temporary injunction hearing that was scheduled to be heard in Dallas state court on January 31 (the “**Temporary Injunction Hearing**”). The second was the closing of a \$420 million transaction involving the reissuance of CLO-3 (as detailed and defined below) (the “**\$420 Million CLO-3 Reissue Transaction**” or “**Transaction**”) that has been in the making since May 2017 and that was scheduled to close on February 1.

3. Terry sought a state-court injunction to prevent Acis from transferring a management contract (the “**Collateral Management Agreement**” or “**CMA**”) from Acis to a Highland entity as part of the Transaction. As will be explained, this CMA is central to Terry’s 303(f) Motion. The transfer of the CMA is a ministerial task that Acis is contractually required to perform and is the last remaining condition to close the \$420 Million CLO-3 Reissue Transaction. Terry has falsely and without any basis claimed that this CMA is worth multiple millions of dollars and that Acis is attempting to fraudulently transfer the CMA in order to avoid paying an \$8 million judgment (that will be appealed) that Terry recently obtained against Acis. But, as set forth below, the facts are the opposite.

4. First, contrary to Terry’s unsupported assertions, the CMA has no value. Acis has no employees, and has never had any employees. Acis has always performed the management services required of it by the CMA by subcontracting those obligations to certain Highland entities (“**Highland Servicers**”). Thus, Acis receives management fees (the “cash inflows”) but then pays fees to the Highland Servicers (the “cash outflows”) under contracts that have been in place for years. Presently, *the cash outflows under the CMA exceed the cash inflows that results in negative cash flow, and thereby rendering the CMA worthless.*

5. Second, and a point that cannot be overstated, the very relief that Terry previously sought in state court, and now seeks in this Court, would cause the CMA to be terminated pursuant to its terms and thereby also render the CMA worthless. On January 29, Terry filed an application with the state court seeking the appointment of a receiver over Acis. In this Court, Terry has filed Involuntary Petitions against Acis. However, *under paragraph 15 of the CMA, [1] the appointment of a receiver and [2] an involuntary bankruptcy petition that “remain[s] undismissed for 60 days and result[s] in an adjudication of bankruptcy or insolvency” are*

*grounds for the CMA to be terminated and for Acis to be removed “for cause” as the collateral manager upon 30 days’ notice.* On the one hand, Terry argues that the CMA is worth millions of dollars and asks this Court to preserve its value by preventing the CMA from being transferred as part of the \$420 Million CLO-3 Reissue Transaction. On the other hand, if Terry succeeds in his effort to throw Acis into bankruptcy, the CMA will be terminated and will cease to have any value. These undisputed facts expose Terry’s bad faith motive behind his state-court and bankruptcy-court filings. Ironically, the very relief requested by Terry in state court and in Bankruptcy Court regarding the CMA would itself destroy any value associated with the CMA by causing the CMA to be terminated.

6. So, why is Terry engaging in this act of self-immolation that will guarantee the CMA will be terminated and any value associated with it to be extinguished? The answer: to try to hold hostage the \$420 Million CLO-3 Reissue Transaction and extort a settlement. Terry’s motive is not to preserve the CMA as part of Acis’s assets that would be available to satisfy his judgment. As discussed herein, the CMA has no value and is going away *regardless* of whether or not the Transaction closes.

7. To fully understand the context of the 303(f) Motion, it is important to understand what transpired in the underlying litigation that resulted in the judgment that Terry obtained against Acis, which judgment Terry is now using as a pretext to throw Acis into bankruptcy and block the \$420 Million CLO-3 Reissue Transaction. Terry was an employee of Highland who was integrally involved in the formation and management of Highland’s CLO business, including CLO-3. In 2016, Highland fired Terry for cause for various acts of misconduct. Terry is *persona non grata* in the CLO industry because he secretly tape recorded his Highland

colleagues, and no one in the CLO industry wants anything to do with Terry or Acis, and the Acis name is now toxic as a result of Terry's actions.

8. Upon being terminated by Highland, Terry filed arbitration claims against six parties: Acis LP; Acis GP; Highland; Highland's two founders (James Dondero and Mark Okada); and Dugaboy Investment Trust ("Dugaboy"). Terry asserted a claim for more than \$200 million and received an \$8 million award against Acis. Terry's claims against Highland, Dondero, Okada, and Dugaboy were all dismissed. Also, Terry's claim that the promissory note transaction between Highland and Acis (the "**Promissory Note**") (the same note referenced at paragraphs 2 and 6 of the 303(f) Motion) was a fraudulent transfer, but the arbitration panel likewise rejected this claim.

9. As a result of losing on all his claims against the deep-pocketed defendants in the arbitration and losing on his fraudulent transfer claim, Terry is left with a pyrrhic victory—a largely uncollectible judgment against Acis. If that fact was not already apparent to Terry, it became so on January 29 when, pursuant to Texas state law, Acis filed a motion to post a supersedeas bond in the amount of \$495,070.50, which is equal to 50 percent of Acis's net worth as of January 29. Terry thus realized that even if he ultimately prevailed on Acis's appeal of the \$8 million judgment, Terry was never going to recover more than the approximately \$500,000 bond amount.

10. Thus, Terry has been flailing about trying to create as much mayhem as possible to see if he can succeed in a shakedown by attempting to block the \$420 Million CLO-3 Reissue Transaction from closing. Terry's filings are made in complete disregard of Terry's own self-interest (the request for a receiver and the Involuntary Petitions) and in complete disregard for

the investors in the \$420 Million CLO-3 Transaction who stand to lose tens of millions of dollars if the Transaction does not close.

11. According to Terry’s fanciful allegations, the Transaction is itself a fraudulent transfer that Highland and Acis allegedly orchestrated to deprive him of the ability to satisfy his judgment against Acis. But, as will be explained, there are numerous reissues or refinances that have taken place, and are scheduled to take place, throughout the CLO industry as a result of changing market forces—specifically, declining interest rates from the time the CLOs were first issued.

12. In fact, Highland has been engaged in efforts to restructure the Acis CLOs long before the arbitration award was issued in October 2017. Highland closed on a restructure of CLO-2 on April 10, 2017 and it began work on the restructure of CLO-3 (the CLO at issue) as far back as May 2017. Thus, contrary to Terry’s wild assertions, the \$420 Million CLO-3 Reissue Transaction is being driven by legitimate business purposes in the ordinary course of business and not by some Machiavellian scheme by Acis to “dismantle their business to the great detriment of their single largest creditor, Mr. Terry” as Terry falsely claims.

13. Another important point for the Court to consider is that Terry’s 303(f) Motion is long on hyperbole and name-calling but short on facts regarding alleged past fraudulent transfers and future fraudulent transfers. But, here are the facts. To date, there has been a single fraudulent-transfer claim that has been litigated and that is Terry’s claim in the arbitration involving the October 2016 transaction giving rise to the Promissory Note in which Highland agreed to pay \$12.6 million to Acis in return for Acis transferring to Highland the right to certain future cash flows was a fraudulent transfer.<sup>1</sup> The arbitration panel roundly rejected Terry’s

---

<sup>1</sup> In his 303(f) Motion regarding a subsequent November 2017 transaction involving this same promissory note (the “**Note Transfer**”), Terry alleges that “[u]pon information and belief, Acis did not receive *sufficient consideration*

fraudulent-transfer claims, holding that “[t]he transactional documents recite business purpose and reasonable consideration for the sale.” Final Award, at 17, Exhibit No. 1, hereto.<sup>2</sup> Moreover, “Terry offer[ed] no evidence that ACIS did not receive reasonable equivalent value in the transaction or that ACIS made the transfer with ‘actual intent to hinder delay or defraud.’” *Id.* With respect to the fraudulent-transfer allegations that are littered throughout the 303(f) Motion, this Court should take such allegations with a heavy dose of salt given Terry’s prior, unsuccessful claims of fraudulent transfers.

14. To bring things full circle, given that the same relief that Terry now seeks in his 303(f) Motion—blocking the \$420 Million CLO-3 Reissuance Transaction—was scheduled to be heard by the state court judge at the Temporary Injunction Hearing on January 31, that begs the following question: Why did Terry simply not go forward with the January 31 Temporary Injunction Hearing in state court and instead file the Involuntary Petitions against Acis and file an emergency 303(f) Motion? The answer is clear: Terry knew that the handwriting was on the wall and that the state court was not going to enjoin the \$420 Million CLO-3 Reissuance Transaction from closing the next day and then Terry would lose all leverage to try to block the Transaction. Terry’s machinations did succeed in causing the closing of the Transaction to be rescheduled from February 1 to February 13. However, as the evidence will show, if this

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for the Note Transfer.” This assertion is in sharp contrast to a sworn declaration that Terry signed on January 23 in support of a temporary restraining order in which he falsely claimed based upon his “*personal knowledge*” that the November 2017 Note Transfer was for “*no consideration*.” Terry Decl. ¶11, Exhibit No.2. At a TRO hearing in state court on January 24, Acis’s counsel pointed out that this statement in Terry’s declaration was false because, among other consideration, the Note Transfer reflected a commitment by a Highland entity to pay Acis upon demand up to \$2 million in legal expenses and an additional \$1 million in administrative expenses. Thus, in his 303(f) Motion, Terry has been forced to change his tune that the Note Transfer was a fraudulent transfer based upon his “*personal knowledge*” that Acis received “*no consideration*” for the transfer to a statement that “*upon information and belief*” Acis did not receive “*sufficient consideration*” for the transfer. The sworn statement in Terry’s January 23 declaration is just one of many misleading and false statements that Terry has made and Acis intends to bring to light in its cross-examination of him at the hearing on his 303(f) Motion.

<sup>2</sup> Each Exhibit referenced herein is incorporated herein by such reference.

Transaction does not close on February 13, it will never close and will cause innocent third party investors to lose tens of millions of dollars.

15. As is detailed herein, Acis's interest in the Transaction is limited to the ministerial assignment of the CMA and not a transfer of millions of dollars of assets of Acis—as Terry suggests is happening. Moreover, Terry's requested relief is an exercise in futility because whether or not the Transaction closes Terry will be in same position. Either the Transaction goes forward or CLO-3 will liquidate. In either case, Acis no longer will manager CLO-3 and the CMA will have no value. However, if CLO-3 liquidates, the third-party investors to whom Acis owes a fiduciary duty stand to lose tens of millions of dollars. Preventing the Transaction therefore would create no additional value for Acis, while creating substantial damages for the investors and risk of claims by them against Acis (and Terry).

16. Because Section 303(f) of the Bankruptcy Code would have allowed Acis to complete the closing of the \$420 Million CLO-3 Reissue Transaction, notwithstanding the Involuntary Petitions, Terry compounded his ill-conceived litigation strategy in filing the Involuntary Petitions by filing the 303(f) Motion, which seeks to impose (before an order for relief is entered and on the strength of Involuntary Petitions which are deficient on their face) the requirements of Section 363 of the Bankruptcy Code. For the reasons set forth below, the 303(f) Motion should be denied.

## II. HISTORICAL BACKGROUND<sup>3</sup>

### A. Acis, Highland, and the CLO Structure

17. Highland is in the business of putting together and managing collateralized loan obligations (“CLOs”). It is one of the primary players in the CLO industry. A CLO is a legal entity that owns a basket of loans, which are managed by a collateral manager (the “Collateral Manager”). The Collateral Manager buys loans into, or sells them out of, the basket. The CLO has its own bondholders (lenders to the CLO) (“Bondholders”), and its own equity holders (“Equity Holders”).

18. Acis LP is the Collateral Manager for CLO-3 as well as four other distinct CLOs. Acis has absolutely no economic interest in any of the CLOs, which includes CLO-3 and the \$420 million in loans that CLO-3 holds. Rather, Acis, as Collateral Manager, provides services to the CLO and is compensated for its services in accordance with the Collateral Management Agreement or CMA. Exhibit No. 3, hereto. The duties and obligations Acis owes CLO-3, in its capacity as Collateral Manager, are governed by the CMA. Among other things, Acis’s duties as Collateral Manager include: supervising and directing the investment and reinvestment of CLO assets; monitoring the CLO assets and providing to the Issuer (the CLO) certain reports, schedules, and other data; and directing an optional redemption under the Indenture on behalf of the Issuer. CMA § 3. Additionally, Acis is obligated to “use commercially reasonable efforts to ensure that no action is taken by it” that would materially and adversely affect the Issuer.” CMA § 8.

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<sup>3</sup> The facts and statements herein will be supported by testimony and evidence presented at the hearing on the 303(f) Motion.

19. Because Acis has no employees it does not and cannot provide any services directly to the CLOs as required by the CMAs. However, the CMA allows Acis to contract with third parties to provide these services, which Acis has done. Specifically, Acis has entered into several agreements with other Highland affiliates to provide the required services. In one such agreement, a Highland affiliate provides “front-office” services that include the buying and selling of the loans that comprise the CLO (the “**Sub-Advisory Agreement**”). Pursuant to the Sub-Advisory Agreement, Highland provides to Acis, among other things, the following services: “mak[ing] recommendations to [Acis] . . . as to the general composition and allocation of the Portfolio . . . including recommendations as to the specific loans and other assets to be purchased, retained or sold”; “plac[ing] orders with respect to, and arrang[ing] for, any investment by or on behalf of [an] Account”; “identify[ing], evaluat[ing], recommend[ing] to [Acis] . . . the structure and/or terms of investment opportunities within the specific investment strategy of [Acis]”; “provid[ing] information to [Acis] . . . regarding any investments to facilitate the monitoring and servicing of such investments”; and “assist[ing] and advis[ing] [Acis] . . . with respect to credit functions including, but not limited to, credit analysis and market research and analysis.” Sub-Advisory Agreement § 1(b). Exhibit No. 4, hereto. The Sub-Advisory Agreement “shall terminate automatically with respect to any Management Agreement on the date on which (i) such Management Agreement has been terminated . . . or (ii) [Acis] is no longer acting as portfolio manager . . . whether due to removal, resignation or assignment.” *Id.* § 6(b).

20. In another agreement, a Highland affiliate provides “back-office” services that include the accounting, legal, and other administrative functions necessary in servicing the loans (the “**Shared Services Agreement**”). Under the Shared Services Agreement, Highland provides

to Acis essential services, including: “[a]ssistance and advice with respect to back- and middle-office functions including, but not limited to, accounting, payments, operations, technology and finance”; “[a]ssistance and advice with respect to legal issues, compliance support and implementation and general risk analysis”; “access to marketing team representatives to assist with the marketing of [Acis]”; “[a]ssistance relating to any reporting [Acis] is required to make”; and “[t]he provision of office space, information technology services and equipment, infrastructure and other related services requested or utilized by [Acis].” Shared Services Agreement § 2.02. Exhibit No. 5. Though these services are essential to Acis’s capacity to serve as Collateral Manager, “[e]ither party may terminate [the Shared Services] Agreement *at any time* upon at least thirty (30) days’ written notice to the other.” *Id.* § 7.01 (emphasis added).

21. The Highland affiliates have notified Acis that they no longer intend to provide services to Acis pursuant either to the Sub-Advisory Agreement or Shared Services Agreement for CLO-3. Thus, even if the Transaction did not close, that would leave Acis unable to provide the services it is required to provide as Collateral Manager, which failure constitutes a basis for removing Acis as collateral manager and terminating the CMA on 30 days’ notice. *See* CMA § 15(g) (CMA may be terminated and Acis may be removed as Collateral Manager upon 30 days’ notice due to “the inability of [Acis] to perform its duties hereunder in accordance with the standard of care specified herein due to the termination of the Service Agreements [defined as the Shared Services Agreement and Sub-Advisory Agreement].” Exhibit No. 3.

22. Terry was an employee of Highland from 2005 until June 2016 when Highland terminated Terry for cause. Terry was integrally involved in the Acis CLOs, having launched the CLOs, set up their structure, and serving as portfolio manager for several years.

23. Highland helped put together six CLOs bearing the Acis name from 2013 until 2015. These are named Acis CLO-I through Acis CLO-6. These CLOs had loan portfolios ranging in value from around \$300 million to \$550 million at the time they were initiated.

### **B. CLO Reissuances Prompted by Falling Interest Rates**

24. The loans held by the CLO pay cash when the borrowers from the CLO pay interest and principal on the loans. The borrowers send their payments to the CLO Trustee's<sup>4</sup> collections account. Each quarter, the Trustee pays out the cash in the collections account. The quarterly payments, also called the "waterfall," are made according to the priority set out in the CLO's indenture (the CLO's governing document). First, the CLO's Collateral Manager receives a fee. Second, the Bondholders are paid in order of priority: the AAA bondholders are paid first, the AA bondholders are paid, etc., until the most-junior bondholders are paid. Third, the Equity Holders—the last group to be paid in a CLO structure—receive what is left from the collections account after all the management expenses and Bondholders are paid. If there is enough cash left at the bottom of the waterfall, the Equity Holders receive a good return. If there is not enough cash, the Equity Holders may get no money for that quarter.

25. The amount of money paid to the Equity Holders in a given quarter will depend on the amount of cash paid *into* the CLO by the borrowers, less the amount that has to be paid *out* to the CLO's Bondholders for that quarter. When loan interest rates are high in the market, the borrowers pay more cash into the CLO and the Equity Holders receive a good return each quarter. CLOs created in calendar year 2014, including CLO-3, were issued when interest rates were higher than they are today. Given these lower interest rates Borrowers have refinanced their

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<sup>4</sup> The CLO Trustee is a third party, in this instance Bank of New York, which oversees the collection of loan payments from the borrowers, among other responsibilities.

loans to lower interest rates. (This is no different than a homeowner taking advantage of lower interest rates to refinance their home, which would result in the lender receiving reduced principal and interest payments). As a result, the borrowers pay less cash into the CLO each quarter than the prior quarter. This is what is currently happening with CLO-3.

26. However, the amount owed to the Bondholders does not change with interest rates. Rather, it is fixed by the indenture (the agreement under which the Bondholders loan money to the CLO), so that amount paid to the Bondholders remains constant. Therefore, as interest rates fall, there is less, and potentially no money left for the Equity Holders at the end of each quarter. The CLO industry has solved this problem by restructuring currently-existing CLOs, called a “reissue.” The reissued CLO will pay lower interest rates to the CLO’s Bondholders. This reduces the cash the CLO must pay *out* each quarter to the Bondholders, leaving more cash available to pay to the Equity Holders. As loan interest rates fall, a CLO must reissue or its Equity Holders will get no more return on their CLO equity-holdings. Last year, 125 CLOs reissued for a total of \$62 billion.<sup>5</sup> One such transaction involved Acis CLO-2 refinancing \$192 million of its loans in April 2017. This reissue or refinancing trend has continued in 2018 with 19 CLOs reissuing for a total of \$10 billion in transactions. *Id.*

27. In addition to doing a reissuance of the CLO, another option available to Equity Holders who are dissatisfied with reduced payments that they are receiving in an era of lower interest rates is to *shut down* the CLO. Pursuant to the CLO’s indenture, the Equity Holders have the right to “call” the CLO, which means to demand that the CLO sell its basket of loans into the market, distribute the remaining proceeds in one, final waterfall, and then cease operations. When a CLO is called, the loans must be liquidated on the open market within a set

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<sup>5</sup> Exhibit No. 6, is an excerpt from JP Morgan 2017-2018 CLO Weekly New Issue Datasheet dated January 29, 2018, showing the CLO market’s reissuance and refinancing activity for 2017 and 2018.

period of time, usually between one and four weeks. Though the Equity Holders often realize a substantial loss in this process, it is better than leaving their money in an investment that pays little or no returns for years to come. (Each CLO has a finite life after which it automatically terminates. In the case of CLO-3, it terminates in 2026). Acis CLO-2014-C Indenture at §1.1, Def. Payment Date, p44, and §2.7(e) re: Final Payment Date, and §9.5, re: surrender of Notes. Exhibit 7.

28. A Collateral Manager only receives management fees for as long as the CLO operates. The Collateral Manager has no control over when a CLO is reissued or called. Instead, the Collateral Manager must follow the directions of the Bondholders and the Equity Holders to whom it owes a fiduciary duty. Once the decision to either reissue or call a CLO has been made, the Collateral Manager is duty-bound to undertake all necessary actions to effectuate the directed outcome. After a CLO is called, the Collateral Manager no longer will get any management fees. Moreover, regardless of whether a CLO is reissued or called, the Collateral Manager does not receive any compensation relating to the reissuance.

### **C. The Planned Reissuance of CLO-3**

29. CLO-3 (Acis CLO 2014-3, Ltd.) was created on February 1, 2014 and terminates on February 1, 2026. CLO-3 owns a basket of loans valued at \$420 million, including loans to Delta Airlines, Dunkin Donuts, and Tribune Media. CLO-3's Bondholders and Equity Holders own the economic interest in this \$420 million basket of loans. CLO-3's Bondholders include public pension funds, insurance companies, and banks. The Equity Holder of CLO-3 is Acis

Loan Funding, Ltd. (“ALF”),<sup>6</sup> which in turn is owned by two entities: a charitable foundation and a third-party private firm (collectively, the “CLO-3 Equity Holders”).

30. When CLO-3 was created, its basket of loans had an average interest rate of 4.59%, resulting in a quarterly waterfall payment of approximately \$2 million to the CLO-3 Equity Holders. However, in recent years, the borrowers on these loans have been refinancing to a lower average interest rate (3.21%). This has resulted in falling distributions to the CLO-3 Equity Holders for each quarter. The returns to the CLO-3 Equity Holders have been as follows: \$1.4 million in the first quarter of 2017, \$1.36 million in the second quarter, \$875,000 in the third quarter, and \$1.1 million in the last quarter of 2017. The quarterly payment for the first quarter of 2018 is \$470,000, and the CLO-3 Equity Holders are expected to receive no distributions by the next waterfall, scheduled for May 2018. Like other similarly-situated CLOs, CLO-3 either needed to be reissued or called to protect the CLO-3 Equity Holders’ interests.<sup>7</sup>

31. Starting in May 2017, CLO-3 started the reissuance process on behalf of its Equity Holders. Typically, the most difficult investors to sign up are the equity holders. As previously explained, the equity is the riskiest investment because it is last in line for payment under the CLO waterfall and faces the prospect of receiving reduced or no payments (which is expected to happen with the May 2018 quarterly payment). In May 2017, a private equity firm

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<sup>6</sup> Acis Loan Funding, Ltd. recently changed its name to Highland CLO Funding, Ltd.

<sup>7</sup> Exhibit No. 8, is a copy of The Loan Syndications and Trading Association’s *2017 CLO Review, 2018 Preview: Necessity is the Mother of Invention* article (also found at <https://www.lsta.org/news-and-resources/news/2017-clo-review-2018-preview-necessity-is-the-mother-of-invention>), which makes the following relevant observations: (a) “When they weren’t doing new deals, managers were busy reducing CLO liability costs via refis or resets.” (b) “Of course, the reason that CLOs were repricing and/or resetting was because i) they could and ii) falling loan spreads meant they needed to reduce liabilities costs to keep the arbitrage working. Wells calculated that the weighted average CLO spread dropped 31 bps during 2017. Without refinancings (which simply reduce spread) and resets (which reduce spread, extend tenor and can reset tests), economics on existing CLOs simply might not work.” (c) Reissuances will become industry standard: “Ultimately, Wells concluded that we may be seeing the development of a new lifecycle for CLOs: i) issuance, ii) refinancing after the non-call expires and then iii) a reset as the end of reinvestment nears.”

expressed an interest in making a \$150 million investment in ALF (the “**\$150 Million Equity Investor**”). ALF was the investment vehicle used for the various Acis CLOs, including CLO-3. However, one of the conditions demanded by the \$150 Million Equity Investor in making its investment was that ALF would instruct the reissuance of certain CLOs, including CLO-3 and would sever any continuing connection that Acis had with the CLOs, including removing it as Collateral Manager. ALF issued this instruction requested by the \$150 Million Equity Investor on October 6, 2017 (two weeks *prior* to the arbitration award).<sup>8</sup>

32. An investment bank was required to be engaged in connection with the contemplated reissuance transaction. The investment bank’s responsibilities included securing new equity investors and new bondholders. Goldman Sachs was the first investment bank that was approached in connection with the reissue of CLO-3. Goldman Sachs recommended that all the CLOs be “called” and that the CLOs start with a fresh slate. Goldman Sachs also unambiguously communicated that Acis could not be the Collateral Manager following the reissuance of the CLOs because of Acis’ now toxic public image after the Terry dispute had so damaged the Acis brand. CLO-3’s Equity Holders agreed. As part of the reissuance, the CMA for CLO-3 would have to be assigned to a new Collateral Manager, in this instance, Highland CLO Management, LLC (the “**New Collateral Manager**”), another Highland affiliate.

33. Goldman Sachs ultimately dropped out due to the “noise” associated with Terry and the Acis brand. Thereafter, in November 2017, CLO-3 engaged a new investment bank, Mizuho, to undertake the efforts to reissue CLO-3. Mizuho worked to find new Bondholders to

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<sup>8</sup> On October 6, 2017, and again on dates subsequent thereto, ALF (on behalf of the CLO-3 Equity Holders, issued the following instruction: *In accordance with Sections 9.2 and 14.3 of the Indenture, ALF hereby directs the Issuer, the Trustee and the Portfolio Manager [Acis] to (i) effect an optional redemption on the 45<sup>th</sup> day following the date of this direction letter, and (ii) redeem each Class of Secured Notes in whole from Refinancing Proceeds, in each case, on the terms and subject to the conditions set forth in the Indenture.* Exhibit Nos. 9 - 12.

invest in the reissued CLO-3. It completed that process on January 26, 2018. On or about January 29, the Bondholders of the reissued CLO-3 agreed to purchase approximately \$375 million of new bonds issued by the reissued CLO-3. The \$375 million from the purchase of the new bonds would in turn be used to pay-off the old Bondholders in the original CLO-3. Collectively the foregoing process is referred to as the “Reissuance of CLO-3”.

34. *At this point in time, the transfer of the CMA from ACIS, LP to the New Collateral Manager, is the sole remaining formality before closing of the Reissuance of CLO-3 can occur.*<sup>9</sup> This is the transaction that Terry argues should require compliance with Section 363 of the Bankruptcy Code, and not be completed by Acis LP in accordance with Section 303(f) of the Bankruptcy Code.

35. But, based on Acis’ fiduciary duty to CLO-3’s Equity Holders, it must execute the transfer.<sup>10</sup> To do otherwise would be to put its interests before those of the CLO-3 Equity Holders. Acis has been instructed to execute the transfer of the CLO-3 Management Agreement to the New Collateral Manager. Holding-up the assignment of the CLO-3 Management Agreement will not result in Acis receiving any more value or funds. Rather, failing to act in the best interest of the CLO subjects Acis to liability to CLO-3, its Bondholders, and its Equity Holders.

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<sup>9</sup> The CMA may be assigned by either Acis or CLO-3 if certain requirements are met. Specifically, Acis may not assign any of the management agreements “without the written consent of the Issuer, at least a Majority of the Subordinated Notes . . . and at least a Majority of the Controlling Class.” CMA § 14(a). Likewise, the Issuer may not assign a management agreement “without the prior written consent of [Acis].” *Id.* § 14(c).

<sup>10</sup> As a registered investment advisor, Acis is bound to act in accordance with the Investment Advisors Act of 1940 (the “IAA”). Under the IAA, it is “unlawful for any investment advisor . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” IAA § 206. Section 206 has since been interpreted as establishing “a statutory fiduciary duty for investment advisers to act for the benefit of their clients, requiring advisers to exercise the utmost good faith in dealing with clients, to disclose all material facts, and to employ reasonable care to avoid misleading clients.” *S.E.C. v. Treadway*, 430 F. Supp. 2d 293, 338 (S.D.N.Y. 2006) (internal quotations omitted).

**D. Terry's bad-faith litigation gamesmanship to block the Reissuance of CLO-3**

36. Terry completely understands the foregoing reissue process, why it is necessary, and the devastating consequences of the reissuance not closing. Terry launched CLO-3, set up its structure, and managed its portfolio for several years. Moreover, never in the history of the CLO industry has a CLO reissuance progressed to the point of funding, and then not closed. The new Bondholders already have committed to buy \$375 million in bonds, the old Bondholders already have been assured they will be paid off, and the CLO-3 Equity Holders already have been assured that their investment will not face liquidation.

37. Knowing this, Terry sought to leverage the situation. On January 24, he filed an application for a TRO to, among other things, prevent Acis from assigning the CMA. The TRO was supported by a declaration from Terry that contained materially misleading statements and omissions, and outright falsehoods. The state court conducted a hearing that resulted in Acis and Terry reaching a short-term agreement that would remain in place until the temporary injunction that was scheduled to be heard within the week. Specifically, Acis agreed in the state court to not transfer the CMAs or remove Acis as manager until the temporary injunction hearing. Acis also informed the state court that the Reissuance of CLO-3 was in progress and, therefore, it was important to have the temporary injunction heard as soon as possible. The temporary injunction hearing was originally scheduled for February 1.

38. On January 29, Terry filed a supplemental TRO, also supported by a declaration from Terry, that Acis "*had transferred*" management of CLO-3 to a Highland entity. The TRO and Terry's supporting declaration, once again, were false. Acis had *not* transferred management of CLO-3 to a Highland entity as Acis had agreed not to transfer such rights until the temporary injunction hearing and had honored that agreement.

39. Also, on January 29, Terry filed an application for a turnover order and for appointment of a receiver (the “Application for Receiver”). In the Application for Receiver, Terry made false and unsubstantiated allegations that Acis had fraudulently transferred more than \$16 million in assets to affiliated entities after entry of the arbitration award in October 2016. As noted in the Introduction, under paragraph 15 of the CMA, *the appointment of a receiver would cause the CMA to be terminated and Acis to be removed as the Collateral Manager, thereby rendering the CMA worthless*. Yet, Terry inexplicably asked for the appointment of a receiver as just another litigation tactic designed to sow confusion regardless of the fatal consequences to Terry’s claims, i.e. his supposed attempts to preserve the value of the CMA.

40. At the January 29 hearing, the Court did not make any substantive rulings. Rather, at the request of Acis’s counsel and in light of the scheduled closing of the Reissuance of CLO-3 on February 1, the state court moved the temporary injunction hearing up from February 1 to January 31 to ensure that the hearing would take place prior to the scheduled February 1 closing. Also, the Court reconfirmed its prior orders that Terry would supply an expert report by noon on January 30 and that both Terry and his expert would appear for deposition for up to two hours’ each prior to the temporary injunction hearing that had been rescheduled for January 31 at 2:00 p.m.

41. On January 30, Terry provided his expert report as ordered. Later that day, Terry withdrew his expert, which resulted in the expert deposition being called off. However, Terry’s deposition remained scheduled to take place at 10:00 a.m. on January 31, the day of the temporary injunction hearing. Then, out of the blue and with no advance notice, Terry filed his Involuntary Petitions against Acis at midnight on January 30 and filed a “suggestion of

bankruptcy” with the state court. Terry’s counsel advised that in light of the bankruptcy filings that Terry would not appear for his court-ordered deposition on January 31 and would not appear at the temporary injunction hearing. In response, on January 31, Acis filed a motion to vacate the agreed order that the parties had entered on January 24 and advised Terry that Acis intended to present the motion to vacate to the state court at the 2:00 p.m. hearing.

42. The parties appeared at the 2:00 p.m. hearing on January 31. During the middle of argument, Judge Goldstein announced that Judge Jernigan was on the phone, which resulted in a recess of about one hour as Judge Goldstein took Judge Jernigan’s call. When Judge Goldstein returned to the bench after that call, she announced her view that the filing of the Involuntary Petitions deprived her of jurisdiction to make any further rulings pending action by the Bankruptcy Court.

#### **E. Closing of the Transaction is rescheduled from February 1 to February 13**

43. CLO-3 has been able to move the closing date for the Transaction from February 1 to February 13. However, this is a short-term fix that demands a permanent solution. The very pendency of these involuntary cases severely impacts CLO-3’s ability to ensure that all of the constituent parties remain committed to the transaction. Each day that passes creates greater risk for this \$420 million transaction. The new Bondholders will grow nervous about the unprecedented delay. The ratings agencies, law firms offering opinion letters, and various trustees have refused to act in the shadow of a potential bankruptcy stay. Indeed, for the Transaction to go forward on February 13, it must “price” five business days in advance, on February 8; and the pendency of these Involuntary cases likely will prevent pricing – which will likely quash the Transaction before the February 13<sup>th</sup> closing date. And the longer the

Transaction waits, the more likely that changing market conditions, such last Friday's precipitous stock market fall, will cause parties to reconsider if they want to enter into the Transaction at the previously negotiated prices. Absent the denial of the 303(f) Motion and the granting of the Motions to Dismiss,<sup>11</sup> the Reissuance of CLO-3 may never close,<sup>12</sup> to the detriment of the CLO-3 Equity Holders and Bondholders to whom Acis owes a fiduciary duty.<sup>13</sup> However, it is beyond question if the assignment of the CMA is not executed prior to February 13, CLO-3 will be called, its basket of loans liquidated, and the CLO-3 Equity Holders and other parties will incur tens of millions of dollars in losses.

44. The CLO-3 Indenture provides that the Equity Holders may "call"—*i.e.*, force the liquidation of—CLO-3 through an optional redemption of the outstanding notes. Specifically, a majority of the Equity Holders may initiate an optional redemption "on any Business Day after the Non-Call Period." CLO-3 Indenture § 9.2(a). Exhibit No. 7. The Non-Call Period for CLO-3 ended in February 2016. CLO-3 Indenture § 1.1. Exhibit No. 7. After being notified of an optional redemption, "the Portfolio Manager [Acis] in its sole discretion shall direct the sale (and the manner thereof) of all or part of the Collateral Obligations and other Assets." *Id.* § 9.2(b).

45. Even if Acis subsequently escapes bankruptcy and the appointment of a receiver, the Equity Holders in CLO-3 will nonetheless issue an optional redemption, thereby liquidating

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<sup>11</sup> In connection with the Motions to Expedite the Hearing on the Motions to Dismiss (which will be considered by the Court current with the 303(f) Motion), Acis is filing a Supplemental Brief, in support of the expedited consideration. As noted therein, it is not enough to simply deny the 303(f) Motion, thus permitting Acis to continue operations, unrestricted by Section 363 of the Bankruptcy Code, until an Order for Relief is entered or the Involuntary Cases are dismissed, as, and most important, the mere existence of the Involuntary Petitions against Acis is interfering with and causing damage to all of the CLO's managed by Acis.

<sup>12</sup> As noted in Paragraph 43, a failure to close the Reissuance of CLO-3 does not result in the continued operations as Collateral Manager by Acis. Rather, Acis is done and CLO-3 is liquidated. Thus, the *hold-up* by Terry of the Reissuance of CLO-3 has no utility for Acis, Terry or any other creditor of Acis.

<sup>13</sup> Each week the transaction is delayed costs the Equity Holders between \$50,000 and \$100,000.

all CLO-3 assets. Under such a scenario, the CMA will automatically terminate upon “the liquidation of the Assets and the final distribution of the proceeds of such liquidation to the Holders.” CMA § 13(a)(ii).

46. What appears to be lost on Terry is that regardless of whether the Reissuance of CLO-3 occurs, Acis’s fate is sealed. In short order, Acis will no longer be the Collateral Manager for CLO-3. Either the Collateral Management Agreement will be transferred pursuant to a reissuance or it will expire when CLO-3 is called and liquidated.

47. Furthermore, and as previously discussed, even if Acis is prohibited from transferring the Collateral Management Agreement, Acis will nonetheless be terminated as Collateral Manager due to (1) the bankruptcy filing, (2) a receivership requested by Terry in state court, or (3) Acis’s inability to provide management services as a result of the Highland Servicers exercising their contractual right to refuse to continue to provide services to Acis under the Sub-Advisory Agreement and Shares Services Agreement. The delay or even prevention of the assignment of the CMA to the New Collateral Manager will not result in more assets owned by Acis, and, in fact, will increase the claims against Acis (not to mention the forthcoming claims against Terry) for its breach of fiduciary duties owed to CLO-3, its Bondholders and the CLO-3 Equity Holders.

### **III.** **OBJECTIONS TO THE 303(f) MOTION**

48. The relief Terry seeks in the 303(f) Motion has no basis in law or fact and is nothing more than the latest maneuver in his scheme to exert pressure on Acis (and Highland) by jeopardizing the closing of the Reissuance of CLO-3.

49. As set forth in the Motions to Dismiss, Terry has improperly invoked the jurisdiction of this Court and did so in bad faith. Allowing Terry to compound those abuses by imposing on Acis the requirements of Section 363 of the Bankruptcy Code would not only be inequitable, but also has the potential to cause millions of dollars of damage to multiple parties, including creditors of Acis or affiliates thereof. Moreover, it would be inappropriate for this Court to condone such abuses by modifying Section 303(f) before this Court has considered the propriety of Acis being subject to Title 11 cases.

**A. Section 303(f) Permits the Alleged Debtors to Operate Unencumbered During the Gap Period**

50. Section 303(f) provides:

“Notwithstanding Section 363 of [the Bankruptcy Code,] except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.”

51. In the *Texas Rangers* case the Court confirmed the scope and rationale of Section 303(f) by quoting from *Consolidated Partners Inv. Co. v. Lake*, 152 B.R. 485, 490 (Bankr. N.D. Ohio 1993):

By virtue of § 303(f), during the gap period, the Debtor was authorized to continue such operations until an order for relief was entered as though no involuntary petition had been filed. The rationale for allowing the debtor to operate during the involuntary gap period is that prior to the entry of an order for relief, the subject of an involuntary petition should not be adversely affected by the case.”

*In re Texas Rangers Baseball Partners*, 434 B.R. 393 ( Bankr. N.D. Tex. 2010).

52. In the 303(f) Motion, Terry cites two cases for the proposition that “courts have imposed restrictions on an involuntary gap debtor’s operations to preserve and protect assets;

especially where there is a concern that a debtor may dispose of assets for less than fair value or dismantle a business for the private gain of its principals.” 303(f) Motion, at ¶¶ 18-19; *In re Texas Rangers Baseball Partners*, 434 B.R. 393 (Bankr. N.D. Tex. 2010); *Wilson v. Davis (In re Wilson)*, 62 B.R. 42 (E.D. Tenn. 1985).

53. Terry’s characterization and attempts to analogize the facts of those cases is unavailing. First, in the *Wilson* case, the court did not modify Section 303(f), but simply observed that because Section 303 permits an involuntary debtor to use, acquire, or dispose of property through the time the order for relief is entered (as opposed to through the date of the involuntary filing, which the appellee had argued), that the proper date for determining the scope of an involuntary debtor’s exempt property was the date on which an order for relief was entered. *Id.* at 45-46.

54. In *Texas Rangers* the Court abrogated Section 303(f), but, the main reason for doing so was that the alleged debtors’ sole asset was *itself* a debtor in a *voluntary* chapter 11 case and that it was appropriate to impose on the involuntary debtors the same fiduciary duties as a debtor in possession because of such ownership structure. 434 B.R. at 404-405. Indeed, the Court acknowledged that section 303(f) generally permits an involuntary debtor to “proceed without court oversight[,] . . . so long as [its] conduct can be justified under the business judgment rule.” *Id.* at 405. Moreover, as acknowledged by Terry, the Court’s conclusion was very much “based on the facts and circumstances of the case.” 303(f) Motion, at ¶ 19.

55. The *Texas Rangers* Court was further concerned that the alleged debtors were not operating consistent with the fiduciary duties of a debtor-in-possession in the gap period. Thus, the Court imposed the obligations of Section 363 of the Bankruptcy Code on the alleged debtors.

Terry makes no comparison of the facts of that case to the facts of this matter in support of his 303(f) Motion – and he cannot.

56. Here, Acis is operating consistent with both Acis’s fiduciary duties and the industry trend of almost 140 CLO reissuances. As noted above, blocking the Transaction benefits neither Acis nor its creditors. In fact, the liabilities undertaken from a failure to comply will surely injure Acis, and its creditors. Further, to cause the assertion of claims against Acis is contrary to its fiduciary duties to its creditors and third parties.

57. In connection with the assignment of the CMA as part and parcel of the Reissuance of CLO-3, there is no evidence to suggest that Acis is not acting in a fashion consistent with the fiduciary responsibilities of a debtor-in-possession (were Acis to become debtors-in-possession at a later date). Rather, the unsupported allegations by Terry of pre-petition transactions undertaken by Acis fail to demonstrate in any regard that the assignment of the CMA to complete the Reissuance of CLO-3 is inappropriate.

58. As demonstrated above, Acis is, by assigning the CMA to the New Collateral Manager, performing exactly as is required of it and is complying with its fiduciary duties to CLO-3. To do otherwise would be a breach of its fiduciary duties as well as cause significant damage to innocent third parties, all of which may assert claims against Acis. Thus, by complying with its fiduciary duties to CLO-3, Acis is also complying with its fiduciary duties to its creditors (if Acis were to become debtors-in-possession).

59. The drastic remedy of imposing upon Acis obligations to comply with Section 363 during the gap period makes no sense when what is being undertaken by Acis is exactly what is in the best interests of all interested parties.

**B. Terry’s “Fraudulent Transfer” Argument is Based on an Incorrect Understanding of the CMA and the Law**

60. Boiled down to its essence, Terry’s “fraudulent transfer” argument asserts the following positions: (i) the CMA (the management agreement by which Acis manages CLO-3) is a valuable asset of Acis; (ii) Acis proposes to transfer that valuable asset to the New Collateral Manager; and (iii) the New Collateral Manager is not providing anything to Acis in exchange for the transfer of the CMA. Thus, Terry argues, the transfer of the CMA eliminates a valuable asset of Acis for no consideration.

61. The flaws in Terry’s “fraudulent transfer” argument, however, are fatal. First, the CMA has no value, as Acis’s operation thereunder results in a loss to Acis (see ¶ 4, *infra*). Second, the contractual arrangement between Acis and CLO-3 (i.e., the CMA), which has been in place since 2014, provides, among other things, that Acis will perform various services, be compensated for those services, and, most relevant here, undertake actions as instructed by CLO-3, including, in this instance, assign the contract (the CMA). Simply put, the provisions of the CMA requiring the Collateral Manager (Acis) to perform as instructed – in this instance *to transfer the CMA*, is a negotiated contractual obligation among Acis and CLO-3 that has nothing to do with the transferee (i.e., the New Collateral Manager). From the outset of the relationship among Acis and CLO-3, Acis has performed in accordance with its fiduciary duties to the CLO, its Equity Holders and its Bondholders; and has been compensated all along by CLO-3 for such performance. It is not being instructed to make the assignment – which it must do consistent with its fiduciary duties.

62. The four year long relationship among Acis and CLO-3 has included performance of the *back and forth* obligations of the parties, which has resulted in consideration flowing to and among the parties. Thus, Acis has already been compensated in anticipation of performing

its instructed obligations including assigning the CMA in further of the Transactions. There is no consideration or value flowing from Acis to the New Collateral Manager. Rather, Acis continues to perform under the terms of its existing contract (i.e., the CMA) by making the assignment as instructed CLO-3.

63. Accordingly, Terry's suggestion that the New Collateral Manager is receiving a fraudulent transfer, and that Acis is making a fraudulent transfer, is not correct. Rather, Acis simply is performing in accordance with a contractual obligation, long-ago entered into, and for which it has been, and continues to be, compensated. The transfer is not anything more than Acis's compliance with the terms of a contract – the CMA. The foregoing analysis debunks any assertion that the assignment of the CMA, a ministerial act to be performed by Acis as part and of the Reissuance of CLO-3, is a fraudulent transfer.

### **C. The Involuntary Petitions are Factually Defective**

64. As described in detail in the Motions to Dismiss, the Involuntary Petitions are subject to dismissal because they are not supported by the requisite number of creditors needed to commence an involuntary chapter 7 case under Section 303 of the Bankruptcy Code. Section 303(b)(1) of the Bankruptcy Code states, in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724 (a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . . .

11 U.S.C. § 303(b).

65. Section 303(b) contains “very specific requirements concerning the number of entities that are necessary to commence an involuntary filing.” 2 COLLIER ON BANKRUPTCY ¶ 303.14 (16th rev. ed. 2013). Those requirements are based on the policy of preventing one or more “recalcitrant creditors” from filing an involuntary case to harass a debtor. Id.

66. Perhaps the most basic of all requirements is that section 303(b)(1) requires that when a debtor has twelve or more creditors, an involuntary case may be commenced only by three or more entities. *See In re Tichy Elec. Co., Inc.*, 332 B.R. 364, 372-73 (Bankr. N.D. Iowa 2005) (citations omitted); *Sipple v. Atwood (In re Atwood)*, 124 B.R. 402, 406 (S.D. Ga. 1991) (“If there are twelve or more qualifying claims, excluding voidable claims, the debtor cannot be forced into involuntary bankruptcy by fewer than three of the qualifying creditors.”). Where a debtor has twelve or more creditors and there are less than three petitioning creditors, the case must be dismissed—section 303(b)(1) leaves no room for Court discretion.

67. Terry has the burden of demonstrating that he has satisfied the numerosity requirement under section 303(b) of the Bankruptcy Code. *Pleas Doyle & Assocs. v. James Plaza Joint Venture (In re James Plaza Joint Venture)*, 67 B.R. 445, 448 (Bankr. S.D. Tex. 1986) (“It is plaintiffs’ burden to demonstrate the number of creditors of [the] debtor’s estate.”); *In re Charon*, 94 B.R. 403, 405-06 (Bankr. E.D. Va. 1988) (petitioner has “burden of proving that it satisfied the jurisdictional requirements of § 303(b)"); 2 COLLIER ON BANKRUPTCY ¶ 303.15, at 76 (15th ed. 1988) (“When fewer than three creditors file an involuntary petition, the

alleged debtor has the burden to raise the issue that it has 12 or more creditors by filing a list pursuant to Bankruptcy Rule 1003(b). The petitioning creditor then has the burden to show that the alleged debtor actually has fewer than 12.”). *Terry cannot do so.*

68. Here, it is beyond dispute that Acis has twelve or more creditors. Ironically, substantially all of Acis’s creditors became creditors because of the pending state court action between Terry and Acis. Specifically, Acis’s creditors include numerous law firms, professionals, and experts, which are creditors of Acis LP and also creditors of Acis GP due to its role as the general partner. Acis has filed with this Court a statement pursuant to Bankruptcy Rule 1003(b) listing such creditors. *See* Case No. 18-30264-SGJ7, Docket No. 7; Case No. 18-30265-SGJ7, Docket No. 7. Exhibit No. 13. Thus, Acis has more than twelve creditors, making clear that three creditors are required to force Acis into bankruptcy pursuant to section 303(b)(1).<sup>14</sup>

69. Based on the foregoing, the Involuntary Petitions lack the statutorily required number of petitioning creditors and therefore are subject to dismissal because they are factually defective.

70. The significance of the Motion to Dismiss cannot be over emphasized. As the fatal flaw in the Involuntary Petitions – only one creditor filed the Involuntary Petitions – is so obvious, this Court should not consider the 303(f) Motion, until and unless consideration has been given to the Dismissal Motion.<sup>15</sup>

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<sup>14</sup> In addition to filing the 1003(b) Notice, Acis has provided to Terry copies of the invoices, statements and other documents evidencing and supporting each of the creditors’ asserted claims. In addition, Acis also offered to present a witness to provide a deposition (including the offer of a deposition to be conducted over the just-concluded weekend) to testify to the creditors and their claims. Terry failed to respond to this offer.

<sup>15</sup> While the Motion to Expedite the Court’s consideration of the Motions to Dismiss is being considered concurrently with the Court’s consideration of the 303(f) Motion, Acis asserts that Dismissal of the Involuntary Petitions should be heard in *advance* of the 303(f) Motion. Were the blatant disagreement and failure to comply with Section 303(b) not as obvious as it is, this Court might consider the 303(f) Motion in advance of the Motions to

**D. The 303(f) Motion is a Blatant Attempt to Pressure Acis by Threatening the Reissuance of CLO-3, in Contravention of the Intent Underlying the Bankruptcy Code’s Involuntary Provisions.**

71. Terry’s bad faith litigation strategy is clear—he intends to exert pressure on Acis (and Highland) by jeopardizing the Reissuance of CLO-3. In furtherance of that ill-conceived objective, Terry filed the 303(f) Motion, which seeks to impose the requirements of Section 363 of the Bankruptcy Code before there has been an adjudication on the merits of the propriety or validity of the Involuntary Petitions. Granting the relief requested would run completely counter to the balance Congress attempted to strike in the Bankruptcy Code’s involuntary bankruptcy provisions.

72. The filing of an involuntary petition is a drastic remedy. *See Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014). In recognition of this fact, “Congress limited the circumstances in which creditors may force a debtor into such a proceeding.” *Id.* (citing, *inter alia*, 30 Cong. Rec. S7618 (daily ed. June 19, 1984)); *see In re Landmark Distribs., Inc.*, 189 B.R. 290, 306 (Bankr. D.N.J. 1995) (“The filing of an involuntary petition by a creditor must be carefully scrutinized by the Court because such an action is extreme in nature and carries with it serious consequences to the alleged debtor, examples of which include loss of credit standing, interference with general business affairs and public embarrassment.”) (citations omitted). Congress created the Bankruptcy Code to serve “as a shield for debtors, not a sword for creditors,” *In re R.N. Salem Corp.*, 29 B.R. 424, 429 (S.D. Ohio 1983), and even the good-faith filing of an involuntary petition creates onerous circumstances for an alleged debtor. *Schmid v.*

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Dismiss. However, the immediately apparent flaw in the Involuntary Petitions warrants consideration of the Motions to Dismiss first.

*Yorke (In re Reid)*, 773 F.2d 945, 946 (7th Cir. 1985) (the filing of an involuntary petition is “an extreme remedy with serious consequences to the alleged debtor”) (citations omitted).

73. Balancing the harshness of the possibility of an entity being put into bankruptcy against its will is the protection afforded by Section 303(f) of the Bankruptcy Code. Recognizing that an alleged debtor should be afforded due process and its day in Court before being required to abide the restrictions the Bankruptcy Code imposes on its operations, Section 303(f) allows an alleged debtor to operate free of those restrictions pending an adjudication of the involuntary petition. The presumption that an alleged debtor should be free to operate its business without restriction pending adjudication of an order for relief is even more critical when the petitioning creditor, like Terry here, has acted alone in an attempt to gain an improper tactical advantage in a longstanding two-party dispute in state court.

74. As set forth in the Motion to Dismiss, the Involuntary Petitions are blatant examples of forum shopping. Terry filed the Involuntary Petitions literally on the eve on an evidentiary hearing in the state court that Terry knew would have resulted in Acis being free to close the Reissuance of CLO-3. Rather than participate in that hearing (and sit for the deposition that was to precede that hearing), Terry attempted a “Hail Mary pass” and precipitously attempted to transfer the venue of his dispute with Acis to this Court. Having done so, Terry should be forced to await the adjudication of the merits of the Involuntary Petitions (already the subject of the Motions to Dismiss, filed less than 24 hours after the Involuntary Petitions themselves) before being granted relief that is akin to a pre-determination that the Acis entities should be adjudicated debtors. To hold otherwise would offend the balancing Congress built into Section 303 and would offend notions of equity and due process.<sup>16</sup>

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<sup>16</sup> As the Motions to Dismiss demonstrate, Acis asserts that the Involuntary Petitions suffer from fatal flaws, both because the numerosity requirement of Section 303(b)(1) is not met and because the filings were made in

**IV.**  
**CONCLUSION**

WHEREFORE, for the reasons set forth herein, Acis respectfully requests that the Court enter an Order denying the Motion and granting such other relief as the Court deems just and proper.

Dated: February 5, 2018

Respectfully submitted,

By: /s/ Michael D. Warner

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Benjamin L. Wallen (TX Bar No.  
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*Attorneys for Acis Capital Management,  
L.P. and Acis Capital Management GP, LLC*

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bad faith. At a minimum, the relief Terry seeks in the 303(f) Motion should await this Court's adjudication of the Motions to Dismiss. At most, the 303(f) Motion should be denied, without prejudice to Terry's right to seek the same relief if these involuntary cases proceed beyond Acis' Motions to Dismiss.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of February, 2018, a true and correct copy of the foregoing *Joint Objection of Alleged Debtors to Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Impose, inter alia, 11 U.S.C. 363* was served upon all parties that are registered to receive electronic service through the court's ECF notice system in the above cases.

By: /s/ Michael D. Warner  
Michael D. Warner

**EXHIBIT L**

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re:	)	Case No. 18-30264-sgj7
	)	Dallas, Texas
ACIS CAPITAL MANAGEMENT, L.P.,	)	
	)	
Alleged Debtor.	)	February 7, 2018
	)	9:36 a.m.
-----	)	
	)	
ACIS CAPITAL MANAGEMENT GP, LLC,	)	Case No. 18-30265-7-sgj7
	)	
Alleged Debtor.	)	
	)	
-----	)	

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL  
MANAGEMENT, L.P. (9)

AS TO CASE NO. 18-30265-7-sgj7:  
EMERGENCY MOTION TO ABROGATE OR MODIFY 11 U.S.C. SECTION  
303(F), PROHIBIT TRANSFER OF ASSETS, AND IMPOSE, INTER ALIA,  
11 U.S.C. SECTION 363, FILED BY PETITIONING CREDITOR JOSHUA  
TERRY (3);  
EMERGENCY MOTION TO SET HEARING (RELATED DOCUMENTS 8 MOTION TO  
DISMISS CASE), FILED BY ALLEGED DEBTOR ACIS CAPITAL MANAGEMENT  
GP, LLC (9)

BEFORE THE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT

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	Suite #604
	New York, NY 10001
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19

20 Also Present:

JOSHUA TERRY  
Petitioning Creditor

21

22

SCOTT B. ELLINGTON, ESQ.  
General Counsel of Highland  
Capital Management

23

24

25

Colloquy

1 MS. PATEL: -- I haven't put on --

2 THE COURT: You may have a witness on that if it --

3 MS. PATEL: I don't know what their evidence --

4 THE COURT: Okay.

5 MS. PATEL: -- is going to be, so I may very well,  
6 yes.

7 THE COURT: All right. Well, then let's go to the  
8 other side. To expedite things, I think I made clear but  
9 maybe I didn't make clear, Mr. Cruciani, your witness can be  
10 combined testimony in response to the 303(f) as well in  
11 support of your motion to expedite. And so --

12 MR. CRUCIANI: Okay. Thank you, Your Honor. So Mr.  
13 Ellington will testify to both.

14 THE COURT: Okay.

15 MR. CRUCIANI: As relates to the motion to expedite,  
16 the actual substantive testimony on our motion to dismiss will  
17 be primarily Mr. Leventon; I understand that was kind of the  
18 next step, but that's not something we'll be doing for this  
19 particular motion, right?

20 THE COURT: Correct.

21 MR. CRUCIANI: Okay.

22 THE COURT: Um-hum.

23 MR. CRUCIANI: Yes, ma'am.

24 THE COURT: All right. So it's Mr. Ellington? Okay,  
25 welcome. If you could approach the witness stand.

1 All right, please raise your right hand.

2 (Witness sworn)

3 THE COURT: All right, please take a seat.

4 THE WITNESS: Thank you.

5 THE CLERK: I will get them and come back here.

6 MR. CRUCIANI: Okay.

7 THE CLERK: It's very directional.

8 MR. CRUCIANI: Okay. Thank you, ma'am.

9 DIRECT EXAMINATION

10 BY MR. CRUCIANI:

11 Q. Please state your name for the record.

12 A. Scott Ellington.

13 Q. What is your position, Mr. Ellington?

14 A. I am the general counsel, chief legal officer, and  
15 partner at Highland Capital Management, L.P.

16 Q. Okay. I'd like to start with just a few things we just  
17 heard from Mr. Terry.

18 A. Okay.

19 MR. CRUCIANI: Let's put up, Omar, slide 4, please.

20 Q. Recall Mr. Terry just testified that the reason Acis is  
21 in this structure was due to the toxic brand name of Highland  
22 back in the 2012 time period?

23 A. Yes, I do.

24 Q. Now, fast-forward; today. What is, based on your  
25 dealings with the marketplace, the nature of the Acis brand

1 today --

2 MR. SHAW: Your Honor, I'm going to object on  
3 foundation. If he's going to testify that his knowledge  
4 regarding the perception is based upon hearsay, people are  
5 telling him what the perception of Acis is, it's rank hearsay.  
6 So if the basis is what others are telling him, it's hearsay  
7 and it's not admissible; there's no exception to that. So --

8 MR. CRUCIANI: It's not offered to prove the truth of  
9 the matter asserted. Doesn't matter whether they in their  
10 heart of hearts believe it. It's just what's been  
11 communicated and how they respond to that.

12 THE COURT: Okay --

13 MR. SHAW: It's --

14 THE COURT: -- overruled.

15 MR. CRUCIANI: Okay.

16 THE COURT: I'll allow it.

17 Q. Do you deal with market participants in the CLO industry?

18 A. Yes.

19 Q. Give us a general overview of the nature of those  
20 dealings

21 A. Especially around these transactions, I've dealt directly  
22 with two investment banks and with the equity holders.

23 Q. Okay. And has the subject of the Acis brand name come up  
24 in those discussions?

25 A. Countless times.

1 Q. What has been communicated to you?

2 A. That it is so toxic that it's impossible to sell the  
3 bonds with Acis as the manager, that you would not be able to  
4 raise the equity and, due to this litigation and allegations  
5 that've been in the litigations and the press, by Mr. Terry's  
6 actions, that nothing can be associated with the Acis brand  
7 and be managed as a CLO or marketed as a CLO.

8 Q. Who has communicated that to you?

9 A. Goldman Sachs, equity holders, large law firms that do  
10 structured products, CLO work for a living, and Mizuho.

11 Q. What role was Goldman Sachs slated to have in this case?

12 A. They were the investment banker that was going to  
13 refinance these CLOs.

14 Q. Who is the current investment banker?

15 A. Mizuho.

16 Q. Why is Goldman Sachs not the investment banker?

17 A. They dropped out because of the Acis name and dealing  
18 with these Acis transactions.

19 Q. How did what you were hearing about the Acis name impact  
20 the decision of whether or not Acis would continue as the  
21 collateral manager in these ventures?

22 A. The bondholders, the -- and -- existing and purchasing,  
23 and the equity holders, existing and new equity holders, said  
24 categorically, with absolute certainty, if there's any  
25 relation to Acis, the Acis brand, the Acis structure, we have

1 no interest in doing business with you at all.

2 Q. How were these -- how was this new reissue transaction  
3 marketed? What was the document that was sent to the  
4 investors?

5 A. Was called a circular, and it lays out -- it's  
6 essentially a term sheet of how the deal will look.

7 Q. Was there any discussion in the circular about who the  
8 collateral manager would be in the new deal?

9 A. Yes.

10 Q. Who was it?

11 A. Highland Capital Loan -- it's that HCLOM -- sorry,  
12 there's just so many names; I'd have to look at the chart.

13 Q. A Highland entity?

14 A. A Highland affiliate, correct, yes.

15 Q. Not Acis?

16 A. Correct.

17 Q. Is it important that these offering circulars be  
18 accurate?

19 A. They have to be.

20 Q. What are the penalties if they're not?

21 A. Securities fraud, negligent misrep., fraud in the  
22 inducement. I mean, it's severe.

23 Q. Okay. And so the information that the investors had --  
24 what information did they have at the time they're making  
25 their investment? What were they told as to who that

1 investment manager would be?

2 A. It would be a new entity per their request.

3 Q. What would be -- would it be of any concern to you -- and  
4 if so, how -- if they changed that after the investment  
5 decision was made in part (indiscernible)?

6 A. We'd have to go and redo the circular, go out and  
7 resolicit the bond and equity tranches. It -- it would  
8 essentially be a recasting of the entire deal, and then it  
9 looks like you don't have your ducks in a row. They're more  
10 likely to not fix.

11 Q. And then what rights would the new investors have to say,  
12 well -- say, now you're telling me there's a new -- Acis is  
13 back in the play, what rights would they have in terms of  
14 going forward or not?

15 A. Rescission, various breaches, you know, lost  
16 relationship, goodwill, brand again. I mean, it's -- it's a  
17 whole host of things, probably a lot that I couldn't even  
18 think of at the top of my head.

19 Q. Okay. Another thing -- let's go to Exhibit 7, the  
20 indenture, paragraph 8.3(e), which is page 164. This is what  
21 Mr. Terry and I just got done discussing. He pointed me to  
22 this in response to my question whether there was anything in  
23 the documents that gave the collateral manager effectively a  
24 veto right over the (indiscernible) transaction. Recall that  
25 discussion?

1 A. Correct.

2 Q. Bloomberg issued some media publications as well, right?

3 A. Correct.

4 Q. There was a Dealbreaker internet post about the dispute,  
5 right?

6 A. I remember that, yes.

7 Q. Right. And this issue with Mr. Terry having recorded  
8 while he was an employee of Highland was well known to the  
9 market, right?

10 A. I would assume so.

11 Q. So despite the fact that this is common knowledge that  
12 Mr. Terry did this, you have Mr. Covitz, who's running Acis in  
13 August of 2017, well after all this stuff comes out, saying  
14 that Acis still intends to issue new CLOs, right?

15 A. Yes, that was the plan.

16 Q. And Acis is risk-retention-compliant, right?

17 A. Yes.

18 Q. And Acis has been risk-retention-compliant?

19 A. As far as I understand, yes.

20 Q. Yet now, fast forward to October or November of 2017 into  
21 the new year in 2018, all of a sudden, this noise about Mr.  
22 Terry recording is what creates the toxic nature of the Acis  
23 brand; is that right?

24 A. No, I don't think that's -- the timing is right. I think  
25 the toxicity was there, but I think the effectuation was

1 actually around this mechanism.

2 Q. You're familiar with the news article that came out in  
3 The Wall Street Journal after the award was made public, when  
4 Mr. Terry went to confirm that award, right?

5 A. Yes, I do.

6 Q. But one of the things that's changed since Mr. Covitz  
7 makes this representation in this document that's posted on  
8 Highland's website about Acis' intent to issue new CLOs as  
9 Acis and now, is that we've got an arbitration award and we've  
10 got a judgment, right?

11 A. And we have third-party investors that said we don't want  
12 to be involved in this brand; and their equity is one of the  
13 reasons that new CLOs can be launched.

14 Q. I want to follow up on that. Those third-party  
15 investors, they never told Highland or Mr. Dondero or you or  
16 Mr. Covitz that in order for them to invest that they were  
17 going to bar this new entity -- this Highland Cayman entity or  
18 the Delaware new Highland CLO entity -- from paying for the  
19 transfer of these CMAs, right?

20 A. What do you mean by "paying for the transfers"?

21 Q. Paying some amount of consideration for Acis to transfer  
22 the management contract?

23 A. No, they just said we want things to be structured in  
24 this way or we're not investing.

25 Q. Right. They didn't say hey, we'll do the deal, but as a

1 condition of doing the deal, we want you to transfer these  
2 assets -- this collateral-management agreement from Acis to  
3 Acis Cayman; and we don't want you to pay -- we don't want  
4 Acis Cayman to pay a dollar for the transfer of that CMA?

5 A. Well, I think there's two questions. I'll try to address  
6 them both.

7 It was call the deal and terminate the CMAs or transfer  
8 the CMAs. That's question one. So yes, they not only  
9 necessitated, they demanded it.

10 How we paid consideration for those transfers to Acis,  
11 they didn't have any involvement in it.

12 Q. Right. I mean, again, I may be belaboring the point, but  
13 I think it's an important one. These investors' involvement  
14 is not an impediment to Acis receiving value in exchange for  
15 the transfer of the CMAs?

16 A. I disagree.

17 Q. Tell me why?

18 A. If they do not become investors or you cannot reset or  
19 refi, the deals will be called and therefore Acis' CMAs don't  
20 have any value.

21 Q. No, no, no. What I'm saying is, everything is the same,  
22 right? The transaction that's going forward on the 13th is  
23 the same. Everything. Right?

24 A. Wrong.

25 Q. No, no. This is -- a hypothetical, what I'm saying.

1 A. Oh, I'm sorry. Okay, I misunderstood.

2 Q. All right. Everything is going forward as is, right?

3 It's going to close on the 13th. There's going to be a  
4 transfer of the collateral-management agreement. There's  
5 going to be a reset. All these things are going to happen,  
6 right, just like you planned. The one variable that's changed  
7 is that instead of Acis receiving nothing for the transfer of  
8 the collateral-management agreement, is that Acis receives  
9 something for the transfer of the collateral-management  
10 agreement to a Highland affiliate.

11 A. Correct. But they weren't going to receive anything from  
12 a refi or a reset or a call anyway.

13 Q. I understand that.

14 A. Okay.

15 Q. But there's nothing that the investors are saying that  
16 stops Highland Cayman or Highland or anybody else giving Acis  
17 value for the CMAs.

18 A. As a directive from the investors; is that what you're  
19 asking me?

20 Q. Right.

21 A. No, they have not given that directive. Their only  
22 directive was call and get rid of Acis or get rid of Acis or  
23 we're not doing the deal through a reset.

24 Q. All right, so you said that when Acis was set up that --  
25 in 2011, that that was directly analogous to what this new

1 transaction that you're doing or that Highland and its  
2 affiliates are doing with regard to the reset and the  
3 transfers of the collateral-management agreement. Do you  
4 remember that?

5 A. Yeah, the idea of Acis and -- yes.

6 Q. Right.

7 A. Correct.

8 Q. Now, when --

9 A. A new brand.

10 Q. Right. Now, when Acis was set up, Highland had existing  
11 CLOs that it managed, right?

12 A. Correct.

13 Q. None of those existing collateral-management agreements  
14 from Highland were transferred as a part of the formation of  
15 Acis to Acis, right?

16 A. I don't recall, but I think Mr. Terry earlier said one  
17 CLO was taken over and managed by Acis. I just don't remember  
18 how it was effectuated, and I didn't remember that till he  
19 said it.

20 Q. But you don't know if that CLO was originally managed by  
21 Highland or if it was managed by some other third party?

22 A. I believe he said it was managed by Highland. But  
23 again --

24 Q. I --

25 A. -- Mr. Terry would know more than me. I just can't

1 bankers didn't want to be involved with the name.

2 THE COURT: All right, late '16 or early 2017. All  
3 right. Well, how then, were you all able to do the refi on  
4 CLO 2?

5 THE WITNESS: Well, because I think CLO 2 was before  
6 things got to the point where people would say no, because  
7 there was successive articles as things developed in the  
8 litigation.

9 THE COURT: Okay. When was CLO 2, the refi closed?

10 THE WITNESS: I believe it was closed on April, but  
11 they usually take several months to effectuate. So that  
12 was -- call it -- and these are just generalizations. But  
13 let's say you start on January 2017, you'll close March or  
14 April of '17. And that process is already ongoing, just like  
15 in these resets, things were ongoing.

16 THE COURT: Well, the name got toxic late 2016 or  
17 early 2017.

18 THE WITNESS: Correct. So you had a bank willing to  
19 do it, and then it got to the point to where they didn't want  
20 to be involved in ongoing litigation. The snowball just got  
21 larger.

22 THE COURT: Well, but April 2017, there was a refi  
23 with Acis as the portfolio manager on CLO 2.

24 THE WITNESS: Correct.

25 THE COURT: I'm trying to understand why was

1 everything fine and rosy in April 2002 (sic) to have Acis in  
2 there, even though its name had gotten toxic in late 2016 or  
3 early 2017, and now just no go, no one will touch it?

4 THE WITNESS: I don't think it was rosy. I think it  
5 was tolerable. And then as things got worse and there was  
6 more mud that was slung, it became intolerable.

7 And you also have the addition of the third-party  
8 investor coming in who gets to start calling the shots.

9 THE COURT: Okay. When was the decision made to do  
10 this refi on CLO 3?

11 THE WITNESS: That began back in the May/June time  
12 frame on that particular CLO, because that's when I got  
13 involved on the due diligence calls with the third-party  
14 investor. And it wasn't just about 3; it was about resetting  
15 them all.

16 THE COURT: All. All the others.

17 THE WITNESS: And then the actual structure, Your  
18 Honor, is what dictates why they were taken out of order, just  
19 the way they economically worked.

20 THE COURT: Okay. Um-hum. Um-hum.

21 So May/June of 2017, discussion of doing a refi on  
22 all of the five remaining?

23 THE WITNESS: Yes, with the new equity investor.  
24 Then they were able to dictate this is what we want the world  
25 to look like that we'll be sticking our 150 million dollars.

1 THE COURT: Okay. When did the offering circular go  
2 out for the one you want to close February 13th?

3 THE WITNESS: I don't know the exact date, but it was  
4 sometime last fall-ish. It may have been after that. I just  
5 don't recall. Because they would be drafted; they would be  
6 changed; you had Goldman doing some; then it got changed. If  
7 anyone knows the date -- I simply don't know the date.

8 THE COURT: Okay. This is a really big deal.

9 THE WITNESS: No, I know.

10 THE COURT: And you don't know the date?

11 THE WITNESS: That's -- I know. I just don't have  
12 this memorized. Does anybody know when the offer circular  
13 went out on 3?

14 THE COURT: You don't know?

15 THE WITNESS: I can't remember now.

16 THE COURT: It wasn't -- you don't know if it was  
17 before or after October 20th, 2017?

18 THE WITNESS: Oh, I think it was after. The circular  
19 goes out when everything else is finished in terms of this is  
20 what we're going to do; this is what the terms are going to  
21 look like; this is what the structure's going to look like.

22 THE COURT: Well, it had to be after this Exhibit 22,  
23 when Goldman is saying --

24 THE WITNESS: Oh, yes, it was after --

25 THE COURT: -- we're not going to do it.

**EXHIBIT M**

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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS (DALLAS)

In Re: ) Case No. 18-30264-Sgj7  
) Dallas, Texas  
ACIS CAPITAL MANAGEMENT, L.P., )  
)  
Alleged Debtor. ) March 23, 2018  
) 9:36 a.m.  
----- )  
)  
ACIS CAPITAL MANAGEMENT GP, LLC, ) Case No. 18-30265-sgj7  
)  
Alleged Debtor. )  
)  
----- )

TRANSCRIPT OF HEARING ON:

AS TO CASE NO. 18-30264-sgj7:  
[#80] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING  
INVOLUNTARY PETITIONS FILED BY CLO HOLDCO, LTD., HIGHLAND CLO  
FUNDING, LTD., NEUTRA, LTD.;

[#81] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #80  
MOTION TO INTERVENE) FILED BY CREDITOR HIGHLAND CLO FUNDING,  
LTD., CREDITOR CLO HOLDCO, LTD., CREDITOR NEUTRA, LTD.) FILED  
BY PETITIONING CREDITOR JOSHUA TERRY

[#87] OBJECTION TO (RELATED DOCUMENT(S): #80 EMERGENCY MOTION  
TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS  
FILED BY CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO  
HOLDCO, LTD., CREDITOR NEUTRA, LTD., #81 MOTION FOR EXPEDITED  
HEARING (RELATED DOCUMENTS, #80 MOTION TO INTERVENE) FILED BY  
CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO HOLDCO,  
LTD., CREDITOR NEUTRA, LTD.) FILED BY PETITIONING CREDITOR  
JOSHUA TERRY

(cont'd. next page)

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AS TO CASE NO. 18-30265-sgj7:  
[#77] EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CLO FUNDING, LTD., HIGHLAND CLO FUNDING, LTD., NEUTRA, LTD.;

[#78] MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY CLO FUNDING, LTD., HIGHLAND CLO FUNDING, LTD., NEUTRA, LTD.;

[#83] OBJECTION TO (RELATED DOCUMENT(S): #77 EMERGENCY MOTION TO INTERVENE IN PROCEEDINGS CONTESTING INVOLUNTARY PETITIONS FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO FUNDING, LTD., #78 MOTION FOR EXPEDITED HEARING (RELATED DOCUMENTS #77 MOTION TO INTERVENE) FILED BY CREDITOR NEUTRA, LTD., CREDITOR HIGHLAND CLO FUNDING, LTD., CREDITOR CLO FUNDING, LTD.) FILED BY PETITIONING CREDITOR JOSHUA TERRY

BEFORE THE HONORABLE STACEY G. JERNIGAN  
UNITED STATES BANKRUPTCY COURT

Transcription Services: eScribers, LLC  
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

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1 November 3, 2017. And you'll see at the beginning paragraph  
2 the parties are Acis, Highland, and then an entity called  
3 Highland CLO Management, Ltd. with a acronym "HCLOM". Do you  
4 know the function or purpose of HCLOM?

5 A. Not -- not specifically.

6 Q. And there are a lot of acronyms here, so let me maybe  
7 help you out on this one if I may. I believe this was the  
8 entity designed to be the successor portfolio manager to Acis.  
9 Does that perhaps refresh your memory on it?

10 (Sneeze)

11 A. Bless you. Yes, okay.

12 Q. Okay, and let's go back to the signature page here. And  
13 there's your signature on behalf of Highland and on behalf of  
14 Acis. And then there's actually another signature here on  
15 behalf of Highland CLO Management, Ltd. I'm not sure if you  
16 can make out that signature or not. Do you know who's  
17 actually signing that? Can you tell?

18 A. No. I imagine it's one of the board members of that  
19 entity.

20 Q. And why is it that this Cayman entity has a -- is a -- is  
21 signing this agreement; do you know?

22 A. I believe -- I would -- I'm guessing it's a -- a  
23 requisite for a Cayman Island entity to have approval of the  
24 board member -- or a board member.

25 Q. Okay, and I see this is on behalf of the director, this

1 signature you see there at the bottom?

2 A. Yes.

3 Q. All right, now, this timing wise was entered about two  
4 weeks after the arbitration award. So first question is did  
5 you have any role in negotiating Exhibit 16?

6 A. No.

7 Q. What role, if any, did you play in connection with  
8 Exhibit 16?

9 A. Just final approval.

10 Q. Do you know -- do you have any understanding about what  
11 group of people would have been responsible for putting  
12 together the document -- for putting together the document?

13 A. Sure. Yeah, I mean, the general context is we'd been  
14 negotiating for months with a large institutional investor out  
15 of Boston to come in for approximately fifty percent of the  
16 ALF. And the investor came into fifty percent of the ALF  
17 based on a schedule of refining -- refining and redoing of the  
18 various different Acis transactions.

19 The refi -- the refining the whole operation of the ALF  
20 post the investor coming in from Boston was all dependent upon  
21 getting as far away from Acis and a new collateral manager as  
22 possible. And so this was part of that as far as I  
23 understand.

24 Q. To your understanding, was that institutional investor  
25 willing to invest if Acis remained as collateral manager?

1 A. No, the way it was described to me, which I believe and  
2 have no reason to disbelieve even at this point, is no  
3 investor or no underwriter wanted to have any legacy or  
4 reputational exposure to Acis, period.

5 Q. And again, this is sort of coming full circle. Highland  
6 had this problem '08, '09 period and now it's Acis having this  
7 brand period.

8 A. Yeah, I would describe it as different. I mean, Highland  
9 back in the day was performance related to real estate. You  
10 know, the Acis problem is terrorism around a former employee  
11 trying to reputationally tarnish in the press as much as  
12 possible a brand.

13 Q. Okay. Let's look at a couple of the whereas clauses here  
14 if we may, on the first page. The third whereas clause says,  
15 "Highland has notified Acis that Highland is unwilling to  
16 continue to provide support personnel and other critical  
17 services to Acis with respect to the CLOs." Did Highland have  
18 that right to do that?

19 A. Yes.

20 Q. And why was that Highland's position?

21 A. It -- it's under no obli -- it's under no obligation. As  
22 a matter of fact, the -- the only reason why it was at this  
23 point was to just facilitate the refinancings, you know, but  
24 it -- but it's under no obligation to provide services to a  
25 shell.

**EXHIBIT N**



**VERIFIED ORIGINAL COMPLAINT AND APPLICATION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**TO THE HONORABLE STACEY G. C. JERNIGAN, UNITED STATES BANKRUPTCY  
JUDGE:**

Robin Phelan (the "Trustee"), the Chapter 11 trustee of Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Debtors" or "Acis") in the above styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), files this *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* (this "Complaint") against Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. ("HCLOF" or "ALF"),<sup>1</sup> CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"), Acis CLO 2014-3 Ltd. ("CLO-3"), Acis CLO 2014-4 Ltd. ("CLO-4"), Acis CLO 2014-5 Ltd. ("CLO-5"), Acis CLO 2015-6 Ltd. ("CLO-6," and together with CLO-3, CLO-4, and CLO-5, the "Issuers"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and respectfully states as follows:

**I. INTRODUCTION**<sup>2</sup>

1. On May 31, 2018, as an extraordinary measure, this Court issued a temporary restraining order ("TRO"), *sua sponte*, pursuant to section 105 of the Bankruptcy Code—which the Court stated it did not take lightly—preventing all Restrained Parties from taking any action

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<sup>1</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. prior to October 30, 2017 and the defined term "HCLOF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. on and after October 30, 2017.

<sup>2</sup> Capitalized terms not defined in the Introduction have the meaning ascribed to such terms later in the Complaint.

in furtherance of an Optional Redemption for fourteen (14) days. This TRO ended on June 15 at 12:01 a.m.

2. It appears that Highland violated the TRO by selling approximately \$23 million of loans pursuant to the First Optional Redemption Notices after May 31, 2018.<sup>3</sup>

3. On June 13, 2018, the day before the hearing on the Trustee's Motion to Extend the TRO, HCLOF advised the Trustee that it would withdraw the First Optional Redemption Notices. Consequently, the Trustee advised the Court that there was no need to go forward with the Motion to Extend the TRO on the following day.

4. On June 14, 2018, HCLOF's counsel told the Court that HCLOF had withdrawn the First Optional Redemption Notices but reserved the right to reissue the notices at some future date, stating:

That process has, in fact, concluded. That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>4</sup>

Because the First Optional Redemption Notices had been withdrawn, the Trustee did not proceed with the Motion to Extend the TRO.

5. At that hearing, the Trustee informed the Court and the parties that after hearing the testimony of Mr. Scott on June 12, 2018, he was developing additional options in an attempt to accommodate HCLOF.

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<sup>3</sup> Considering Highland's current and prior actions in attempting to effectuate (and possibly completing) unauthorized trades without approval of the Trustee, the Trustee believes there is sufficient urgency to the Court hearing the application for a TRO on an emergency basis. The Trustee does not waive and reserves all rights in connection with any unauthorized trades or transfers that have occurred or may occur.

<sup>4</sup> See Docket No. 298 at p. 7, ll. 15-22, Transcript of Hearing Held June 14, 2018.

6. On June 15, 2018, the very day after the hearing on the Motion to Extend the TRO was to have taken place, and after the TRO had expired, HCLOF—without requesting relief from the stay under section 362(d) of the Bankruptcy Code or requesting authority to take such action under section 363(b) of the Bankruptcy Code—again advised the Trustee that it had directed the Issuers to effectuate the Optional Redemption on July 30, 2018.

7. On June 20, 2018, Highland presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption, and further advised the Trustee:

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves its rights to seek appropriate protection and redress at law or in equity.**<sup>5</sup>

8. Once again, Highland and the Highland Affiliates, through this purported Optional Redemption, without Court approval, have attempted to exert control over Acis's property, the PMAs, in violation of the automatic stay and outside the ordinary course of Acis's business. In addition, Acis, pursuant to the PMAs, controls trading of the loans in the CLOs. Consequently, the notices of optional redemption sent by HCOLF are an attempt to obtain a property right (the right to control trading of the loans in the CLOs) from Acis as well as an attempt to exercise control over contractual property rights of Acis, all in violation of section 362(a)(3) of the Bankruptcy Code.

9. This action by Highland and the Highland Affiliates represents yet another attempt in their greater scheme to systematically dismantle and strip away Acis's assets, with the

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<sup>5</sup> Emphasis in original email correspondence.

larger goal of leaving effectively nothing for its creditors. In fact, HCLOF is attempting to use rights transferred prepetition, for no value, from Acis to now strip Acis of its remaining rights.

10. By this Complaint, the Trustee seeks: (i) a temporary restraining order and preliminary injunction to preserve the status quo and protect the estates by enjoining the Defendants from taking any action in furtherance of the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129; (ii) relief pursuant to 11 U.S.C. § 362(k) for Defendants' willful violation of the automatic stay for actions taken in furtherance of the Optional Redemption; (iii) a declaratory judgment that the Optional Redemption Notices are defective and ineffective pursuant to the PMAs and the Indentures; (iv) a declaratory judgment that the Optional Redemption Notices are ineffective pursuant to 11 U.S.C. § 363(b) because such actions are outside the ordinary course of Acis's business and were taken without Court approval; and (v) a declaratory judgment that the Trustee has not violated his fiduciary duties by declining to carry out the Optional Redemption.

## **II. JURISDICTION**

11. This Court has subject matter jurisdiction over the Bankruptcy Cases and this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

12. This matter arises under the laws of the United States of America. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The Trustee hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding.

13. Venue of the Adversary Proceeding in this District is proper under 28 U.S.C. § 1409.

### III. PARTIES

14. The Trustee is an individual and may be served with pleadings and process in this Adversary Proceeding through undersigned counsel.

15. Highland is a limited partnership incorporated under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

16. HCLOF is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

17. Holdco is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at 190 Elgin Ave., George Town, Grand Cayman, Cayman Islands KY 1-9005.

18. Neutra is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.

19. CLO-3 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

20. CLO-4 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

21. CLO-5 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

22. CLO-6 is an exempted company incorporated with limited liability under the laws of the Cayman Islands, with its registered office located at P.O. Box 1093, Boundary Hall, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands.

23. CLO-3 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

24. CLO-4 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

25. CLO-5 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

26. CLO-6 LLC is a limited liability company organized under the laws of the State of Delaware, with its registered office located at 850 Library Avenue, Ste. 204, Newark, Delaware 19711.

#### IV. BACKGROUND

##### A. **The Bankruptcy Cases**

##### 1. **Involuntary Petitions**

27. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Mr. Terry"), as petitioning creditor, filed involuntary petitions against both Acis LP and Acis GP, thereby

initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

28. On January 31, 2018, Mr. Terry filed the *Emergency Motion of Petitioning Creditor to Abrogate or Modify 11 U.S.C § 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C § 363* [Case No. 18-30264, Docket No. 3 & Case No. 18-30265, Docket No. 3] (the "303(f) Motion"). After a two-day hearing on February 6 and 7, 2018 (the "303(f) Hearing"), the Court found that it was proper to impose section 363 of the Bankruptcy Code<sup>6</sup> before the hearing on the Involuntary Petitions and granted the 303(f) Motion.

29. On April 13, 2018, after six days of testimony and argument, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Order for Relief").

## **2. Chapter 7 Cases Converted to Chapter 11**

30. Following entry of the Order for Relief, Diane Reed (the "Chapter 7 Trustee") was appointed the interim Chapter 7 trustee for these Bankruptcy Cases.

31. On May 4, 2018, the Chapter 7 Trustee filed the *Trustee's Expedited Motion to Convert Cases to Chapter 11* [Docket No. 171] (the "Conversion Motion").

32. On May 4, 2018, Mr. Terry filed his *Emergency Motion for an Order Appointing a Trustee for the Chapter 11 Estates of Acis Capital Management, L.P. and Acis Capital Management GP, LLC Pursuant to Bankruptcy Code Section 1104(a)* [Docket No. 173] (the "Trustee Motion").

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<sup>6</sup> 11 U.S.C § 101 *et seq.* (the "Bankruptcy Code").

33. On May 8, 2018, Highland filed its *Comments by Highland Capital Management L.P. on (A) Chapter 7 Trustee's Expedited Motion to Convert Cases to Chapter 11; and (B) Creditor Joshua Terry's Motion for an Order Appointing a Trustee for the Chapter 11 Estates for the Debtors* [Docket No. 190] (the "Comment"). The Comment states that

the requisite equity and subordinated noteholders of the CLOs have issued Optional Redemption Notices . . . . These Optional Redemption Notices mandate that the CLOs be liquidated by June 14, 2018, in accordance with the terms of the Indentures as set forth therein. There is a potential that any change in the trustees could create market risks in effectuating the liquidation of the CLOs.

Comment ¶ 11.<sup>7</sup> A true and correct copy of the Comment (including the optional redemption notices as exhibits thereto) is attached hereto as **Exhibit "A."**

34. On May 11, 2018, the Court entered its *Order Granting Trustee's Expedited Motion to Convert Cases to Chapter 11* [Docket No. 205] (the "Conversion Order").

35. Following entry of the Conversion Order, Robin Phelan was appointed Chapter 11 Trustee of the Debtors in the Bankruptcy Cases.

## **B. Highland and the Highland Affiliates' Role in these Cases**

### **1. Highland**

36. Although Highland did not appear in the Bankruptcy Cases until after the entry of the Order for Relief, Highland employees directed Acis's actions at all times before the Order for Relief. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

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<sup>7</sup> The Trustee disputes that the Optional Redemption Notices are effective.

*Id.* Additionally, the two indirect owners of Highland, James Dondero and Mark Okada, testified at the Involuntary Trial.<sup>8</sup>

## 2. The Highland Affiliates

37. As the Court is aware, Highland and its network of affiliates have numerous other connections to this case. HCLOF, Holdco, and Neutra attempted to intervene in the trial on the Involuntary Petitions.

38. HCLOF is the

holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash flow from the CLOs. It, in certain ways, controls the CLO vehicle—for example, by virtue of having the ability to make a redemption call after a certain 'no-call' period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A's). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. ('ALF'), which was incorporated under the laws of the island nation of Guernsey, was the CLO equity holder. To be clear, ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the 'ALF Portfolio Management Agreement'— not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements).

Opinion at pp. 12-13 (footnotes omitted).

## C. Additional Factual Background

### 1. The CLOs, the PMAs, and the Indentures

39. Acis LP is the portfolio manager for funds of certain CLO's: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) CLO-3, (iii) CLO-4, (iv) CLO-5, and (v) CLO-6. *See* Opinion ¶ 24. CLO-1, CLO-3, CLO-4, CLO-5 and CLO-6 are collectively referred to herein as the "Acis CLOs."

<sup>8</sup> Opinion at p. 3, n. 4 ("Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and [O]kada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable").

40. As relevant herein, Acis LP manages the Acis CLOs through five PMAs.<sup>9</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. *See* Opinion ¶ 13. True and correct copies of the PMAs are attached hereto as **Exhibit "B."** Each of the Acis CLOs is governed by the Indentures.<sup>10</sup> True and correct copies of the Indentures are attached hereto as **Exhibit "C."**

## 2. Shared Services and Sub-Advisory Agreement

41. Acis contracts out its operations to Highland pursuant to the Third Amended and Restated Sub-Advisory Agreement by and between Acis LP and Highland, dated March 17, 2017 (the "Sub-Advisory Agreement"), and the Fourth Amended and Restated Shared Services Agreement by and between Acis LP and Highland, dated March 17, 2017 (the "Shared Services Agreement"). These agreements are terminable by Acis on 30-days' notice, without cause. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of

<sup>9</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

<sup>10</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures."

companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at p. 14 (footnotes omitted).

**3. The ALF PMA Transfer**

42. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to another Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "ALF PMA"). The ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) **vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.**

ALF PMA § 5(a)-(q) (emphasis added). A true and correct of the ALF PMA is attached hereto as

**Exhibit "D."**

43. While ALF did not have authority to terminate the ALF PMA, Acis LP could terminate the ALF PMA without cause upon at least ninety (90) days' notice. *See* ALF PMA § 13(a)-(c). Still, the ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." *See* ALF PMA § 14(a)-(e).

44. On October 27, 2017, just seven days after Mr. Terry's arbitration award, Acis LP effectively terminated its own portfolio management rights under the ALF PMA and transferred its authority and those valuable portfolio management rights—for no value—to Highland HCF Advisors, Ltd. ("Highland HCF").

45. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which cancelled and terminated the ALF PMA and empowered Highland HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct of the October 2017 PMA is attached hereto as **Exhibit "E."**

46. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at p. 19 (footnotes omitted).

47. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, (without expressing its business judgment to this transfer) Acis LP simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA.

48. Without this ALF PMA Transfer, which transferred Acis LP's rights under the ALF PMA to Highland HCF, HCLOF could not have attempted to direct and effectuate an optional redemption, and deplete Acis's assets, as it is now attempting to do.

#### 4. The First Optional Redemption Notices

49. On April 30, 2018, HCLOF sent five notices purportedly requesting optional redemption pursuant to the Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").<sup>11</sup> True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit "F."**

50. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, the Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights and, effectively, the PMAs.

51. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit "G."**

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<sup>11</sup> Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

**D. Highland Litigation and TRO**

52. On May 30, 2018, Highland and HCLOF filed Adversary No. 18-03078, styled *Highland Capital Management, L.P. and Highland CLO Funding, Ltd. v. Robin Phelan, Chapter 11 Trustee*, in this Court (the "Highland Adversary"). The Highland Adversary alleges, among other things, that the Trustee, by failing to effectuate the Optional Redemption pursuant to the First Optional Redemption Notices, breached the PMAs.

53. On May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including all of Acis's creditors in full.

54. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a TRO, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

55. On June 6, 2018 the Court entered its *Temporary Restraining Order*, whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

56. On June 8, 2018, the Trustee filed the *Emergency Motion to Approve Break-Up Fee, Expense Reimbursement, and Replacement Sub-Advisory and Shared Services Provider, Oaktree Capital Management, L.P.* (the "Motion to Approve Break-Up Fee"). See Docket No. 263.

57. As described in the Motion to Approve Break-Up Fee, the Trustee has executed a Commitment Letter (the "Commitment Letter") with Oaktree Capital Management, L.P. ("Oaktree") whereby Oaktree would: (i) obtain the subordinated equity rights in CLO-3, CLO-4, CLO-5, and CLO-6 after payment in full to HCLOF of a premium above the value of those rights; (ii) obtain Acis LP's rights, title and interests in the respective PMAs for enough to pay the creditors of Acis in full; and (iii) replace Highland as provider of the services currently provided by Highland under the Sub-Advisory Agreement and the Shared Services Agreement, at a fraction of the cost currently being charged by Highland (the "Oaktree Transaction"). A true and correct copy of the Commitment Letter is attached hereto as **Exhibit "H."**

58. The Oaktree Transaction, if consummated, would provide a return to all holders of the subordinated notes *in excess* of what they would receive in an optional redemption and pay all Acis's allowed creditors in full.<sup>12</sup> The Trustee intends to effectuate the Oaktree Transaction via a Chapter 11 plan.

59. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. See Docket No. 275.

60. Also on June 11, 2018, HCLOF filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). See Docket. No. 271. This pleading did not mention that Highland apparently violated

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<sup>12</sup> Based upon current projected and known claims and also based on expeditious plan confirmation.

the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its TRO on May 31.

**E. The Second Optional Redemption Notices**

61. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, HCLOF advised the Trustee that HCLOF would withdraw the First Optional Redemption Notices. HCLOF's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit "I"** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that HCLOF was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

62. On June 14, 2018, counsel for HCLOF advised the Court that HCLOF had withdrawn the First Optional Redemption Notices. Counsel for HCLOF further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>13</sup>

63. On June 15, 2018, at 12:01 a.m., the TRO expired.

64. Later on June 15, 2018, despite the fact that HCLOF had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, HCLOF gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional

<sup>13</sup> See Docket No. 298 at p. 7, ll. 16-22, Transcript of Hearing Held June 14, 2018.

Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit "J"** and are incorporated herein for all purposes.

65. By the Second Optional Redemption Notices, HCLOF directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

66. On June 20, 2018, Highland presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland further stated:

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves it rights to seek appropriate protection and redress at law or in equity.**<sup>14</sup>

**V. CAUSES OF ACTION**

***Count 1: Temporary Restraining Order and Preliminary Injunction***

67. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

68. Absent affirmative relief from the automatic stay, any action to effectuate the Optional Redemption by way of the Optional Redemption Notices violates the automatic stay because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."<sup>15</sup> Further, any action taken by the Defendants to effectuate the Optional Redemption is outside the ordinary course of Acis's

<sup>14</sup> Emphasis in original email correspondence.

<sup>15</sup> 11 U.S.C. § 362(a)(3).

business, and therefore requires Court approval.<sup>16</sup> Acis's rights under the PMAs are valuable, and if Acis were to lose such rights, immediate and irreparable harm would result to Acis's creditors and third parties with financial interests in Acis's bankruptcy estates because confirmation of a plan of reorganization funded by Oaktree pursuant to the Oaktree Transaction would be impossible. In addition to the Oaktree Transaction, the Trustee has received proposals from other qualified parties to fund alternative plans of reorganization which may include a reset of the CLOs and continuance of Acis as the portfolio manager of the CLOs. In addition, HCLOF is using rights fraudulently transferred from Acis to effectuate the Optional Redemptions. Therefore, pursuant to Bankruptcy Rule 7001(7) and Civil Rule 65, incorporated by Bankruptcy Rule 7065, the Trustee seeks a temporary restraining order and preliminary injunction, to prohibit the Defendants from taking any further actions to effectuate the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129.

69. The standards for a temporary restraining order and a preliminary injunction are the same.<sup>17</sup> To obtain either, the movant must show (a) it has a substantial likelihood of prevailing on the merits; (b) it will suffer irreparable injury without the injunction; (c) the threatened injury to the movant outweighs the damage the proposed injunction may cause to the parties opposing it; and (d) that the requested injunction would not be against the public interest.<sup>18</sup> The Court must necessarily make its decision by relying on an early and abbreviated

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<sup>16</sup> See 11 U.S.C. § 363(b).

<sup>17</sup> *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987); *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 635 (M.D. La. 2015); *Miranda v. Wells Fargo Bank, N.A.*, 2013 U.S. Dist. LEXIS 90632 (N.D. Tex. June 27, 2013).

<sup>18</sup> *Id.*

proceeding and set of facts.<sup>19</sup> Quick and abbreviated determinations are necessary to recognize the goal of injunctive relief, which is to maintain the status quo to permit the Court the time necessary to make a decision on the merits after full development of the facts.<sup>20</sup>

70. Moreover, not all of the four (4) factors must be given equal weight. According to the Fifth Circuit Court of Appeals: “a sliding scale must be applied in considering the probability of plaintiffs’ winning on the merits and plaintiffs’ irreparable injury in the absence of interlocutory relief...”<sup>21</sup> and “...none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus.”<sup>22</sup> This means that as long as the Court finds that there is some likelihood of ultimate success (*i.e.*, not zero likelihood of success), the Court can give greater weight to the severity and irreparability of the harm and the relative hardships to the movant and opponent of the injunctive relief.<sup>23</sup>

71. The Trustee can show that the elements warranting a temporary restraining order and preliminary injunction exist here: (1) the Trustee has a "substantial likelihood of success on the merits" of a claim regarding (i) violation of the automatic stay if injunction is not granted, (ii) failing to comply with the requirements of an optional redemption, (iii) utilizing assets transferred for no value to attempt to effectuate an optional redemption, (iv) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (v) confirmation of an effective plan of reorganization; (2) creditors and interested third-parties face a substantial threat of imminent and irreparable injury to their interests in the Debtors' bankruptcy estates if an injunction is not issued since confirmation of a plan of reorganization funded by Oaktree or other

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<sup>19</sup> *Texas v. Seatrain Int’l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975).

<sup>20</sup> *Kliebert*, 141 F. Supp. 3d at 635.

<sup>21</sup> *Siff v. State Democratic Executive Committee*, 500 F.2d 1307 (5th Cir. 1974).

<sup>22</sup> *Seatrain*, 518 F.2d at 180.

<sup>23</sup> *Id.*

competent party will be eliminated; (3) the threatened injury to interested parties "if the injunction is denied outweighs any harm that will result if the injunction is granted"; and (4) "public interest" favors letting the Trustee exercise its fiduciary duties and effectuate his process over costly litigation.<sup>24</sup>

**A. Substantial Likelihood of Success on the Merits**

72. The Optional Redemption Notices demand the liquidation of property currently under the control of Acis LP, as portfolio manager, as well as the PMAs, which are defined as Assets under the Indentures and are property of the Acis LP estate. Indeed, the main, if not sole, purpose of the redemptions appears to be to remove Acis LP as portfolio manager and terminate its primary asset, the PMAs. Accordingly, by extinguishing the PMAs, the purported Optional Redemption is prohibited because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" in violation of 11 U.S.C. § 362(a)(3).

73. Further, any action taken by the Defendants to effectuate the Optional Redemption, and thereby extinguish rights under the PMAs, is outside the ordinary course of Acis's business, and therefore would require Court approval pursuant to 11 U.S.C. § 363(b).

**1. The Automatic Stay**

74. Section 362 of the Bankruptcy Code operates as a stay, applicable to all entities of: "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate."<sup>25</sup> Property of the estate is defined by section 541 of

<sup>24</sup> See *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (stating the elements of a preliminary injunction).

<sup>25</sup> 11 U.S.C. § 362(a)(3).

the Bankruptcy Code as including: "all legal or equitable interests of the debtor in property as of the commencement of the case."<sup>26</sup>

75. The protection afforded to a debtor by the automatic stay is one of the most important benefits that a debtor and its creditors receive when filing for bankruptcy. "The automatic stay has broad scope."<sup>27</sup> "This breadth suggests Congressional intent that, in the face of uncertainty or ambiguity, courts should presume protection of arguable property."<sup>28</sup> The stay is automatic and "springs into being immediately upon the filing of a bankruptcy petition."<sup>29</sup> Actions in violation of the automatic stay are voidable.<sup>30</sup>

## 2. The Automatic Stay is Applicable to the PMAs and CLOs

76. In the TRO, the Court enjoined "the Optional Redemption, call, or other liquidation of the Acis CLOs" because such actions appeared to this Court to have the potential to liquidate or harm valuable property of the Debtors, namely the PMAs. Moreover, this Court found the "Trustee has a substantial case on the merits on a serious legal question" that such actions would constitute a violation of the automatic stay pursuant to 11 U.S.C. § 362(a)(3). Thus, to obtain a second TRO and a preliminary injunction, the Trustee must demonstrate a substantial likelihood of success on the merits regarding whether the actions by HCLOF and others to liquidate the assets of the Acis CLOs, and thereby eviscerate the value of Acis LP's interest in the PMAs, violate the automatic stay.

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<sup>26</sup> 11 U.S.C. § 541(a).

<sup>27</sup> *Burns v. Home Zone Sales & Lease Purchase, LLC*, 503 B.R. 666, 673 (Bankr. S.D. Miss. 2013).

<sup>28</sup> *Brown v. Chesnut (In re Chesnut)*, 422 F.3d 298, 302 (5th Cir. 2005).

<sup>29</sup> *Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003)(quoting *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997)).

<sup>30</sup> *Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003).

77. The Debtors' rights under the PMAs, which are executory contracts, are property of the estate.<sup>31</sup> The Debtors' rights under the PMAs are therefore protected by the automatic stay.<sup>32</sup> If the Optional Redemption or other liquidation of the assets in the Acis CLOs is permitted to go forward, it would render the PMAs valueless. Consequently, the Optional Redemption and any other attempt by HCLOF liquidate the assets of the Acis CLOs would violate section 362(a)(3) because such actions involve exercising control over property of the estate (the PMAs).

78. In *Three Strokes Limited Partnership*, this Court held that a foreclosure sale was an attempt to exercise control over property of the estate under 11 U.S.C. § 362(a)(3) where the debtor held the second lien, but not the first lien on the property subject to foreclosure.<sup>33</sup> The Court held that, even though the underlying asset (i.e., the real property subject to foreclosure) was not the debtor's property:

[T]he second line interest of the Debtor in that property is a property interest worth of recognition and protection. Thus, Section 362 applies to automatically stay the foreclosure proceedings. The foreclosure proceedings could have the effect of extinguishing the Debtor's second lien interest. The foreclosure proceedings would constitute an exercise of control over property of the estate, pursuant to Bankruptcy Code Section 362(a)(3). The court recognizes that the automatic stay is generally a tool to stop creditor collection efforts, and Consecro is not a creditor of this Debtor. However, section 362 is worded to prevent "of all entities" (not merely creditors) from engaging in certain accts including "an act ... to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Clearly, Section 362(a)(3) is intended to prevent dismemberment of the estate and to allow a breathing spell for a debtor-in-possession."<sup>34</sup>

The *Three Strokes* case is analogous to this one. Here, Acis has a property interest in the PMAs – an interest “worthy of recognition and protection” – that will be extinguished if the CLOs are

<sup>31</sup> *In re Mirant Corp.*, 303 B.R. 319, 328 (Bankr. N.D. Tex. 2003) (“a debtor has rights under the contract which are property of the estate and so are protected by the automatic stay from actions of other parties”).

<sup>32</sup> *Id.* at 328.

<sup>33</sup> 397 B.R. 804, 807 (Bankr. N.D. Tex. 2008).

<sup>34</sup> *Id.*

liquidated. Consequently, any attempt to extinguish Acis LP's property interest in the PMAs would be an exercise of control over property of the estate, and is therefore stayed by Section 362(a)(3).

79. The *Three Strokes* opinion is consistent with a long line of cases holding that where a non-debtor's actions would directly or indirectly interfere with and/or substantially diminish a debtor (or trustee's) intangible property rights, such actions violate section 362(a)(3) of the Bankruptcy Code. See, e.g., *In re 48th Street Steakhouse*, 835 F.2d 427, 430-31 (2d Cir. 1987) (finding landlord's termination as to the primary tenant would destroy the debtor's subtenancy violated the automatic stay and was therefore void because, where a non-debtor's interest is intertwined with that of a bankrupt debtor and an action would "inevitably have an adverse impact on property of the estate," such action is barred by the automatic stay); *In re Prudential Lines*, 928 F.2d 565, 573-574 (2d Cir. 1991) (affirming order of the bankruptcy court permanently enjoining parent from taking a "worthless stock" deduction on its tax return where it would effectively eliminate the value of the debtor's net operating loss and have an adverse impact on its reorganization); cf., *Allentown Ambassadors, Inc. v. Northeast Am. Baseball, LLC (In re Allentown Ambassadors, Inc.)*, 361 B.R. 422, 438 and n. 34 (Bankr. E.D. Pa. 2007) (analyzing the phrase "to exercise control over property of the estate" and collecting cases explaining what that means in the context of section 362(a)(3)). Thus, because the liquidation of the CLOs represents an "act to obtain possession of property of the estate," – namely, Acis LP's intangible property rights in the PMAs – such actions constitute a violation of section 362(a)(3).

80. Moreover, apart from the fact that the Optional Redemption directs Acis LP to cancel the PMAs, the Optional Redemption also seeks to force the winding down of the CLOs. By Acis LP's own admission on the Acis LP SOFA, Acis LP has at least a possessory interest in the CLO assets, such that a transfer of CLO assets constitutes a transfer of property *from* the

estate under section 362(a)(3) of the Bankruptcy Code. Property from the estate includes property that does not belong to debtor, but over which the debtor has possession or control. The legislative history of section 362(a)(3) makes this clear:

Paragraph (3) stays any act to obtain possession of property of the estate (that is, property of the debtor as of the date of the filing of the petition) or property **from** the estate (**property over which the estate has control or possession**). The purpose of this provision is to prevent dismemberment of the estate. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.<sup>35</sup>

Similarly, Collier extensively discusses the concept that property over which a debtor has possession or control is appropriately covered by the automatic stay:

Section 362(a)(3) stays all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. The trustee or debtor in possession takes control of all property of the estate in order to maintain any going concern value and to ensure an equitable distribution of the property among creditors. This requires that no entity seek to interfere with these tasks by taking possession or exercising control over property of the estate. It also requires that no entity grab non-estate property *from* the estate without the court supervision that comes from a stay relief proceeding . . . . The property protected may be property of the estate or property in the possession of the estate.<sup>36</sup>

81. Finally, cases interpreting section 362(a)(3) uniformly hold that property in the possession of a debtor (even if not property of the estate) is covered by the protections and procedures of Section 362(a)(3). For example, Judge Isgur has called section 362(a)(3) an "anti-grab-law statute" and noted that "[t]he intent and purpose of (a)(3) is to prohibit physical taking of property . . . ." In *Adana Mortgage*, the Georgia bankruptcy court thoroughly explained the purpose of section 362(a)(3) related to property from the estate in finding a willful violation of the automatic stay:

<sup>35</sup> S. REP. No. 95-989, at 50 (1978) (emphasis added).

<sup>36</sup> 3 COLLIER ON BANKRUPTCY ¶ 362.03[5] (16th ed. 2018) (emphasis in original).

Title or ownership of property is not controlling to a Section 362(a)(3) violation. Possession or control by the debtor is sufficient to enact the protection of the automatic stay. The prohibition against any act to remove property from the estate was apparently "included to forestall a lienor or other adverse claimant from asserting as a justification for an exercise of selfhelp that the property taken from the debtor did not belong to the estate." The accounts clearly were under the control of Debtor at the time of filing. Thus, regardless of whether they are property of the estate, the accounts constituted property from the estate at the time of filing and were under the protection of Section 362(a)(3). The actions taken by GNMA to attempt to divest the Debtor of control and to obtain possession of these accounts were, therefore, in violation of the automatic stay.<sup>37</sup>

82. Likewise, many cases have found that a debtor's mere possessory interest in property is sufficient to make it property of the estate under section 541 of the Bankruptcy Code and subject to the stay.<sup>38</sup>

### 3. Section 555 of the Bankruptcy Code Does Not Apply to HCLOF

83. Section 365(e)(1) prohibits the operation of an *ipso facto* clause in an executory contract or unexpired lease due the filing of a bankruptcy case.<sup>39</sup> Section 555 provides a "safe harbor" from the automatic stay when a stockbroker, financial institution, financial participant, or securities clearing agency exercises its contractual right under an *ipso facto* clause to liquidate, terminate, or accelerate a securities contract for one of the conditions specified in section 365(e)(1)—that is, the insolvency or financial condition of the debtor, the commencement of a case under title 11, or the appointment of or taking possession by a trustee

<sup>37</sup> *Adana Mortgage Bankers, Inc.*, 12 B.R. 989, 1005 (Bankr. N.D. Ga. 1980) (vacated by the agreement of parties).

<sup>38</sup> *See In re Canon*, 130 B.R. 748, 750 (Bankr. N.D. Tex. 1991) (citing legislative history of Bankruptcy Code to show that a "possessory interest" is property of the estate); *In re 48th St. Steakhouse, Inc.*, 835 F.2d 427, 430 (2d Cir. 1987) ("[A] mere possessory interest in real property, without any accompanying legal interest, is sufficient to trigger the protection of the automatic stay."); *In re Salov*, 510 B.R. 720, 729 (Bankr. S.D.N.Y. 2014) ("Courts in all ten circuits have found that the automatic stay protects a possessory interest in property.") (collecting cases); *Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered Prods., Inc.)*, 382 B.R. 90, 106 (Bankr. E.D. Mich. 2008) ("The stay protects interests in property whether an ownership interest, possessory interest or some other interest."); *Boydston v. Reed*, 218 B.R. 840, 842 (N.D. Miss. 1998) (finding that even stolen property is property of the estate).

<sup>39</sup> *See* 3 COLLIER ON BANKRUPTCY ¶ 365.08[1].

in a case under title 11.<sup>40</sup> Section 555 does not provide an unqualified right to liquidate, terminate, or accelerate a securities contract in violation of the automatic stay merely because the contract contains a broad termination provision.<sup>41</sup>

84. Here, although HCLOF has asserted that it is protected by the safe harbor of section 555 of the Bankruptcy Code, HCLOF is not exercising a "contractual right . . . [under a] securities contract . . . because of a condition of the kind specified in section 365(e)(1) of [the Bankruptcy Code]."<sup>42</sup>

85. Specifically, HCLOF has not demonstrated that it is exercising its contractual right under a securities contract to liquidate, accelerate, or terminate due to an *ipso facto* clause in such contract.

86. Further, HCLOF must show that it has:

agreements or transactions described in described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than \$1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross market-to-market positions of not less than \$100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor of any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition.<sup>43</sup>

87. HCLOF has not demonstrated that it is exercising purported contractual rights under securities contracts with the Debtors or non-affiliates. HCLOF has also not demonstrated that it is a "financial participant," as required under section 555. Accordingly, HCLOF has not

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<sup>40</sup> Cf. *In re Enron Corp.*, 306 B.R. 465, 472-733 (Bankr. S.D.N.Y. 2004) (reaching the same result under analogous provision of section 560 of the Bankruptcy Code).

<sup>41</sup> See *In re Amcor Funding Corp.*, 117 B.R. 549, 551 (Bankr. D. Ariz. 1990) (finding contractual provision permitting liquidation of a securities contract for *any reason* did not bring contract within section 555's safe harbor provision where liquidation was not triggered by a condition of the kind specified in section 365(e)(1)).

<sup>42</sup> See HCLOF's Brief in Opposition to Extending the TRO, Docket No. 271, at 22-27.

<sup>43</sup> See 11 U.S.C. § 101(22A).

shown that the safe harbor of section 555 of the Bankruptcy Code applies to its actions to effectuate the Optional Redemption.

**4. The Optional Redemption is Outside the Ordinary Course of the Debtors' Business**

88. Under section 363(b) of the Bankruptcy Code, the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

89. To determine whether a transaction is within the ordinary course of business, courts look to "whether the transaction is abnormal or unusual, in which case it is probably not in the ordinary course of business, or whether it is a reasonably common type of transaction."<sup>44</sup> The Optional Redemption contemplated by HCLOF is not a common event in the course of the Debtors' business. Indeed, the Optional Redemption is an extraordinary event, which would effectively cause the liquidation of the CLOs and the PMAs. This is not in the ordinary course of business.

90. Further, any party that "deals with a bankruptcy trustee in a transaction that is not in the ordinary course of business is charged with the knowledge that the law may require court approval."<sup>45</sup>

91. Actions taken by Defendants in furtherance of the purported Optional Redemption were outside the ordinary course of the Debtors' business and were taken without the Trustee's consent or authorization from the Court. Thus, such actions are ineffective pursuant to 11 U.S.C. § 363(b).

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<sup>44</sup> 3 COLLIER ON BANKRUPTCY ¶ 363.03[1][a] (citing *In re Dant & Russell, Inc.*, 853 F.2d 700 (9th Cir. 1988) (applying the "horizontal test").

<sup>45</sup> *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 266 (5th Cir. 2010).

92. For the reasons set forth above, sections 362(a)(3) and 363(b) of the Bankruptcy Code foreclose any action by the Defendants in furtherance of the Optional Redemption, call, or liquidation of the Acis CLOs. Thus, the Trustee has a substantial likelihood of succeeding on the merits.

**B. Substantial Threat of Irreparable Injury**

93. Injunctive relief is necessary to prevent imminent and irreparable injury in the form of substantial losses to creditors and parties-in-interest, as well as to third parties' financial interests, related to the Optional Redemption, call, or other liquidation of the Acis CLOs. The losses that would result in the event an injunction is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, creditors and interested third parties otherwise would have no adequate remedy at law. The Optional Redemption would eliminate the confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan.

**C. Balancing of Harms**

94. The balancing of the harms weighs in favor of issuing a preliminary injunction because any alleged harm to Highland, or any of the Highland Affiliates, is substantially outweighed by the damage that would be caused to all parties-in-interest if the Court does not enjoin the Optional Redemption, call, or other liquidation of the Acis CLOs, and return more to all affected parties than would be received by the Optional Redemption.<sup>46</sup> Highland and the Highland Entities will receive the same monetary benefit from the Oaktree Transaction, creditors will be paid in full, and economic stakeholders would reap a benefit. HCLOF's claimed harm is exaggerated.

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<sup>46</sup> Any alleged harm to Defendants is illusory and specious because, among other things, the Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a "refinance" or "reset" transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption.

**D. Public Interest**

95. Public policy supports restraining the actions described herein to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property and other assets. Further, there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.

96. Therefore, the Trustee asks that the Court, after a hearing on this application, grant a temporary restraining order and preliminary injunction enjoining the Defendants and Defendants' officers, agents, servants, employees, and attorneys from engaging in the following actions:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs, including any further optional redemption under section 9.2 of the Indentures; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

97. The Trustee requests that such injunctive relief remain effective unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129.

***Count 2: Willful Violation of the Automatic Stay***

98. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.<sup>47</sup>

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<sup>47</sup> *Campbell v. Countrywide Home Loan, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005)).

99. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate."<sup>48</sup>

100. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees.<sup>49</sup>

101. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."<sup>50</sup> The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction."<sup>51</sup> This is consistent with the broad equitable authority of the bankruptcy courts.<sup>52</sup>

102. Pursuant to section 362(k)(1), Plaintiff seeks recovery of damages commensurate with its injury, due to Defendants' violation of the automatic stay. Further, given Defendants' blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiff seeks attorneys' fees and sanctions against Defendants, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 3: Declaratory Judgment that the Optional Redemption Notices  
Were Defective and Ineffective Under the PMAs and Indentures***

103. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

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<sup>48</sup> *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

<sup>49</sup> *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009) the term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. See *Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, inter alia, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

<sup>50</sup> 11 U.S.C. § 105(a).

<sup>51</sup> 2 COLLIER ON BANKRUPTCY ¶105.01 (collecting cases).

<sup>52</sup> See *United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

104. The Optional Redemption Notices were not sent by properly authorized parties, pursuant to the certain PMA, dated November 15, 2017 (the "11-15-17 PMA"), between HCLOF and Highland HCF. A true and correct copy of the 11-15-17 PMA is attached hereto as **Exhibit "K."**

105. Under Section 5(a)(xvii) of this 11-15-17 PMA, Highland HCF has the authority for and in the name of HCLOF to "vote Financial Instruments . . . ." The Subordinated Notes referenced in the Optional Redemption Notices are clearly Financial Instruments covered by Section 5(a)(xvii). Further, Section 4 of the 11-15-17 PMA requires that State Street Custodial Services (Ireland) Limited ("State Street"), as custodian, "shall at all times be responsible for the . . . exercise of rights and tenders on the Financial Instruments after consultation with and as then directed by [HCLOF]." Yet, the Optional Redemption Notices were signed only by directors of HCLOF, not Highland HCF or State Street.

106. Section 9.4(a) of the Indenture states that, with any redemption under Section 9.2, the Holders of the Subordinated Notes (currently, HCLOF) must provide written direction/notice of such redemption no later than 45 days prior to the Redemption Date, and Section 9.4(b) requires that all notices of redemption delivered pursuant to Section 9.4(a) state:

- (i) the applicable Redemption Date;
- (ii) the Redemption Prices of the Notes to be redeemed;
- (iii) that all of the Secured Notes are to be redeemed in full and that interest on such Secured Notes shall cease to accrue on the Redemption Date specified in the notice;
- (iv) the place or places where Notes are to be surrendered for payment of the Redemption Prices, which shall be the office or agency of the Co-Issuers to be maintained as provided in Section 7.2; and
- (v) if all Secured Notes are being redeemed, whether the Subordinated Notes are to be redeemed in full on such Redemption Date and, if so, the place or places where the Subordinated Notes (other than any Uncertificated Subordinated Notes) are to be surrendered for payment of the Redemption Prices, which shall be the office or

agency of the Co-Issuers to be maintained as provided in Section 7.2 in order to receive payment therefor.

107. The Optional Redemption Notices fail to provide any such information other than the Redemption Date. Thus, the Optional Redemption Notices are defective on their face. Additionally, it has not been demonstrated that the Optional Redemption Notices were actually received by the required parties, which is required at least with respect to U.S. Bank.

108. Also, as originally referenced the Trustee's May 22, 2018 Redemption Responses, and as adduced above, completion of the Optional Redemption as requested by the Optional Redemption Notices would, or could reasonably be expected to: (i) violate applicable law; and/or (ii) knowingly and willfully adversely affect the interests of the Holders in the Assets in any material respect that is not expressly permitted under the PMAs or the Indentures. Under such circumstances, Section 8 of the PMAs requires coordination with the Trustee in order to make indemnification arrangements and providing a legal opinion from outside counsel, which must meet the Trustee's approval. Defendants have not complied with Section 8 of the PMAs.

109. Finally, the Second Optional Redemption Notices make reference to placing "a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P." The Indentures and PMAs do not provide for such an arrangement.

110. Thus, for the numerous deficiencies set forth above, the Optional Redemption Notices are defective and ineffective.

***Count 4: Declaratory Judgment that the Optional Redemption Notices Were Outside the Ordinary Course of Business and Therefore Ineffective under 11 U.S.C. § 363(b)***

111. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

112. Under section 363(b) of the Bankruptcy Code, the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

113. The Trustee did not consent to Defendants' actions taken in connection with the Optional Redemption Notices.

114. Actions taken by Defendants in furtherance of the purported Optional Redemption were outside the ordinary course of the Debtors' business and were taken without the Trustee's consent or authorization from the Court. Thus, such actions are ineffective pursuant to 11 U.S.C. § 363(b).

***Count 5: Declaratory Judgment that the Trustee Has Not Violated His Fiduciary Duties by Declining to Carry Out the Optional Redemption***

115. Plaintiff incorporates the preceding paragraphs as if set forth fully herein.

116. The Trustee is mindful of his fiduciary obligations under the PMAs and Indentures. At the same time, the Trustee believes any action taken to effectuate the Optional Redemption are in violation of the automatic stay, outside the ordinary course of Acis's business, and an attempt to destroy the primary vehicle by which Acis generates revenue.

117. The Trustee was appointed on Monday, May 14, 2018. In the brief period of time since the Trustee's appointment, Highland, pursuant to the Shared Services Agreement and Sub-Advisory Agreement, has advised the Trustee on the day-to-day business operations of Acis. Highland, as a fiduciary for Acis LP, pursuant to the Sub-Advisory Agreement, has stated that if the Trustee does not begin the process of liquidating the Acis CLOs and comply with the Optional Redemption, the Trustee will breach certain fiduciary duties owed to the Acis CLOs. As described believe, the Trustee believes the Optional Redemption will violate sections 362 and 363 of the Bankruptcy Code and leave Acis without its most valuable assets, the PMAs. Highland

has further suggested to the Trustee that if he does not agree to effectuate the Optional Redemption, he was be individually liable for violating his fiduciary duty to the Acis CLO's equity.<sup>53</sup> At the May 31, 2018 status conference in these Cases, the Trustee advised the Court of Highland's demands related to the Optional Redemption. The Trustee believes that he has proposed a plan of reorganization that maximizes recovery for all parties, including HCLOF.

118. As such, the Trustee seeks a declaratory judgment that he has not violated his fiduciary obligations by declining to carry out the Optional Redemption, as ordered by HCLOF.

## VI. PRAYER

119. For the foregoing reasons, the Trustee respectfully requests that the Court enter judgment in favor of the Trustee, and specifically and expressly provide the following relief to the Plaintiff for the benefit of the Debtors' bankruptcy estates:

- (i) Temporary restraining order and preliminary injunction pursuant to Federal Rule of Bankruptcy Procedure 7065, to preserve the status quo and protect the estates by enjoining the Defendants from taking any action in furtherance of the Optional Redemption, or any action to effectuate yet another optional redemption at some future time under section 9.2 of the Indentures, unless the Defendants seek Court approval, and the Court lifts the automatic stay to allow such actions, or the Court confirms a plan pursuant to 11 U.S.C. § 1129;
- (ii) Plaintiff's recovery of damages pursuant to 11 U.S.C. § 362(k), for Defendants' violation of the automatic stay;
- (iii) Declaratory judgment that the Optional Redemption Notices are defective and ineffective pursuant to the PMAs and Indentures;
- (iv) Declaratory judgment that the Optional Redemption Notices are ineffective pursuant to 11 U.S.C. § 363(b);
- (v) Declaratory judgment that the Trustee has not violated his fiduciary duties by declining to carry out the Optional Redemption;

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<sup>53</sup> HCLOF is the only signatory on the Optional Redemptions related to CLO-3, CLO-4, CLO-5, and CLO-6. The signatories for the Optional Redemption related to CLO-1 are New ALF, Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategic Fund) (a Highland affiliate), and Drexel Limited.

- (vi) Plaintiff's recovery from Defendants of pre- and post-judgment interest, at the greatest rate permitted by law, on all amounts awarded to Plaintiff;
- (vii) Plaintiff's recovery from Defendants of all attorney's fees and costs incurred in connection with the prosecution of this Adversary Proceeding;
- (viii) All such other and further relief as to which Plaintiff has shown or hereafter shows himself to be justly entitled in law or in equity.

**DATED: June 20, 2018**

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Respectfully submitted,

By: /s/ Rakhee Patel

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**COUNSEL FOR THE CHAPTER 11  
TRUSTEE**

VERIFICATION

STATE OF TEXAS

ss  
ss  
ss

COUNTY OF DALAS

BEFORE ME, the undersigned notary public on this day personally appeared Robin Phelan, Chapter 11 Trustee, as authorized representative of Acis Capital Management, L.P. and Acis Capital Management GP, LLC, who, after being duly sworn stated under oath that he has read the foregoing Verified Original Complaint and Request for Temporary Restraining Order and Preliminary Injunction, and that every statement contained therein is true and correct based on his personal knowledge or information obtained from other persons.

Robin Phelan

SWORN TO and SUBSCRIBED before me on this 20<sup>th</sup> day of June, 2018.

Sheryl Precopia  
Notary Public in and for the State of Texas

My Commission Expires:

\_\_\_\_\_



**EXHIBIT O**



imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a temporary restraining order enjoining the actions described herein, the Parties will be irreparably injured. As the basis for this order, the Court states the following:

1. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland Capital Management, L.P. ("Highland"), Highland CLO Funding, LTD ("HCLOF"), CLO Holdco, Ltd. ("Holdco"), Neutra, Ltd. ("Neutra") (HCLOF, Holdco and Neutra are collectively referred to herein as the "Highland-Related Parties"), U.S. Bank National Association ("US Bank"), Acis CLO 2013-1 LTD. ("CLO-1"), Acis CLO 2014-3 LTD. ("CLO-3"), Acis CLO 2014-4 LTD. ("CLO-4"), Acis CLO 2014-5 LTD. ("CLO-5"), Acis CLO 2015-6 LTD. ("CLO-6") (CLO-1, CLO-3, CLO-4, CLO-5, and CLO-6 are collectively referred to herein as the "Acis CLOs"), Acis CLO 2013-1 LLC ("CLO-1 LLC"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), Acis CLO 2015-6 LLC ("CLO-6 LLC") (CLO-1 LLC, CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, and CLO-6 LLC are collectively referred to herein as the "Acis CLO Co-Issuer") and other parties (the Trustee, Highland, the Highland-Related Parties, US Bank, the Acis CLOs, and the Acis Co-Issuers are referred to herein as the "Restrained Parties") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the following: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, CLO-1 LLC, as co-Issuer and US Bank as Trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-Issuer and US Bank, as Trustee (the "CLO-6 Indenture"). CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures"). The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties.

2. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a temporary restraining order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.
3. The Trustee has a substantial case on the merits on a serious legal question—to wit: that the threatened actions described herein, if not enjoined, will violate the automatic stay in this matter, pursuant to 11 U.S.C. § 362(a)(3).
4. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland-Related Parties, is substantially outweighed by the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.
5. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

**IT IS THEREFORE ORDERED** that all Restrained Parties<sup>2</sup> and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Restrained Parties' behalf are enjoined for a period of fourteen (14) days from:

1. proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
2. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of the Optional Redemption, call, or other liquidation of the Acis CLOs.

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<sup>2</sup> The Restrained Parties appeared at the Status Conference. Parties-in-interest received notice of the Status Conference pursuant to the *Notice of Status Conference* [Docket No. 242].

**IT IS FURTHER ORDERED**, for the avoidance of doubt, that U.S. Bank may continue to perform its ministerial functions in respect of sale trades that *were executed and settled*, at the initiation of the CLO issuers or Highland-Related Parties *prior to May 31, 2018*, without running afoul of this TRO.

**IT IS FURTHER ORDERED** that this Order expires on 12:01 a.m. (Central Daylight Time) on June 15, 2018, unless further extended by this Court or by agreement of the parties.

**### END OF ORDER ###**

**EXHIBIT P**

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COUNSEL FOR HIGHLAND CLO FUNDING LTD.

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS**



**Case No. 18-30264-SGJ-11  
Case No. 18-30265-SGJ-11**

**(Jointly Administered Under  
Case No. 18-30264-SGJ-11)**

**Chapter 11**

---

**ROBIN PHELAN, CHAPTER 11  
TRUSTEE**

**Plaintiff,**

**v.**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P., HIGHLAND CLO FUNDING, LTD.  
f/k/a ACIS LOAN FUNDING, LTD., CLO  
HOLDCO, LTD., NEUTRA, LTD., ACIS  
CLO 2014-3 LTD., ACIS CLO 2014-4 LTD.,  
ACIS CLO 2014-5 LTD., ACIS CLO 2015-6  
LTD., ACIS CLO 2014-3 LLC, ACIS CLO  
2014-4 LLC, ACIS CLO 2014-5 LLC, and  
ACIS CLO 2015-6 LLC,**

**Defendant.**



**Adversary No. 18-03212-SGJ**

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**HIGHLAND CLO FUNDING, LTD.'s MOTION TO  
DISSOLVE PRELIMINARY INJUNCTION AND LIFT THE AUTOMATIC STAY**

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## PRELIMINARY STATEMENT

Highland CLO Funding, Ltd. (“**HCLOF**”) holds bargained-for contractual rights under non-debtor contracts with respect to non-debtor CLOs that hold over \$2 billion in assets. For months now, the Chapter 11 Trustee (the “**Trustee**”) has enjoyed the benefits of a preliminary injunction that has barred HCLOF from exercising these rights. That injunction was granted, in part, upon the Trustee’s belief that he could effect a plan of reorganization that would pay creditors and HCLOF in full. HCLOF objected to the Trustee’s proposed plan because it did not pay HCLOF “in full” and forced a sale of its property, or altered its non-debtor contract rights, against its will. The Court denied approval of all three plans.

The Trustee now wants to try again — this time with “Plan D.” Plan D suffers from the same defects that rendered Plans B and C unconfirmable because it presumes that the Trustee can alter rights that HCLOF has under the CLO indentures — contracts to which debtor Acis LP is not a party. The CLOs are not in bankruptcy, the CLO indentures are non-debtor contracts, and HCLOF is not even a creditor in this case. Plan D will fail just as the other plans have failed.

The Trustee had his chance. If there were ever justification for the injunction, that justification no longer exists. There is no “quick fix” to this bankruptcy case. If the Trustee believes he has claims against HCLOF and others, he should not ask the Court to prejudge those claims, or prejudge whether HCLOF or others should be “collapsed” into parties against whom Mr. Terry has a pre-petition arbitration award. Instead, the Trustee should pursue those claims to judgment. If he prevails, he has a remedy. That stands in stark contrast to HCLOF, which has been held in stasis for months with no remedy against the Debtors or the Trustee. The Court recently concluded that HCLOF is not a creditor; it follows that HCLOF has no claim against the

Trustee for the harm he is causing. A party with an adequate legal remedy (the Trustee) is not entitled to an injunction.

Accordingly, HCLOF respectfully requests that the preliminary injunction be dissolved, and that it be granted relief from the automatic stay, to the extent applicable, to exercise its contractual rights as it sees fit, with the discretion it bargained for, and to which it is entitled.

## RELEVANT FACTS

### A. Background

1. The debtors in this case are Acis Capital Management, L.P. (“**Acis LP**”) and Acis Capital Management GP, LLC (collectively, the “**Debtors**”). Acis LP is the portfolio manager of five financial investment vehicles known as collateralized loan obligations (“**CLOs**”).<sup>1</sup>

2. Each CLO holds a portfolio of diversified syndicated leveraged commercial loans through the private placement of rated secured notes (“**Secured Notes**”) and unsecured subordinated securities (“**Equity Notes**” together with the Secured Notes, the “**Notes**”), providing investors with differentiated risk and reward profiles. Hr’g Tr. (Feb. 7, 2018), at 73:1–74:20.

3. Each Note is subject to an indenture (the “**Indenture**”) that establishes the rights of the noteholders and the indenture investment criteria.<sup>2</sup> Neither of the Debtors are a party to any of the Indentures.

4. Through a Portfolio Management Agreement (“**PMA**”) for each CLO, Acis LP agreed to manage the assets securing the Notes according to the criteria specified in the

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<sup>1</sup> The CLOs at issue are: Acis CLO 2013-1, Ltd.; Acis CLO 2014-3, Ltd.; Acis CLO 2014-4, Ltd.; Acis CLO 2014-5, Ltd.; and Acis CLO 2015-6, Ltd.

<sup>2</sup> *E.g.*, Indenture for Acis CLO 2013-1 (Exhibit 1 at Plan Confirmation) (“2013-1 Indenture”). The indentures for the other CLOs were Exhibits 2 through 5 at Plan Confirmation. References to specific provisions of the Indentures are illustrated by reference to the 2013-1 Indenture. The provisions are substantially similar, if not identical, across the various indentures.

respective Indentures.<sup>3</sup> In return for its services, Acis LP earns management fees, which are specified percentages of the principal amount of the total assets under management. *See, e.g.*, 2013-1 Indenture at 31–32, 64, 66. Acis LP has no employees or other infrastructure necessary to manage the CLOs, and has historically employed Highland-related entities as sub-advisors and sub-servicers to perform the necessary front, middle, and back office services.

5. At the time of their respective investments in the CLOs, it was represented to the investors, including the Equity Noteholders, that Highland Capital Management, L.P. (“**Highland**”) would perform all of the portfolio management duties, and the CLOs and the Equity Noteholders, including HCLOF, relied on that representation and the reputation of Highland in the industry to manage their investments. Hr’g Tr. (June 12, 2018), at 36:25–38:25; *see also* HCLOF Offering Memorandum dated Nov. 15, 2017 (Ex. 90 at Plan Confirmation).

6. Pursuant to the Indentures, the CLOs can redeem the Secured Notes under certain conditions, including at the written direction of 66 2/3% of the aggregate outstanding amount of the Equity Notes. *E.g.*, 2013-1 Indentures § 9.2. Through this right of redemption, the Equity Noteholders can restructure the CLOs when they no longer meet their investment objectives.

7. Acis LP is not a party to the Indenture but must comply with certain aspects of the Indenture in its capacity as the Portfolio Manager of the CLOs. *See, e.g.*, 2013-1 PMA § 3(a). As relevant here, the Indentures require Acis LP, “[u]pon receipt or delivery of a notice of a redemption of the Secured Notes,” to “direct the sale of all or part of the Collateral Obligations and other Assets” to effect a redemption. *E.g.*, 2013-1 Indenture § 9.2. Acis LP has no discretion to refuse this directive.

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<sup>3</sup> *E.g.*, Portfolio Management Agreement between Acis CLO 2013-1, Ltd. and Acis Capital Management, LP (Exhibit 6 at Plan Confirmation) (“2013-1 PMA”). The PMAs for the other CLOs were Exhibits 7 through 10 at Plan Confirmation. References to specific PMAs are illustrated by reference to the 2013-1 PMA. The provisions are substantially similar, if not identical, across the various PMAs.

## B. HCLOF's Efforts To Reset The CLOs

8. Because changes in interest rates affect the return on the CLOs' investments, HCLOF has the contractual right under the Indentures to "reset" the CLO, which is a process of refinancing currently existing collateral loan obligations. Once refinanced, the reset CLO will pay lower interest rates to the Secured Noteholders and thus maintain or improve the yield to the Equity Noteholders. *See* Hr'g Tr. (Feb. 6, 2018), at 73:22–75:1.

9. By January 2018, HCLOF had secured sufficient capital to effectuate the reset for Acis CLO 2014-3. Hr'g Tr. (Feb. 7, 2018), at 81:1–83:7. But the transaction did not close because the involuntary bankruptcy petitions were filed. *Id.* at 83:8–84:7, 85:20–89:2.<sup>4</sup> As a result, HCLOF remains stuck in subpar investments, and it is losing approximately \$59,000 per CLO per week — a total of approximately \$295,000 per week — compared to what it could earn by redeploying this capital to a better investment. Hr'g Tr. (June 12, 2018), at 40:20–23, 73:1–8.<sup>5</sup>

## C. The Bankruptcy Proceedings

10. Following the bankruptcy petitions and the appointment of a Chapter 7 bankruptcy trustee, HCLOF decided to cut its losses, as a now bankrupt portfolio manager was untenable and the future of its investment was uncertain. HCLOF determined that a redemption, effectuated by Highland as the sub-manager for Acis LP, was its sole remedy under the circumstances. Accordingly, on April 30, 2018, HCLOF instructed the Indenture Trustee and Acis LP to initiate an optional redemption (the "**Initial Notices**"). *See* Hr'g Tr. (Feb. 6, 2018), at 157:9–160:11.

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<sup>4</sup> Mr. Terry has admitted that preventing the reset was a reason why he filed the involuntary. Hr'g Tr. (Mar. 27, 2018), [Doc. 107], at 27:22–28:1 (Q: "And you knew that there was an extreme likelihood that the transaction was not going to go forward as a result of the bankruptcy filing." Joshua Terry: "Yes, that was our goal on filing the involuntary petitions . . .").

<sup>5</sup> These figures were calculated as of June 2018.

11. After the Initial Notices were issued, on May 11, 2018, the Bankruptcy Court converted the Chapter 7 cases and granted a motion to appoint a Chapter 11 trustee. *See* Order [Doc. 205]. The Trustee was appointed by this Court on May 17, 2018. *See* Order [Doc. 221].

12. The Trustee refused to authorize the processes to allow Highland, as sub-manager, to take the actions necessary to effect the Initial Notices. *See* Trustee Letters (May 22, 2018) (Exhibit 40 at Plan Confirmation); Trustee Email (May 27, 2018) (Exhibit 44 at Plan Confirmation). At a status conference on May 31, 2018, the Court *sua sponte* entered a temporary restraining order (“**TRO**”) which effectively stayed the optional redemption process. [Doc. 256]. Hr’g Tr. (May 31, 2018), at 66:11–69:2.

13. On June 13, 2018, HCLOF withdrew the Initial Notices. *See* Revocation and Withdrawal Notices (Exhibit 97 at Plan Confirmation). On June 15, 2018 at 12:01 a.m., the TRO expired by its own terms.

14. Later on June 15, 2018, HCLOF issued new Notices of Redemption (the “**Second Notices**”) with a redemption date of July 30, 2018, in the manner required by the Indentures. *See* June 15, 2018 Redemption Notices (Exhibit 20 at Plan Confirmation). The Second Notices were withdrawn on July 6, 2018. *See* Revocation and Withdrawal Notices (Exhibit 98 at Plan Confirmation).

15. On June 21, 2018, the Trustee filed the *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Doc. 1] seeking, among other things, a temporary restraining order and preliminary injunction prohibiting HCLOF from taking any actions to effectuate an optional redemption. The Court entered an *ex parte* temporary restraining order on June 21, 2018 and held a preliminary injunction hearing on July 6, 2018.

16. On July 10, 2018, the Court entered a preliminary injunction (the “**Preliminary Injunction**”) enjoining HCLOF from “proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption.” *Preliminary Injunction Order* [Adv. No. 18-03212, Doc. 21] (“**PI Order**”), at 13.

#### **D. The Proposed Plans And Confirmation Hearing**

17. On July 5, 2018, the Trustee filed his joint plan for the Debtors [Doc. 383], proposing three (3) alternatives — Plans A, B and C. Plan A proposed to transfer non-estate property (i.e., HCLOF’s Equity Notes) and the PMAs (the “**Oaktree Transaction**”) to Oaktree Capital Management, L.P. (“**Oaktree**”). Alternatively, the Trustee proposed Plans B and C, both of which were premised on preventing HCLOF from exercising certain rights under the Indentures, thereby ensuring future revenue streams from which the estates would pay creditors.

18. On August 30, 2018, the Court denied confirmation of all three plans. *See generally* Court’s Ruling on Confirmation [Doc. 549] (“**Confirmation Decision**”) and subsequent Order entered at Doc. 569.

19. On September 28, 2018, the Trustee filed a *Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Doc. 612] (“**Plan D**”). Plan D is very similar to Plans B and C in that it seeks to modify the Indentures to restrict HCLOF’s contractual rights. Plan D relies on a plan injunction, issued pursuant to sections 105(a), 1123(a)(5), and 1123(b)(6), and other plan provisions to achieve the same result. *See* Plan D §§ 14.03 (plan injunction), § 6.08 (restricting HCLOF’s right to withdraw redemptions).

## ARGUMENT

20. With the benefit of the Preliminary Injunction granted by this Court, the Trustee took his chances with Plans A, B, and C. The Court denied confirmation of all three plans, concluding that HCLOF's rights could not be so modified because it was neither (1) a creditor of the estates nor (2) a contract counter party to the Debtors. For these same reasons, the Trustee cannot confirm any plan that alters HCLOF's rights without its consent.

21. Nonetheless, the Trustee has determined to continue on his war path, seeking to confirm his new Plan D. That new plan relies on a continued injunction barring HCLOF from exercising its rights. But, Plan D is no less confirmable than Plans A, B, or C without HCLOF's consent. The same jurisdictional infirmities apply: (1) HCLOF is neither a creditor nor a contract-counterparty to the Debtors, and (2) this Court does not have the jurisdiction to impair HCLOF's rights under the Indentures through such an injunction. The Trustee's proposal of another unconfirmable plan only highlights that there is no likelihood of a successful reorganization justifying a continued injunction.<sup>6</sup>

22. Nor is the Preliminary Injunction necessary pending the Trustee's current prosecution of his fraudulent transfer claims. If the Trustee succeeds on those claims, he has a legal remedy. There is no irreparable harm and thus no need for an injunction. Even if the Trustee were successful in avoiding the alleged "transfer" of the ALF PMA,<sup>7</sup> that contract on its face would not grant the Trustee unfettered rights with respect to the Equity Notes. No witness in this case has so testified, and the contract language is perfectly clear. At all times, HCLOF's portfolio manager, whether it be Highland, Acis LP or anyone else, is subject to the direction and

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<sup>6</sup> See Highland's Motion for an Order Dismissing the Debtors' Chapter 11 Cases Or, in the Alternative, Converting the Cases to Chapter 7 for Cause [Doc. 604] ("**Motion to Dismiss**").

<sup>7</sup> The "ALF PMA" refers to the Portfolio Management Agreement, dated December 22, 2016, by and between Acis Loan Funding, Ltd. and Acis. (Ex. 11 at Plan Confirmation).

control of HCLOF with respect to its investments. The Court should not effectively pre-judge those claims through the Preliminary Injunction. Nor would lifting the injunction necessarily pre-judge the outcome of that proceeding. *See Vogel v. Am. Society of Appraisers*, 744 F.2d 598, 604 (7th Cir. 1984) (emphasizing that denial of preliminary injunction did not serve to “prejudge the trial”).

23. The continuation of the Preliminary Injunction only exacerbates the great prejudice and irreparable harm to HCLOF. As stated throughout these cases, HCLOF continues to suffer irreparable damages (per a June analysis, \$295,000 on a weekly basis). Moreover, HCLOF should not be compelled into a forced marriage with an investment adviser that has been openly hostile to HCLOF and its interests.

24. If the balance of harms and the public interest ever tipped in favor of the Trustee, that is no longer the case. The Court gave the Trustee an opportunity to deliver what he promised would be a quick-fix and win for everyone, but he has failed at great expense. Plan D stands on no better footing. The public interest now demands that HCLOF’s rights under non-debtor contracts, with non-debtor CLOs, be respected and that the Preliminary Injunction be dissolved. Those same reasons also constitute “cause” for this Court to lift the automatic stay (to the extent it applies) so that HCLOF can exercise its contractual rights.

#### **I. THE PRELIMINARY INJUNCTION SHOULD BE DISSOLVED**

25. “The district courts apply the same standards in reviewing a preliminary injunction under a motion to dissolve as they do in deciding whether to grant one in the first instance.” *Texas v. United States*, No. 7:15-cv-00056-O, 2015 WL 13424776, at \*1 (N.D. Tex. June 26, 2015) (quoting *Vaughn v. St. Helena Parish Police Jury*, 261 F. Supp. 2d 553, 556 (M.D. La. 2002)). These elements are: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened

injury to the plaintiff outweighs the injury to the defendant; and (4) that granting the injunction does not disserve the public interest. *See, e.g., Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (citation omitted).

**A. The Trustee Cannot Show Irreparable Harm; HCLOF Continues to Be Irreparably Harmed by the Preliminary Injunction.**

26. In rendering its confirmation decision, this Court made it crystal clear: HCLOF is not a creditor and does not have a claim against the Trustee or the estates. *See* Confirmation Ruling at \*3-4. *HCLOF therefore has no remedy against these estates* — for the Trustee’s failure to effect an optional redemption and for the millions of dollars in damages that it has accrued and will continue to accrue. That is a textbook example of “irreparable harm.” *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (“An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.”).

27. On the other hand, the Trustee continues to benefit from the Preliminary Injunction even though he continues to have every remedy available at law against Highland or HCLOF — whether arising from any purported fraudulent transfers or otherwise. Indeed, the Trustee is now affirmatively pursuing those claims. The Trustee *cannot* suffer irreparable harm if he has an adequate remedy at law. *See, e.g., Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 491 B.R. 27, 39 (S.D.N.Y. 2013), *aff’d sub nom. Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199 (2d Cir. 2014) (“Since the Trustee would be able to recover any property deemed to be property of the estate in the fraudulent transfer action, the Trustee has failed to demonstrate . . . that the Madoff Securities estate would suffer irreparable harm under the traditional test for an injunction . . .”).

28. There has never been a suggestion that the Trustee is without a legal remedy. Instead, the Trustee stated previously only that he wanted to avoid lengthy litigation. As the Fifth Circuit has concluded, the inconvenience of having to litigate is not irreparable harm:

Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction], are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

*Morgan v. Fletcher*, 518 F.2d 236, 240 (5th Cir. 1975) (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)); see also *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (same); *Jones v. Dallas County*, No. 3:11-CV-2153-D, 2013 WL 4045291, \*3 (N.D. Tex. Aug. 9, 2013) (same); *Controls Int'l, Inc. v. Kinetrol, Ltd.*, No. 3:97-CV-2504-D, 1998 WL 158678, \* 2 (N.D. Tex. Mar. 25, 1998) (same).

29. That is the case even if the costs of litigation would be substantial or even unrecoverable. See *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974) (“Mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury.”) (citing *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51-52, 58 (1938)).

30. Moreover, it is neither necessary nor appropriate to leave the injunction in place pending a resolution of the fraudulent transfer claims. The Court can dissolve the Preliminary Injunction and allow HCLOF to reset or redeem the CLOs pursuant to its existing contractual rights, thereby avoiding the ongoing harm caused by the injunction. Again, the Trustee will be able to present his claims and present every theory of damages available to him. If the Trustee can successfully prove his theories (he has stated he has claims against Highland of more than \$20 million), he can collect damages and pay creditors in full. The existence of an injunction

does nothing to preserve or enhance those claims. There is *no need* for any injunction to preserve the prosecution of these claims.<sup>8</sup>

31. The Fifth Circuit has long recognized that an injunction should not be imposed merely to protect legal remedies. *See F.D.I.C. v. Faulkner*, 991 F.2d 262, 265 (5th Cir. 1993) (“Because the availability of a legal remedy often indicates that an applicant’s injury is not irreparable, courts generally do not issue injunctions to protect legal remedies.”). In fact, the Fifth Circuit has likened such an injunction to an impermissible “prejudgment attachment.” *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 560 (5th Cir. 1987).

32. In granting the Preliminary Injunction, the Court also found that irreparable harm would ensue because “[t]he Optional Redemption would eliminate any chance of confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan.” PI Order ¶ 14. As explained below, the Trustee had his chances at reorganization, and failed. A transaction such as that contemplated by the Oaktree Transaction is no longer possible. The Court has concluded that the Trustee cannot transfer HCLOF’s notes without its consent.

33. The Court also noted that “[t]he Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors’ rights, the Debtors’ estates, and other assets in this matter, to the detriment of the Parties.” *Id.* ¶ 18. Here, it has been demonstrated conclusively that the PMAs have no significant value *unless* the HCLOF’s notes are sold or the Indentures are amended (both of which the Court has rejected). Hr’g Tr. (Aug. 28, 2018) (AM), at 124:10–128:9. The injunction is thus not necessary to preserve the value of the PMAs. Finally, and as noted above, if there is any alleged value attributable to the prosecution of the fraudulent transfer claims, such damages are easily subject

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<sup>8</sup> Indeed, Plan D makes no provision for how the fraudulent transfer or other litigations will be pursued (if at all).

to quantification (the Trustee has already proffered opinion testimony on this issue)<sup>9</sup> and therefore can be adequately compensated by monetary damages from financially capable defendants if the Trustee is able to prove his claims.

**B. The Trustee Cannot Show Reasonable Likelihood of Success on the Merits.**

34. In granting the Preliminary Injunction, the Court found that “[t]he Trustee has a ‘substantial likelihood of success on the merits’ of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iii) confirmation of an effective plan of reorganization.” PI Order ¶ 20. While the issues have evolved in the past several months, the bottom-line questions with respect the “success on the merits” prong to the injunction analysis distill down to the following: (1) do these Debtors have a legitimate chance at reorganization? and (2) are the fraudulent transfer claims are likely to succeed? As explained below, the answer to both questions is no.

**i. Plan D Is Dead On Arrival; There is No Reasonable Likelihood of a Successful Reorganization Without HCLOF Consent.**

35. Plan D is nothing but a reworked version of Plans B and C. The reorganized Acis LP (owned by Josh Terry) will assume the PMAs, and Brigade Capital Management, LP (“**Brigade**”) will provide operational support. As in Plans B and C, HCLOF’s rights under the Indentures will be modified by way of a Court-ordered injunction designed to prohibit HCLOF from exercising under the Indentures, thereby holding HCLOF and the cash flow from the PMAs captive. *See* Plan D § 14.03 (“**Plan Injunction**”).<sup>10</sup>

36. **First**, HCLOF is not a contract counter-party to the debtors, and this Court is

<sup>9</sup> *See generally* Hr’g Tr. (Aug. 27, 2018), at 139:19–159:20.

<sup>10</sup> In fact, the Trustee cites to the same three statutes in his Plan Injunction provision that he cited in Plans B and C: section 105(a), section 1123(a)(5), and section 1123(b)(6).

without jurisdiction to modify the Indentures to affect HCLOF's rights thereunder. Again, *the Debtors are not a party to the Indentures*. The Court cannot modify the Indentures either through section 1123(a)(5) (like under Plans B or C) or through an injunction (like under Plan D). In addition to depriving HCLOF of its right to seek a redemption, Plan D also modifies other of HCLOF's rights under the Indentures. *See, e.g.*, Plan D § 6.08 (foreclosing HCLOF's right to withdraw an optional redemption "in the reasonable business judgment of the Reorganized Debtor."). This Court already held that section 1123(a)(5)(F) does not authorize such modifications. Confirmation Decision at \*1. That notwithstanding, the Trustee has invoked section 1123(a)(5) as a basis for the proposed injunction. The Trustee cannot seek to do through section 105(a), what the Court has already said he cannot do under section 1123(a)(5)(F).<sup>11</sup>

37. The Trustee's reliance on section 105(a) is improper. Section 105(a) must be exercised within the boundaries of the Bankruptcy Code and is not intended to create new, substantive rights. As the Fifth Circuit has stated:

While the bankruptcy courts have fashioned relief under Section 105(a) in a variety of situations, the powers granted by that statute may be exercised only in a manner consistent with the provisions of the Bankruptcy Code. That statute does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.

*U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986); *see also Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, (1988) (a bankruptcy court's powers "must and can only be exercised within the confines of the Bankruptcy Code.").

38. In keeping with this limitation, courts have refused to use section 105(a) to expand the scope of specific statutes and rules. *See, e.g., In re Smith*, 21 F.3d 660, 666 (5th Cir.

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<sup>11</sup> 11 U.S.C. 1123(b)(6) provides that "Subject to subsection (a) of this section, a plan may ... include any other appropriate provision not inconsistent with the applicable provisions of this title."

1994) (“Bankruptcy courts cannot use their equitable powers created by Section 105(a) to expand the requirements of Rules 3003(c)(3) and 9006(b)(1).”); *U.S. Bank Nat’l Ass’n v. Verizon Commcn’s Inc.*, No. 3:10-CV-1842-G, 2012 WL 3100778, \*7 (N.D. Tex. July 31, 2012) (Fish, J.) (refusing to expand scope of section 550 under “equitable jurisdiction and Section 105... [b]ecause allowing this action would be inconsistent with a more specific provision of the Code.”).

39. These principles also accord with the bankruptcy axiom that the debtor in possession or trustee steps into the shoes of a debtor and has no greater rights than that of the debtor. *See Majestic Star Casino, LLC v. Barden Dev., Inc. (In re Majestic Star Casino, LLC)*, 716 F.3d 736, 748 (3d Cir. 2013) (“It is a given that the trustee or debtor-in-possession can assert no greater rights than the debtor himself had on the date the bankruptcy case was commenced.” (internal alterations omitted)); *In re Gibraltar Res., Inc.*, 197 B.R. 246, 253 (Bankr. N.D. Tex. 1996) (“the general rule is that a trustee has no greater rights than the debtor”).

40. The PMAs, which are proposed to be assumed by the reorganized debtors, do not provide Acis LP with any guarantee to management fees or any right to prevent HCLOF from exercising the options available to it under the Indentures. Such rights cannot now be created out of whole cloth either through modification of the PMAs or the Indentures (which the Debtors are not even party to), and doing so would be inconsistent with section 1123(a)(5) and other black-letter bankruptcy principles. *See In re Advent Corp.*, 24 B.R. 612, 614 (B.A.P. 1st Cir. 1982) (“A bankruptcy court may not extend a contract beyond its original terms. The Bankruptcy Code neither enlarges the rights of a debtor under a contract, nor prevents the termination of a contract by its own terms.”); *see also In re Nat’l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000) (executory contracts must be assumed *cum onere*); *In re Texas Rangers Baseball Partners*, 521

B.R. 134, 179–80 (Bankr. N.D. Tex. 2014) (Jernigan, J.) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”).

41. **Second**, this Court has already established that HCLOF is not a creditor of the estates. HCLOF does not hold a claim that would allow the Debtors to modify HCLOF’s rights through a plan. In fact, because HCLOF does not hold a claim, it cannot even vote on Plan D.

42. Plan D proposes to modify the rights of HCLOF, a third party, for absolutely no consideration, again raising issues relating to the taking of third-party rights that the *Irving Tanning* case explicitly identified and denounced. *See In re Irving Tanning Co.*, 496 B.R. 644, 664-65 (B.A.P. 1st Cir. 2013). To be sure, not only does Plan D propose to modify HCLOF’s contract rights under the Indentures, it also seeks to seize and hold captive HCLOF’s investments in the CLOs, i.e., *its property*, without its consent.

43. The words of the First Circuit B.A.P. bear repeating:

[F]or both statutory and constitutional reasons, the preemptive effect of § 1123(a) cannot extend to laws defining and protecting the property rights of third parties. . . . Indeed, what the Debtors urge us to find—a grant of power to appropriate the property of third parties—is so bold and remarkable a grant that one cannot imagine Congress having inserted it without a clear and specific indication of such intent. . . . Constitutional concerns also inform this interpretation. Any interpretation of the preemptive scope of § 1123(a)(5) that permitted plan proponents to appropriate or overwrite the property rights of third parties under applicable nonbankruptcy law would run headlong into constraints and quite possibly outright impediments in the takings clause of the Fifth Amendment. . . ***Even if the takings clause were deemed to permit a private plan proponent to appropriate the property of another for plan purposes, “just compensation” would be a necessary condition of that appropriation. . . .***

*Id.* at 664-65 (emphasis added). While the B.A.P. was speaking specifically to section 1123(a), the same rationale logically extends to section 105(a) and section 1123(b)(6), which the Trustee is attempting to use to preempt and overwrite fundamental protections. Holding HCLOF hostage, and giving it the false option of a reset — a right that HCLOF already possesses — is no less of an offensive intrusion upon HCLOF’s property rights than what was proposed in Plan A.

44. **Third**, the Trustee will still have to satisfy the numerous confirmation requirements of the Bankruptcy Code for any new plan, including the flawed Plan D. Highland and HCLOF will reiterate each of their prior confirmation objections with respect to the lack of good faith, the failure of the best interests test, the failure to satisfy the cram-down standard, and Josh Terry’s insider status, among others.<sup>12</sup>

45. **Fourth**, and more practically, it is highly unlikely that Acis will ever be able to deliver a reset for HCLOF, rendering that critical aspect of Plan D entirely illusory. HCLOF has presented credible testimony that industry participants would not want to engage with a reorganized portfolio manager in a reset transaction, let alone the four or five sequential resets that would be required in this case. Hr’g (July 6, 2018) at 200:8–14.<sup>13</sup>

46. And even if resets could be effectuated, they would necessarily be on terms highly unfavorable to HCLOF. As a third party to these proceedings, HCLOF cannot be compelled against its will into transactions that it does not wish to enter into by giving it a choice between a bad choice and a worse one. HCLOF never bargained for investment into CLOs managed by Brigade, Josh Terry, or anyone other than Highland when it invested in the Equity Notes. Moreover, the involvement of a formerly-bankrupt portfolio manager, let alone one that is helmed by Joshua Terry, and a mandatory two-year lock up will undoubtedly result in sub-market terms that will be unfavorable to HCLOF. The market is very well aware of this bankruptcy case and the pricing of any Acis-led reset will reflect that market perception.

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<sup>12</sup> See generally Joint Objection of Highland Capital Management, L.P. and Highland CLO Funding, Ltd. to Final Approval of Disclosure Statement and to Confirmation of the Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC [Doc. 497]. In the event Plan D is set for a confirmation hearing, HCLOF and Highland will further articulate their objections in written pleadings.

<sup>13</sup> If necessary, HCLOF is prepared to produce further expert testimony that a market reset is simply not feasible with Acis LP and Josh Terry at the helm.

47. Outside of bankruptcy, Acis, a portfolio manager and fiduciary, would never have been able to effect such transactions without the consent of its investors.<sup>14</sup> It cannot try to do that now in bankruptcy.

**ii. The Trustee’s Fraudulent Transfer Claims Will Not Succeed, and Even If They Do, Will Not Provide the Result Desired By the Trustee.**

48. In denying confirmation, the Court found “a basis for keeping the preliminary injunction in place pending determination of the Acis Trustee’s fraudulent transfer lawsuits.” Confirmation Opinion at \*6. However, the injunction is not necessary at all to allow for a determination of those claims or to preserve a right to monetary damages. Moreover, even if the Trustee were to prevail on those claims, they would not provide the Trustee with the rights he is touting.

49. The crux of the Trustee’s claims is that HCLOF’s rights under the Indentures once belonged to Acis LP pursuant to the ALF PMA. *See* PI Order ¶ 10.<sup>15</sup> At Plan Confirmation, the Trustee presented his evidence in support of avoidance, which consisted entirely of Mr. Terry’s self-serving legal conclusions disguised as “testimony” that the ALF PMA allowed Acis to make all decisions on behalf of HCLOF. Hr’g Tr. (Aug. 28, 2018) (AM), at 69:7–76:11. In support of this interpretation, the Trustee points to Section 5 of the ALF PMA, which provided Acis LP authority to take specified actions “[s]ubject at all times to . . . the Investment Policy” of the Fund. ALF PMA § 5.

50. First, as repeated at the confirmation hearing, the ALF PMA *explicitly limits* the authority delegated under Section 5 as follows:

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<sup>14</sup> HCLOF’s position, of course, is that Acis LP could not effect such a transaction even if it was still portfolio manager for HCLOF under the ALF PMA, as explained below.

<sup>15</sup> The “ALF PMA” is the Portfolio Management Agreement between Acis Loan Funding, Ltd. and Acis Capital Management, L.P. (Exhibit 11 at Plan Confirmation).

Policies of the Company. The activities engaged in by the Portfolio Manager *shall be subject to the policies and control of the Company, including (without limitation) the Investment Policy*. . . .

*In furtherance of the foregoing*, the Company hereby appoints the Portfolio Manager as the Company’s attorney-in-fact, with full power of authority to act in the Company’s name and on its behalf with respect to the matters set forth in Section 5 above.

*Id.* § 6 (emphasis added); *see also* Hr’g Tr. (Aug. 28, 2018) (AM), at 157:3–158:21 (testimony of Dan Castro, Jr. explaining that “th[e] control provisions, it’s explicit there, and that is the market understanding”). At all times, HCLOF’s portfolio manager, whether Acis LP or anyone else, has been subject to the direction and control of HCLOF with respect to its investments.

51. Second, Acis LP’s exercise of its delegated authority was subject at all times to the fiduciary duties it owes as an investment adviser. *See* Hr’g Tr. (Aug. 28, 2018) (AM), at 157:3–158:21 (testimony of Dan Castro, Jr. that “if the portfolio manager disagrees with [the investor], the fiduciary duty of the portfolio manager is, well, I may not agree with it, I may - - maybe I think this is a better trade or a different way to go, but if that’s what he wants me to do, I’m supposed to do it.”). It would defy common sense for any investment adviser to be given authority to take actions that would be contrary to the directives of its investor. Yet it is clear that the Trustee’s intention, if given his alleged “control” over HCLOF’s rights, is to attempt to force decisions on behalf of HCLOF that preserve at all costs the right of Acis to earn an income stream. Such a course of action would be illegal, and it cannot be, and would not be, condoned.<sup>16</sup>

### **C. The Balance of Equities Weighs in Favor of Lifting the Preliminary Injunction.**

52. The balance of equities favors lifting of the Preliminary Injunction. The Trustee has had the benefit of an injunction for months while he pressed forward with three patently unconfirmable plans. During that time, HCLOF has continued to incur losses of approximately \$295,000 per week (an annualized loss of over \$15 million). Hr’g Tr. (June 12, 2018) at 40:20–

<sup>16</sup> Acis LP was not contractually entitled to any fees under the ALF PMA.

23, 73:1–8. Again, to the extent HCLOF were somehow able to later prevail on any claims for these losses, it will hold a judgment against Acis LP, a Chapter 11 debtor with no meaningful assets. *See Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 848 (5th Cir. 2004) (“there is no adequate remedy at law if the defendant is incapable of responding in damages”) *see also Aspen Tech., Inc. v. M3 Tech., Inc.*, 569 F. App’x 259, 273 (5th Cir. 2014) (affirming finding of irreparable harm where there was a substantial probability that movant would be unable to collect a judgment against bankruptcy debtor) (citation omitted). Meanwhile, the Trustee continues to possess legal remedies against HCLOF and Highland.

53. The Trustee has repeatedly appealed to this Court’s equity sounding the call that HCLOF is acting “economically irrationally” and that he is trying to save HCLOF from committing “economic suicide.” The Trustee (a bankruptcy attorney with no background in CLO investing or portfolio management) is in no position to instruct HCLOF on how to run its business. There is nothing economically irrational or suicidal in HCLOF’s efforts to divorce itself of Acis LP or avoid a forced sale of its property. HCLOF has every right to take the actions that it is legally entitled to take, regardless of the motivations, and the Trustee’s judgment should not be supplanted for HCLOF’s judgment with respect to its own property.

54. In fact, and ironically, it is the Trustee who has been acting in an economically irrational manner, choosing to *never once* approach HCLOF regarding a consensual plan, while reiterating the disingenuous notion that he is giving HCLOF “everything it wants.” In that process, he has pursued manifestly unconfirmable plans while racking up millions in administrative expenses, driving the estates into administrative insolvency, all while continuously placing the estates’ interests in earning management fees above all other interests. No investor anywhere would voluntarily tolerate this behavior from an investment advisor. The

equities here demand that the Trustee’s runway be cut off. The Trustee obtained an injunction on a promise to deliver and he has failed. He cannot be allowed to further harm the estates and HCLOF in this manner.

55. Moreover, the estates and creditors will not be harmed if these cases are converted and the fraudulent transfer litigation pursued alongside a Chapter 7 proceeding. In fact, creditor recoveries may very well be enhanced through avoiding the costs associated with another plan solicitation and confirmation process and the heavier carrying costs of Chapter 11 – especially where, as here, the Trustee has employed two sets of counsel and has wasted millions of dollars in payments to Oaktree and other unnecessary expenses.

**D. The Public Interest Is Served By Lifting the Preliminary Injunction.**

56. In granting the Preliminary Injunction, the Court found that “[p]ublic policy supports [the injunction] to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors’ property and other assets. Further there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.” PI Order ¶ 16.

57. Again, the Trustee has wasted his opportunity to maximize value and the Chapter 11 process was given its due course. The Trustee now has nothing to show for his attempt other than a mountain of administrative expenses and another doomed plan. The Trustee’s shortcut has in fact turned out to be the long way, and likely more expensive than litigation alone would have been. If the Trustee from the beginning had shut down the business, initiated litigation, and treated this as the “cash and claims case” that it is, millions of dollars and untold judicial resources would have been saved. The public interest would not be served by the

Trustee’s attempt to effectively “cram-down” a Plan D on a non-voting, non-creditor HCLOF, which HCLOF will contest just as vigorously as it did Plans A, B, and C.

58. And again, the Trustee owes fiduciary duties to the CLOs, and, by extension, to the CLOs’ investors. The Trustee cannot in good conscience be said to be fulfilling those fiduciary duties when he is continuously in pursuit of plans that seek to undermine the interests of the CLOs and their investors — the very parties that he is duty-bound, by contract and state and federal law, to serve. *See, e.g.*, 2013-1 PMA § 17(b)(i); *see also Transamerica Mortg. Advisors v. Lewis*, 444 U.S. 11, 17 (1979) (“Congress intended to impose enforceable fiduciary obligations” in passing the Investment Advisers Act of 1940); 15 U.S.C. § 80b-6; *Bullmore v. Ernst & Young Cayman Islands*, 846 N.Y.S.2d 145, 148 (N.Y. App. Div. 2007) (“Professionals such as investment advisors, who owe fiduciary duties to their clients. . . .”) (citations omitted).

59. Furthermore, the public interest would not be served by unfairly holding HCLOF hostage to an investment, tying up its property and its funds, solely so that a bankrupt portfolio manager can generate fees from that relationship. Nor would the public interest be served by binding HCLOF into a continuing relationship with a reorganized debtor helmed by Joshua Terry, whom HCLOF is actively litigating against. A continued injunction would be manifestly unjust with respect to HCLOF and its expectations as an investor.

60. Moreover, it bears noting that the Debtors here are no more than shell entities with nothing other than a conditional, unguaranteed payment stream. There are no jobs to be saved or an enterprise to be preserved through a reorganization. Thus, traditional policy concerns weighing in favor of Chapter 11 rehabilitation are just not present here.<sup>17</sup> Here, there

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<sup>17</sup> Courts have refused to confirm plans of reorganization involving shell companies on the basis that they were not filed in good faith where the goal was not rehabilitation (e.g., tax avoidance purposes). *See, e.g., In re Maxim Indus., Inc.* 22 B.R. 611 (Bankr. D. Mass. 1982).

are only a sparse number of creditors—and only one who timely voted in favor of the Trustee’s original plans—who have every avenue of recovery left open to them through the prosecution of causes of action in a Chapter 7 proceeding. Again, these cases have been “cash and claims” cases since the very beginning. The injunction should be lifted and this unproductive and lengthy detour through Chapter 11 should be put to an end.

**II. The Automatic Stay Does Not Apply; To the Extent it Applies, the Stay Should Be Lifted to Permit HCLOF’s Exercise of Its Rights.**

61. In its Confirmation Decision, the Court noted that it would keep the Preliminary Injunction “in place for now” because the “effect of an optional redemption is to *exercise control over the Acis PMAs and revenue stream* (property of the estate).” Confirmation Decision at \*5 (citing *Hometown 2006-11925 Valley View, L.L.C. v. Prime Income Asset Mgmt., L.L.C.*, 847 F.3d 302 (5th Cir. 2017)). HCLOF respectfully disagrees with this portion of the Court’s Confirmation Decision and reiterates its belief that the automatic stay does not apply to HCLOF’s exercise of its rights under the Indenture.<sup>18</sup>

62. This case is very different from the *Hometown* case cited by the Court in its Confirmation Decision. Unlike the debtor there, Acis LP has no property interest in any future, unearned management fees. That is because the PMAs provide no guarantee, after an initial two year non-redemption period (which has long passed), that the CLO structure or the collateral therein will continue to exist. This is not a case involving a debtor with a vested property interest in a fixed or guaranteed payment stream, such as a right to a structured settlement payment or a coupon under a bond. *Cf. Hometown*, 847 F.3d at 302 (fee stream earned during

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As alleged by Highland in its Motion to Dismiss, the Chapter 11 process has been essentially used as a collection device for Josh Terry and the Court should not condone the further abuse of the process and confirm a plan that will essentially act as nothing more than a collection device for Josh Terry.

<sup>18</sup> See generally Response of HCLOF to Chapter 11 Trustee’s Application for Temporary Restraining Order and Preliminary Injunction [Doc. 365].

required termination notice period were “sufficiently vested” and therefore constituted “assets” for purposes of Texas fraudulent transfer statute). There is likewise no mechanism in the PMAs that permits Acis LP to compel that the CLO assets remain in place so that it can continue to earn fees. Acis LP has already received multiples of what it is entitled to under the PMAs and it is not entitled to another dollar.

63. To the extent the Court believes the stay applies, HCLOF asks that that the Court grant HCLOF stay relief for “cause” under section 362(d)(1).

64. Because “cause” is not defined in the Bankruptcy Code, bankruptcy courts have the flexibility to define cause in a particular case. *Little Creek Dev. Co. v. Commonwealth Mtg. Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986). Whether cause exists to grant relief from the stay is determined on a case-by-case basis, based on the totality of the circumstances. *In re Trident Assocs. Ltd. P'ship*, 52 F.3d 127, 131 (6th Cir. 1995).

65. “Cause” exists for all of the reasons stated above. The estates’ only asset of any value (other than causes of action) are the PMAs, which have little or no value. The Debtors have little chance at a successful reorganization with or without the PMAs, without HCLOF consent. On the other hand, the stay continues to irreparably harm HCLOF and greatly prejudice its rights. The balance of equities and the public interest also weigh in favor of lifting the stay.

66. The Court should also consider lifting the stay under the factors articulated in section 362(d)(2). While section 362(d)(2) applies to lifting the stay with respect to a secured creditors’ collateral, the principles that undergird that analysis apply here. Section 362(d)(2) provides that the court shall grant relief from the stay “with respect to a stay of an act against

property ... (A) the debtor does not have any equity in such property; and (B) such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2).<sup>19</sup>

67. This Court has considered a request for stay relief under section 362(d)(2) in similar circumstances. In that case, the Court considered whether the stay should be lifted to allow a secured creditor to proceed against its collateral, which was central to any reorganization in that case. In deciding to lift the stay, the Court stated as follows:

It is undisputed that the Debtors will be unable to reorganize without the properties. However, the properties must be essential for an effective reorganization *that is in prospect*. This means there must be a reasonable possibility of a successful reorganization within a reasonable time. However honest in its efforts the debtor may be, and however sincere its motives, the Court is not bound to clog its docket with visionary or impracticable schemes for resuscitation. In essence, courts usually require the debtor to do more than manifest unsubstantiated hopes for a successful reorganization.

*In re Northwest Timberline Enters.*, 348 B.R. 412, 430 (Bankr. N.D. Tex. 2006) (Jernigan, J.) (emphasis in original) (internal citations and alterations omitted).

68. Although the debtor in that case had languished in Chapter 11 for two years, the rationale in lifting the stay apply equally here. The Trustee has not demonstrated that he can, in fact, propose a reorganization “that is in prospect.” *See id.* (citing *United Sav. Ass’n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 376 (1988)).

69. HCLOF should not and cannot be held hostage to an investment because the portfolio manager wants to earn or monetize future management fees—fees that are in no way assured or guaranteed under the PMAs—and the Court should not allow this to continue. The stay should be lifted.

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<sup>19</sup> It bears noting that the PMAs are pledged by the CLOs to the Indenture Trustee pursuant to the Indentures in order to permit the Indenture Trustee to enforce the obligations of Acis LP under the PMAs. *E.g.*, 2013-1 Indenture § 15.1.

**CONCLUSION**

WHEREFORE, HCLOF respectfully requests that the Court (a) enter an order dissolving the Preliminary Injunction, (b) to the extent applicable, enter an order granting HCLOF relief from the automatic stay to exercise its rights under the Indentures, and (c) grant to HCLOF such other and further relief as the Court may deem proper.

Dated: October 11, 2018

Respectfully submitted,

**KING & SPALDING LLP**

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***Counsel for Highland CLO Funding, Ltd.***

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served electronically by the Court's ECF system on October 11, 2018.

/s/ Paul R. Bessette  
Paul R. Bessette

**EXHIBIT Q**



## PRELIMINARY INJUNCTION ORDER

Upon the *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adversary No. 18-03212, Docket No. 1] (the "Complaint")<sup>1</sup> filed by Robin Phelan, the Chapter 11 Trustee (the "Trustee") for Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP", with Acis LP, "Debtors"); and the Court having jurisdiction over this matter pursuant 28 U.S.C. §§ 157 and 1334; and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and the Complaint constituting a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O); and the substantive law being 11 U.S.C. §§ 105, 362, and 363; and it appearing that there was good and sufficient notice of the Trustee's Application for Preliminary Injunction ("Application"); and upon the record of the July 6, 2018 hearing on the Application (the "Hearing"); and upon the Trustee's verification of the Complaint; and pursuant to Federal Rule of Civil Procedure 65, incorporated by Federal Rule of Bankruptcy Procedure 7065, the Court finds that there is compelling evidence that irreparable harm is imminent to the Debtors, the Debtors' estates, the Debtors' rights, the Debtors' creditors, and to interested third parties (collectively the "Parties"), and if the Court does not issue a preliminary injunction enjoining the actions described herein, the Parties will be irreparably injured. All objections to the Trustee's Application are hereby overruled. As the basis for this order, the Court states the following:

1. The Chapter 11 Debtor, Acis LP—which is affiliated with the large investment advisor firm Highland Capital Management, L.P. ("Highland")—is a company that, for several years, has been engaged in the business of managing investments for special purpose entities that hold collateralized loan obligations ("CLOs"). Acis LP is currently the portfolio manager for,

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<sup>1</sup> Capitalized term(s) not expressly defined herein shall have the same meaning(s) as such term(s) have in the Complaint.

*inter alia*, funds of the following CLOs: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6" and together with CLO-1, CLO-3, CLO-4, and CLO-5, the "Issuers" or the "Acis CLOs"). As relevant herein, Acis LP manages the Acis CLOs through five portfolio management agreements ("PMAs").<sup>2</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. True and correct copies of the PMAs were submitted into evidence at the Hearing (Trustee's Exhibits B-F). The Acis CLOs are subject to: (i) that certain Indenture, dated as of March 18, 2013, by and among CLO-1, as Issuer, Acis CLO 2013-1 LLC, as Co-Issuer and U.S. Bank National Association ("US Bank"); (ii) that certain Indenture, dated as of February 25, 2014, by and among CLO-3, as Issuer, Acis CLO 2014-3 LLC, as Co-Issuer and U.S. Bank, as Indenture Trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, by and among CLO-4, as Issuer, Acis CLO 2014-4 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, by and among CLO-5, as Issuer, Acis CLO 2014-5 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, by and among CLO-6, as Issuer, Acis CLO 2015-6 LLC, as Co-Issuer and US Bank, as Indenture Trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures." True and correct copies of the Indentures were submitted into evidence (Trustee's Exhibits G-K).

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<sup>2</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

2. Highland CLO Funding, Ltd. f/k/a/ Acis Loan Funding Ltd. ("HCLOF" or "ALF") has had, in recent months, a significant role with regard to Acis LP, and the PMAs, and the whole "CLO ecosystem"—as the parties in this bankruptcy case have been known to call the structure of the Acis LP CLO business. ALF apparently was originally created, in large part, to comply with certain risk-retention requirements of federal law relating to CLOs. ALF has been the holder of the equity in the Acis CLOs (which "equity" is actually in the form of subordinated notes, and is the bottom tranch of the capital structure of the Acis CLOs—i.e., the last investor to get paid upon a liquidation of the Acis CLOs). Notably, persons connected with Highland began implementing transactions that changed the Acis LP "CLO ecosystem" and impaired Acis LP's contractual rights, almost immediately after October 20, 2017—the date that an individual named Joshua Terry obtained a multi-million arbitration award against Acis LP. For example, prior to October 24, 2017, Acis LP had a small ownership interest in ALF. Acis LP (being controlled at that time by the same persons that control Highland) decided to sell its interest in ALF back to ALF on or around October 24, 2017

3. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to another Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "ALF PMA"). A true and correct copy of the ALF PMA was submitted into evidence (Trustee's Exhibit L). The ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which

may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

See ALF PMA § 5(a)-(q).

4. While ALF did not have authority to terminate the ALF PMA, *Acis LP* could terminate the ALF PMA without cause upon at least ninety (90) days' notice. See ALF PMA § 13(a)-(c). Still, the ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." See ALF PMA § 14(a)-(e).

5. Significantly, on October 27, 2017, *just seven days after Joshua Terry's arbitration award, Acis LP effectively terminated its own portfolio management rights under the ALF PMA and transferred its authority and those valuable portfolio management rights—for no apparent value—to Highland HCF Advisors, Ltd. ("Highland HCF").*

6. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which cancelled and terminated the ALF PMA and empowered Highland HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). See October 2017 PMA §§ 1 & 5(a)-(q).

7. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. Nevertheless, just days after the Joshua Terry multimillion dollar arbitration award was issued, the persons controlling Acis LP (and Highland), without expressing the basis for reasonable business judgment for this transfer,

simply directed Acis LP to sign the October 2017 PMA, consenting and agreeing to Acis LP's removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA. *It appears to the Court that, without this ALF PMA Transfer, which transferred Acis LP's rights under the ALF PMA to Highland HCF, ALF—which changed its name in late October 2017 to Highland CLO Funding Ltd.—could not have attempted to direct and effectuate an optional redemption, which it is now attempting to do.*

8. On April 30, 2018, HCLOF sent five notices purportedly requesting optional redemption pursuant to the Section 9.2 of each of the Indentures (the "First Optional Redemption Notices")—which essentially ordered a liquidation of the Acis CLOs, which among other things, would have rendered valueless the Acis PMA and Acis LP's value. Those notices were later withdrawn, after resistance from the Trustee and Court intervention.

9. Later, on June 15, 2018, after HCLOF withdrew the First Optional Redemption Notices, HCLOF gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices"). Apparently, HCLOF has now withdrawn the Second Optional Redemption Notices. However, the Trustee seeks a preliminary injunction preventing further attempts by HCLOF at effectuating Optional Redemptions while the Trustee attempts to confirm a plan or otherwise resolve the Acis LP bankruptcy case in a way beneficial to creditors and interest holders. "Optional Redemption" is defined by and effectuated pursuant to Sections 9.2 of each of the Indentures. For the avoidance of doubt, Optional Redemption as used herein refers to an Optional Redemption previously or currently issued by HCLOF or any of the Defendants (as

hereinafter defined) or any other attempt to liquidate the Acis CLOs now or in the future by any means.

10. The Trustee has sustained his heavy burden of entitlement to a preliminary injunction in this Adversary Proceeding. First, absent affirmative relief from the automatic stay, any action to effectuate an Optional Redemption by way of any Optional Redemption notices violates the automatic stay of the Acis LP bankruptcy case because it represents an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Further, any action taken by the Defendants to effectuate an Optional Redemption is outside the ordinary course of Acis LP's business, and therefore requires bankruptcy court approval. Acis LP's rights under the PMAs are valuable, and if Acis LP were to lose such rights, immediate and irreparable harm would result to Acis LP's creditors and third parties with financial interests in the Acis LP's bankruptcy estates because confirmation of a plan of reorganization funded by Oaktree Capital Management, L.P. ("Oaktree") pursuant to the Oaktree Transaction (as defined and explained by the *Emergency Motion to Approve Break-Up Fee, Expense Reimbursement, and Replacement Sub-Advisory and Shared Services Provider, Oaktree Capital Management, L.P.* [Case No. 18-30264, Docket No. 263] (the "Break-Up Fee Motion")—or, perhaps, any other viable transaction—would be impossible. In addition to the Oaktree Transaction, the Trustee credibly testified that he has received expressions of interests from other qualified parties to fund alternative plans of reorganization for Acis LP, which may include a reset of the CLOs and continuance of Acis LP as the portfolio manager of the CLOs. Finally, HCLOF is using rights that appear to have been fraudulently transferred from Acis LP (i.e., rights under the ALF PMA) to attempt to effectuate the Optional Redemptions.

11. To obtain a preliminary injunction, the movant must show that (a) it has a substantial likelihood of prevailing on the merits; (b) it will suffer irreparable injury without the injunction; (c) the threatened injury to the movant outweighs the damage the proposed injunction may cause to the parties opposing it; and (d) the requested injunction would not be against the public interest. *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987); *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F.Supp. 3d 604, 635 (M.D. La. 2015); *Miranda v. Wells Fargo Bank, N.A.*, No. 3:13-CV-2217-L, 2013 U.S. Dist. LEXIS 90632 (N.D. Tex. June 27, 2013). The Court must necessarily make its decision by relying on an early and abbreviated proceeding and set of facts. *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179 (5th Cir. 1975). Quick and abbreviated determinations are necessary to recognize the goal of injunctive relief, which is to maintain the status quo to permit the court the time necessary to make a decision on the merits after full development of the facts. *Kliebert*, 141 F. Supp. 3d at 635. Moreover, not all of the four (4) factors must be given equal weight. According to the Fifth Circuit Court of Appeals: "a sliding scale must be applied in considering the probability of plaintiffs' winning on the merits and plaintiffs' irreparable injury in the absence of interlocutory relief...." (*Siff v. State Democratic Executive Committee*, 500 F.2d 1307, 1309 (5th Cir. 1974)) and "...none of the four prerequisites has a fixed quantitative value. Rather, a sliding scale is utilized, which takes into account the intensity of each in a given calculus." *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 179-180 (5th Cir. 1975). This means that as long as the court finds that there is some likelihood of ultimate success (i.e., not zero likelihood of success), the court can give greater weight to the severity and irreparability of the harm and the relative hardships to the movant and opponent of the injunctive relief. *Id.*

12. The Trustee has shown that the elements warranting a preliminary injunction exist here: (1) the Trustee has a "substantial likelihood of success on the merits" of a claim regarding (i) violation of the automatic stay if injunction is not granted, (ii) utilizing rights transferred for no or insufficient value to attempt to effectuate an optional redemption, (iii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iv) confirmation of an effective plan of reorganization; (2) creditors and interested third-parties face a substantial threat of imminent and irreparable injury to their interests in the Debtors' bankruptcy estates if an injunction is not issued since confirmation of a plan of reorganization funded by Oaktree or other competent party will be eliminated; (3) the threatened injury to interested parties "if the injunction is denied outweighs any harm that will result if the injunction is granted"; and (4) "public interest" favors letting the Trustee exercise his fiduciary duties and effectuate his process over costly litigation. *See Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (stating the elements of a preliminary injunction).

13. As earlier noted, the Optional Redemption Notices essentially demand the liquidation of property currently under the control of Acis LP, as portfolio manager, and, in effect, the PMAs themselves, which are defined as Assets under the Indentures and are property of the Acis LP estate. Indeed, the main, if not sole, purpose of the redemptions appears to be to remove Acis LP as portfolio manager and terminate its primary asset, the PMAs. Accordingly, by extinguishing the PMAs, a purported Optional Redemption in this context should be deemed prohibited because it would represent an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" in violation of 11 U.S.C. § 362(a)(3). The Debtors' rights under the PMAs, which are executory contracts, are property of the estate. The Debtors' rights under the PMAs are therefore protected by the

automatic stay. *In re Mirant Corp.*, 303 B.R. 319, 328 (Bankr. N.D. Tex. 2003) ("a debtor has rights under the contract which are property of the estate and so are protected by the automatic stay from actions of other parties"). If the Optional Redemption or other liquidation of the assets in the Acis CLOs is permitted to go forward, it would render the PMAs valueless. Consequently, the Optional Redemption and any other attempt by HCLOF to liquidate the assets of the Acis CLOs would violate Section 362(a)(3) because such actions involve exercising control over property of the estate (the PMAs). Thus, because the liquidation of the CLOs represents an "act to obtain possession of property of the estate,"—namely, Acis LP's intangible property rights in the PMAs—such actions constitute a violation of Section 362(a)(3).

14. Injunctive relief is necessary here to prevent imminent and irreparable injury in the form of substantial losses to creditors and parties-in-interest, as well as to third parties' financial interests, related to the Optional Redemption, call, or other liquidation of the Acis CLOs. The losses that would result in the event an injunction is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, creditors and interested third parties otherwise would have no adequate remedy at law. The Optional Redemption would eliminate any chance of confirmation of a plan of reorganization based on the Oaktree Transaction, or a similar plan. HCLOF has not shown that the safe harbor of Section 555 of the Bankruptcy Code applies to its actions to effectuate the Optional Redemption.

15. The balancing of the harms weighs in favor of issuing a preliminary injunction because any alleged harm to HCLOF, Highland, or any of the Highland Affiliates,<sup>3</sup> is substantially outweighed by the damage that would be caused to all parties-in-interest if the

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<sup>3</sup> The Highland Affiliates include: HCLOF, CLO Holdco, Ltd. ("Holdco"), and Neutra, Ltd. ("Neutra," and together with HCLOF, and Holdco, the "Highland Affiliates"),

Court does not enjoin the Optional Redemption, call, or other liquidation of the Acis CLOs, and return more to all affected parties than would be received by the Optional Redemption. Any alleged harm to Defendants is illusory and specious because, among other things, the Defendants have options available that immediately mitigate any purported damage. Namely, Defendants could (1) authorize a "refinance" or "reset" transaction or (2) sell their equity to a third party in an amount that exceeds what they would receive in an Optional Redemption. There seems to the Court to be a highly meaningful chance that HCLOF, Highland and the Highland Affiliates will receive the same or more monetary benefit from the Oaktree Transaction than they would from an Optional Redemption, and creditors will likely be paid in full. HCLOF's claimed harm is exaggerated.

16. Public policy supports restraining the actions described herein to allow the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of creditors by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property and other assets. Further, there is a public interest in allowing for a Chapter 11 process, rather than costly prolonged litigation.

17. Accordingly, the Court issues this preliminary injunction preventing the Defendants from taking any action in furtherance of any Optional Redemption. Any notices of optional redemption sent by HCOLF would be an attempt to obtain a property right (the right to control trading of the loans in the CLOs) from Acis LP as well as an attempt to exercise control over contractual property rights of Acis LP, all in violation of Section 362(a)(3) of the Bankruptcy Code.

18. The Parties will suffer immediate and irreparable harm in the form of substantial losses to the Parties and third parties' financial interests if the Trustee, Highland, CLO-1, CLO-3,

CLO-4, CLO-5, CLO-6, Acis CLO 2013-1 LLC ("CLO-1 LLC"), Acis CLO 2014-3 LLC ("CLO-3 LLC"), Acis CLO 2014-4 LLC ("CLO-4 LLC"), Acis CLO 2014-5 LLC ("CLO-5 LLC"), and Acis CLO 2015-6 LLC ("CLO-6 LLC," and together with CLO-1 LLC, CLO-3 LLC, CLO-4 LLC, CLO-5 LLC, the "Co-Issuers"), and other parties (the Trustee, Highland, HCLOF, the Issuers, and the Co-Issuers are referred to herein as the "Defendants") are not immediately restrained and enjoined from effectuating the Optional Redemption, call, or other liquidation of the Acis CLOs. The Optional Redemption, call, or other liquidation of the Acis CLOs threatens to liquidate or harm valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter, to the detriment of the Parties.

19. Injunctive relief is necessary to prevent imminent and irreparable injury to the Parties in the form of substantial losses to the Parties and third parties' financial interests related to the Optional Redemption, call, or other liquidation of the Acis CLOs and the threatened liquidation of valuable property of the Debtors, the Debtors' rights, the Debtors' estates, and other assets in this matter. The losses that would result in the event a preliminary injunction order is not issued cannot be presently measured by any certain pecuniary standard, are not reasonably quantifiable, and cannot be adequately compensated with monetary damages; thus, the Parties and interested third parties otherwise have no adequate remedy at law.

20. The Trustee has a "substantial likelihood of success on the merits" of a claim regarding: (i) violation of the automatic stay if this temporary restraining order is not issued, (ii) failing to obtain court authority under Section 363 to effectuate an optional redemption, and (iii) confirmation of an effective plan of reorganization.

21. The balancing of the harms weighs in favor of issuing the temporary injunction because any harm to Highland, or any of the Highland Affiliates, is substantially outweighed by

the damage that would be caused to Parties if the Optional Redemption, call, or other liquidation of the Acis CLOs is not enjoined.

22. Public policy supports restraining the actions described herein and allowing the Trustee to exercise his fiduciary duties to maximize the value of the estate for the benefit of the Parties by allowing the Trustee to direct and control the refinancing, sale, or other monetization of Debtors' property, the Debtors' rights, the Debtors' estates, and other assets in this matter.

**IT IS THEREFORE ORDERED** that for the reasons stated herein and pursuant to Federal Rule of Civil Procedure 65, made applicable herein by Federal Rule of Bankruptcy Procedure Rule 7065 and pursuant to Federal Rule of Bankruptcy Procedure Rule 7001(7) the Court finds the Trustee is entitled to a preliminary injunction, that all Defendants and their officers, agents, servants, employees, attorneys, and any other person or entity acting on the Defendants' behalf are enjoined from:

- a. proceeding with, effectuating, or otherwise taking any action in furtherance of any Optional Redemption, call, or other liquidation of the Acis CLOs previously or currently issued by the Defendants and any other attempt to liquidate the Acis CLOs now or in the future by any means;
- b. trading any Acis CLO collateral, whether in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs or otherwise, without the express and explicit written authorization of the Trustee; and
- c. sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the effectuation of any Optional Redemption, call, or other liquidation of the Acis CLOs.

**IT IS FURTHER ORDERED** that pursuant to Federal Rule of Bankruptcy Procedure 7065, the Trustee is not required to provide security or bond in connection with this Order.

**IT IS FURTHER ORDERED** for the avoidance of doubt, that U.S. Bank, as Indenture Trustee, may perform its ministerial functions in respect of sale trades executed at the initiation of the Issuers or Highland Affiliates prior to July 9, 2018.

**IT IS FURTHER ORDERED** that this Order expires upon confirmation of any plan of reorganization or conversion of the Bankruptcy Cases unless further extended by the Court or by the agreement of the parties, or until such time as the Defendants seek Court approval to dissolve this Order or until such time as the Defendants seek and are granted relief from the automatic stay pursuant Section 362 of the Bankruptcy Code.

### END OF ORDER ###

Submitted by:

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**EXHIBIT R**

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March 20, 2019

## VIA ELECTRONIC MAIL

Brian P. Shaw  
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**Re: Resets or refinancings of Acis CLOs**

Dear Counsel,

I am responding to your letter of February 26, attached, which I have discussed with Highland CLO Funding Limited ("HCLOF").

As you know, Highland CLO Funding Limited ("HCLOF") is appealing the bankruptcy court's confirmation order. As you also know, HCLOF has repeatedly denied that a reset transaction led by Acis and Brigade is either feasible, or in HCLOF's best interests, and HCLOF has received and continued to rely on independent advice to that effect. Further, as also noted in connection with HCLOF's objections to confirmation of the plan of reorganization, HCLOF is constrained under its governing Investment Policy from authorizing a reset transaction with Acis and Brigade.

For the above reasons, while HCLOF will continue to evaluate all options and alternatives, at present HCLOF is neither interested in pursuing, nor able to pursue, a reset transaction.

Sincerely,



Mark M. Maloney

cc: William Scott  
Heather Bestwick



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February 26, 2019

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Re: Resets or refinancings of Acis CLOs

Dear Counsel:

I represent Acis Capital Management, L.P. ("Acis"). I write to you as counsel for Highland CLO Funding, Ltd. ("HCLOF"), Highland Capital Management, L.P., and Highland HCF Advisor, Ltd., respectively.

I assume HCLOF still maintains its position in the subordinated notes of CLOs for which Acis presently serves as portfolio manager. If so, Acis desires to work with HCLOF to attempt a reset or refinance of the relevant CLOs, as provided in the plan of reorganization for Acis (the "Plan"). This desire is constrained, of course, by market conditions, the governing documents of the CLOs, the Plan, as well as any other applicable law or contractual limitation.

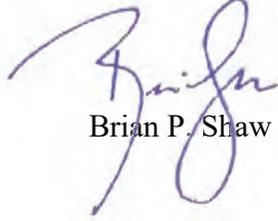
HCLOF and its directors have repeatedly stated that a reset or refinance of the relevant CLOs is in HCLOF's best interests. Acis wants to do everything reasonably practicable to accomplish that goal.

Acis notes that while it is not presently a shareholder in HCLOF, Acis believes its status as a shareholder will be recognized in the future by courts in the United States, and that recognition will be retroactive.

Please contact me as soon as possible so we can get this process moving. My hope is that the attorneys can step aside and we can let the business people get to business.

Mark M. Maloney  
Holland N. O'Neil  
February 26, 2019  
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian P. Shaw". The signature is stylized with a large, looping initial "B" and a long, sweeping tail that extends downwards and to the right.

Brian P. Shaw

BPS

**EXHIBIT S**

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**COUNSEL FOR  
THE CHAPTER 11 TRUSTEE**

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

**IN RE:**

**ACIS CAPITAL MANAGEMENT, L.P.,  
ACIS CAPITAL MANAGEMENT GP,  
LLC,**

**DEBTORS.**



**Case No. 18-30264-SGJ-11  
Case No. 18-30265-SGJ-11**

**(Jointly Administered Under Case  
No. 18-30264-SGJ-11)**

**Chapter 11**

**HIGHLAND CAPITAL MANAGEMENT,  
L.P. AND  
HIGHLAND CLO FUNDING LTD,**

**Plaintiffs.**

**v.**

**ROBIN PHELAN, CHAPTER 11  
TRUSTEE,**

**Defendant.**



**Adversary No. 18-03078-sgj**

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY  
CLAIMS**



not in the possession of the Debtors. The Trustee denies the remaining factual allegations asserted in Paragraph 2 of the Complaint.

## **II.** **PARTIES**

3. No response is required for the facts asserted in Paragraph 3 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 3 of the Complaint, the remaining allegations asserted in Paragraph 3 of the Complaint are denied.

4. No response is required for the facts asserted in Paragraph 4 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 4 of the Complaint, the remaining allegations asserted in Paragraph 4 of the Complaint are denied.

5. The Trustee admits the factual allegations asserted in Paragraph 5 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 5 of the Complaint, the remaining allegations asserted in Paragraph 5 of the Complaint are denied.

6. No response is required for the facts asserted in Paragraph 6 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 6 of the Complaint, the remaining allegations asserted in Paragraph 6 of the Complaint are denied.

7. No response is required for the facts asserted in Paragraph 7 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 7 of the Complaint, the remaining allegations asserted in Paragraph 7 of the Complaint are denied.

8. No response is required for the facts asserted in Paragraph 8 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 8 of the Complaint, the remaining allegations asserted in Paragraph 8 of the Complaint are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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9. No response is required for the facts asserted in Paragraph 9 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 9 of the Complaint, the remaining allegations asserted in Paragraph 9 of the Complaint are denied.

10. No response is required for the facts asserted in Paragraph 10 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 10 of the Complaint, the remaining allegations asserted in Paragraph 10 of the Complaint are denied.

11. No response is required for the facts asserted in Paragraph 11 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 11 of the Complaint, the remaining allegations asserted in Paragraph 11 of the Complaint are denied.

### **III. JURISDICTION AND VENUE**

12. The Trustee admits that jurisdiction is proper pursuant to 28 U.S.C. § 1334. The Trustee denies that 28 U.S.C. § 157(d) and Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 7001(2) and 7001(9) relate to jurisdiction. The Trustee denies the remaining allegations asserted in Paragraph 12 of the Complaint.

13. The Trustee denies the allegations asserted in Paragraph 13 of the Complaint because this matter is a core proceeding.

14. The Trustee admits the allegations asserted in Paragraph 14 of the Complaint.

15. The Trustee admits that the predicate for the relief sought by the Complaint are Bankruptcy Rules 3007(b), 7001(2), 7001(9), 7003, and 7008. The Trustee denies the remaining allegations asserted in Paragraph 15 of the Complaint.

16. The Trustee admits the allegations asserted in Paragraph 16 of the Complaint.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

**IV.  
FACTS**

17. To the extent Paragraph 17 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 17 of the Complaint; therefore, those allegations are denied.

18. To the extent Paragraph 18 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 18 of the Complaint; therefore those allegations are denied.

19. To the extent Paragraph 19 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 19 of the Complaint; therefore those allegations are denied.

20. To the extent Paragraph 20 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 20 of the Complaint; therefore those allegations are denied.

21. To the extent Paragraph 21 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 21 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLEE RECORD  
VOLUME 12**



**APPELLEE’S AMENDED SUPPLEMENTAL  
 DESIGNATION OF RECORD ON APPEAL**

Appellee Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its amended supplemental designation of the record in the appeal filed by The Dugaboy Investment Trust and Get Good Trust (together, the “Appellants”) from the *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788] entered by the United States Bankruptcy Court for the Northern District of Texas on January 21, 2021 in the above-captioned chapter 11 bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

**I. Supplemental Items Designated from the Docket in the Bankruptcy Case**

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellants:

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol. 10 002202	April 8, 2020	Proof of Claim No. 143	HarbourVest 2017 Global Fund L.P. Claim No. 143
002211	April 8, 2020	Proof of Claim No. 147	HarbourVest 2017 Global AIF L.P. Claim No. 147
002220	April 8, 2020	Proof of Claim No. 149	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149
002229	April 8, 2020	Proof of Claim No. 150	HarbourVest Dover Street IX Investment L.P. Claim No. 150
002238	April 8, 2020	Proof of Claim No. 153	HV International VIII Secondary L.P. Claim No. 153
002247	April 8, 2020	Proof of Claim No. 154	HarbourVest Skew Base AIF L.P. Claim No. 154

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol 10 002256	July 30, 2020	906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
002279 thru Vol. 12	September 11, 2020	1057	HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
Vol. 12 002896	October 18, 2020	1208	Declaration of Michael Pugatch
002900	October 18, 2020	1207	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan
			Highland CLO Funding Portfolio Management Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
			Highland CLO Funding Subscription and Transfer Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
Vol. 13 002919	November 24, 2020	1473	Liquidation Analysis
			All exhibits necessary for impeachment and/or rebuttal purposes

**II. Docket Items from Case 18-30264-sgj11**

003097	April 13, 2018	118	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264- sgj11, (Bankr. N.D. Tex. Apr. 13, 2018))
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Vol. 13

January 31, 2019

827

Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan (*In re Acis Capital Mgmt.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019))

003150

Appellee reserves the right to designate additional items depending on the arguments made by Appellants on appeal.

*[Remainder of Page Intentionally Left Blank]*

Dated: February 25, 2021.

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Ira D. Kharasch (CA Bar No. 109084)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

---

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*Counsel for Highland Capital Management, L.P.*

22. To the extent Paragraph 22 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 22 of the Complaint; therefore those allegations are denied.

23. The Trustee denies the factual allegations in Paragraph 23 of the Complaint.

24. To the extent Paragraph 24 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 24 of the Complaint; therefore those allegations are denied.

25. To the extent Paragraph 25 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 25 of the Complaint; therefore those allegations are denied.

26. To the extent Paragraph 26 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 26 of the Complaint; therefore those allegations are denied.

27. To the extent Paragraph 27 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 27 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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28. To the extent Paragraph 28 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 28 of the Complaint; therefore those allegations are denied.

29. To the extent Paragraph 29 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 29 of the Complaint; therefore those allegations are denied.

30. The Trustee denies the factual allegations in Paragraph 30 of the Complaint.

31. The Trustee denies the factual allegations in Paragraph 31 of the Complaint.

32. To the extent Paragraph 32 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 32 of the Complaint; therefore those allegations are denied.

33. To the extent Paragraph 33 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 33 of the Complaint; therefore those allegations are denied.

34. To the extent Paragraph 34 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 34 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

35. To the extent Paragraph 35 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 35 of the Complaint; therefore those allegations are denied.

36. To the extent Paragraph 36 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 36 of the Complaint; therefore those allegations are denied.

37. The Trustee admits that Mr. Terry filed involuntary bankruptcy petitions against Acis LP and Acis GP on January 30, 2018 at approximately 12:00 a.m. Otherwise, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 37 of the Complaint; therefore those allegations are denied.

38. The Trustee admits the factual allegations in Paragraph 38 of the Complaint.

39. The Trustee admits the factual allegations in Paragraph 39 of the Complaint.

40. The Trustee admits the factual allegations in Paragraph 40 of the Complaint. However, the trial referenced by paragraph 40 was also on the Involuntary Petitions (as defined by the Complaint).

41. The Trustee admits the factual allegations in Paragraph 41 of the Complaint.

42. The Trustee admits the factual allegations in Paragraph 42 of the Complaint.

43. The Trustee admits the factual allegations in Paragraph 43 of the Complaint.

44. The Trustee admits that the Bankruptcy Court held a hearing on April 23, 2018 on the Operating Motion, and on May 6, 2018, the Bankruptcy Court granted the Operating Motion

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

[Dkt. No. 178], and that the Chapter 7 Trustee thereafter proceeded to operate the Debtors in the ordinary course of business. The Trustee denies the remaining factual allegations in Paragraph 44 of the Complaint.

45. The Trustee admits the factual allegations in Paragraph 45 of the Complaint.

46. The Trustee admits the factual allegations in Paragraph 46 of the Complaint.

47. The Trustee admits the factual allegations in Paragraph 47 of the Complaint.

48. The Trustee admits the factual allegations in Paragraph 48 of the Complaint.

49. The Trustee admits the factual allegations in Paragraph 49 of the Complaint.

50. To the extent Paragraph 50 contains any factual allegations requiring a response by the Trustee, the Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 50 of the Complaint; therefore those allegations are denied.

51. The Trustee denies the factual allegations in Paragraph 51 of the Complaint.

52. The Trustee denies the factual allegations in Paragraph 52 of the Complaint.

53. The Trustee denies the factual allegations in Paragraph 53 of the Complaint.

54. The Trustee admits that on April 30, 2018 Highland CLO Funding LTD f/k/a Acis Loan Funding, Ltd. ("HCLOF")<sup>1</sup> purported to and attempted to direct each CLO (as defined by the Complaint), the Indenture Trustee (as defined by the Complaint), and Acis LP to affect an

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<sup>1</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. prior to October 30, 2017 and the defined term "HCL~~O~~F" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. on and after October 30, 2017.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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"Optional Redemption of all Secured Notes and the Subordinated Notes in full on June 14, 2018." The Trustee denies all other factual allegations in Paragraph 54.

55. The Trustee admits that Highland Capital Management, L.P. ("Highland") emailed the Trustee stating that the Trustee should begin selling the CLOs' assets pursuant to HCLOF's redemption instructions. The Trustee lacks sufficient information and knowledge to form a belief as to the truth of the remaining factual allegations in Paragraph 55 of the Complaint; therefore those allegations are denied.

56. The Trustee admits that he sent a response to the Redemption Notices Letter dated May 22, 2018 stating that, *inter alia*, "[i]t does not appear that the Redemption Notice[s] were] sent by properly authorized parties," and that "[t]he Redemption Notice[s] themselves] fail[] to comply with the Indenture[s]." The Trustee denies the remaining factual allegations in Paragraph 56 of the Complaint.

57. The Trustee admits that he received the Notices of Redemption on May 24, 2018. The Trustee denies the remaining factual allegations in Paragraph 57 of the Complaint.

58. The Trustee admits the factual allegations in Paragraph 58 of the Complaint.

59. The Trustee admits that on May 27, 2018 he sent correspondence stating that the May 24, 2018 Issuer Orders "do not comply with the relevant Indentures and Portfolio Management Agreements" and the Issuer Orders are therefore ineffective. The Trustee denies the remaining factual allegations in Paragraph 59 of the Complaint.

60. The Trustee lacks sufficient information and knowledge to form a belief as to the truth of the factual allegations in Paragraph 60 of the Complaint; therefore those allegations are denied.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

61. The Trustee admits the factual allegations in Paragraph 61 of the Complaint.
62. The Trustee denies the factual allegations in Paragraph 62.
63. The Trustee denies the factual allegations in Paragraph 63.
64. The Trustee denies the factual allegations in Paragraph 64.
65. The Trustee denies the factual allegations in Paragraph 65.
66. The Trustee denies the allegations in Paragraph 66.

**V.**  
**CLAIMS FOR RELIEF**

67. The Trustee admits the allegations in Paragraph 67.
68. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLOs (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 68 of the Complaint.
69. The Trustee denies the allegations in Paragraph 69.
70. The Trustee denies the allegations in Paragraph 70.
71. The Trustee denies the allegations in Paragraph 71.
72. The Trustee denies the allegations in Paragraph 72.
73. The Trustee denies the allegations in Paragraph 73.
74. The Trustee admits the allegations in Paragraph 74.
75. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 75 of the Complaint.
76. The Trustee denies the allegations in Paragraph 76.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

77. The Trustee denies the allegations in Paragraph 77.

78. The Trustee denies the allegations in Paragraph 78.

79. The Trustee denies the allegations in Paragraph 79.

80. The Trustee denies the allegations in Paragraph 80.

81. The Trustee admits the allegations in Paragraph 81.

82. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 82 of the Complaint.

83. The Trustee denies the allegations in Paragraph 83.

84. The Trustee denies the allegations in Paragraph 84.

85. The Trustee denies the allegations in Paragraph 85.

86. The Trustee denies the allegations in Paragraph 86.

87. The Trustee denies the allegations in Paragraph 87.

88. The Trustee admits the allegations in Paragraph 88.

89. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 89 of the Complaint.

90. The Trustee denies the allegations in Paragraph 90.

91. The Trustee denies the allegations in Paragraph 91.

92. The Trustee denies the allegations in Paragraph 92.

93. The Trustee denies the allegations in Paragraph 93.

94. The Trustee denies the allegations in Paragraph 94.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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95. The Trustee admits the allegations in Paragraph 95.

96. The Trustee admits that under the PMA (as defined by the Complaint) Acis provides investment advisory services to the CLO (as defined by the Complaint). The Trustee denies the remaining factual allegations in Paragraph 96 of the Complaint.

97. The Trustee denies the allegations in Paragraph 97.

98. The Trustee denies the allegations in Paragraph 98.

99. The Trustee denies the allegations in Paragraph 99.

100. The Trustee denies the allegations in Paragraph 100.

101. The Trustee denies the allegations in Paragraph 101.

102. Paragraph 102 is a legal conclusion that does not require an answer. To the extent a response is required for the allegations asserted in Paragraph 102 of the Complaint, the remaining allegations asserted in Paragraph 102 of the Complaint are denied.

103. The Trustee denies the allegations in Paragraph 103.

104. The Trustee denies the allegations in Paragraph 104.

105. The Trustee denies the allegations in Paragraph 105.

106. The Trustee denies the allegations in Paragraph 106.

107. The Trustee denies the allegations in Paragraph 107.

108. The Trustee denies the factual allegations in Paragraph 108.

109. No response is required for the facts asserted in Paragraph 109 of the Complaint. To the extent a response is required for the facts asserted in Paragraph 109 of the Complaint, the remaining allegations asserted in Paragraph 109 of the Complaint are denied

110. The Trustee denies the allegations in Paragraph 110.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

111. The Trustee denies the allegations in Paragraph 111.

112. The Trustee denies the factual allegations in Paragraph 112 of the Complaint.

113. The Trustee denies the allegations in Paragraph 113.

114. The allegations contained in paragraph 114 are not sufficiently specific for the Trustee to admit or deny. To the extent a response is required for the facts asserted in Paragraph 114 of the Complaint, the remaining allegations asserted in Paragraph 114 of the Complaint are denied

115. The Trustee denies the allegations in Paragraph 115.

116. The Trustee denies the allegations in Paragraph 116.

117. The Trustee denies the factual allegations in Paragraph 117.

118. The Trustee denies the allegations in Paragraph 118.

119. The Trustee denies the allegations in Paragraph 119.

120. The Trustee denies the allegations in Paragraph 120.

121. The Trustee denies the allegations in Paragraph 121.

122. The Trustee denies the allegations in Paragraph 122.

123. No response is required to Paragraph 123. To the extent a response is required for the facts asserted in Paragraph 123 of the Complaint, the remaining allegations asserted in Paragraph 123 of the Complaint are denied

124. The Trustee denies the allegations in Plaintiffs' prayer for relief and further denies that Highland and HCLOF (the "Plaintiffs") are entitled to the relief sought.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

**VI.**  
**AFFIRMATIVE DEFENSES**

125. Highland's claims are barred because Highland lacks standing to bring the claims and requests for relief asserted.

126. Plaintiffs' claims are barred, in whole or in part, for failure to perform a condition precedent.

127. Plaintiffs' claims are barred, in whole or in part, by estoppel.

128. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' unclean hands.

**VII.**  
**PRAYER FOR RELIEF: HIGHLAND CAPITAL MANAGEMENT, L.P.'S AND  
HIGHLAND CLO FUNDING, LTD.'S COMPLAINT**

129. The Trustee prays that Highland and HCLOF take nothing by virtue of its Complaint and that the Trustee have all such other and further relief, in either law or equity, as may be appropriate.

**COUNTERCLAIMS**

130. The Trustee hereby asserts the following counterclaims against Highland and HCLOF as an offset to any claim Highland and HCLOF have against the Trustee or the Debtors and for the purposes of affirmative recovery against Highland and HCLOF.

**VIII.**  
**PARTIES**

131. Highland is a limited partnership incorporated under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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132. HCLOF is an exempted company incorporated with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands. Highland and HCLOF are collectively referred to herein as the "Counter Defendants."

133. Highland HCF Advisor, Ltd. ("Highland HCF") is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland HCF Advisor, Ltd. may be served through its president, James Dondero at 300 Crescent Court, Suite 700 Dallas, TX 75201.

134. Highland CLO Management Ltd. ("Highland CLOM") is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland CLO Management Ltd. may be served through the President of its general partner, Strand Advisors, Inc., James Dondero at 300 Crescent Court, Suite 700 Dallas, TX 75201 and its general partner, Strand Advisors, Inc., at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. Highland HCF and Highland CLOM are collectively referred to herein as the "Third Party Defendants."

## **IX. JURISDICTION AND VENUE**

135. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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136. The Court has the power to adjudicate this adversary proceeding pursuant to 28 U.S.C. § 157(a)-(b) and the *Miscellaneous Order No. 33, Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas.

137. This matter arises under the laws of the United States of America. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2). The Trustee hereby consents to the Bankruptcy Court's entry of a final judgment resolving this Adversary Proceeding.

138. Venue of this Adversary Proceeding in this District is proper under 28 U.S.C. § 1409.

139. The predicate for relief requested here in is 11 U.S.C. §§ 544, 548, 550, 551, TEX. BUS. & COM. CODE 24.001 *et seq.* ("TUFTA") and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

## **X.** **INTRODUCTION**

140. After the commencement of litigation with Mr. Terry and in earnest after Mr. Terry received the Final Award (as hereinafter defined) Highland, Highland CLOM, Highland HCF and HCLOF sought to fraudulently transfer the assets of Acis LP pursuant to a scheme comprised of a series of fraudulent transfers in an effort to denude Acis LP of value (Highland, Highland CLOM, Highland HCF and HCLOF collectively referred to herein as the "Highland Enterprise"). This fraudulent transfer scheme was accomplished through, *inter alia*, the Note Transfer, the ALF Share Transfer, and ALF PMA Transfer (as hereinafter defined), which

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fraudulently transferred economic rights away from Acis LP to the Highland Enterprise. The Trustee seeks to recover the fraudulent transfers, as further described herein.

## **XI. BACKGROUND FACTS**

### **A. State Court Litigation And Final Award**

141. Highland commenced litigation against Mr. Terry on or about September 8, 2016 in the 162<sup>nd</sup> Judicial District Court of Texas (the "162<sup>nd</sup> Action"). Mr. Terry subsequently moved to compel arbitration, which request was granted. Accordingly, the 162<sup>nd</sup> Action was stayed pending resolution of the arbitration on the merits.

142. On October 20, 2017, a JAMS arbitration panel made up of former or retired judges (the "Arbitration") entered a Final Award (the "Final Award") in favor of Mr. Terry in the amount of \$7,949,749.15<sup>2</sup> against the Debtors.

143. On December 18, 2017, the Final Award was reduced to a final judgment by the 44th Judicial District Court of Dallas County, Texas, and the Final Judgment was entered in Cause No. DC-17-15244 (the "Judgment").

### **B. The Bankruptcy Cases**

144. On January 30, 2018 (the "Petition Date"), Mr. Terry as petitioning creditor, filed involuntary petitions (the "Involuntary Petitions") against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

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<sup>2</sup> Pursuant to the Judgment, interest accrues on the Judgment from October 20, 2017 until such time as the Judgment is paid in full, at an interest rate of 5% per annum. The total amount due to Mr. Terry, pursuant to the Judgment, as of the date of filing the involuntary bankruptcy, January 30, 2018, was at least \$8,060,827.84.

145. On April 13, 2018, after six days of testimony and argument, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Order for Relief").

146. After the Order for Relief was entered these cases were converted to Chapter 7 cases. Robin Phelan was appointed Chapter 11 Trustee of the Debtors' the bankruptcy estates.

**C. Highland and the Highland Enterprise's Role in these Cases**

147. Although Highland did not appear in these cases until after the entry of the Order for Relief, Highland employees directed Acis's actions at all times before the Order for Relief.

*See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

*Id.*

148. Additionally, the two indirect owners of Highland, James Dondero and Mark Okada, testified at the trial on the Involuntary Petitions.<sup>3</sup>

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<sup>3</sup> Opinion at p. 3, n. 4 ("Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and [O]kada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable").

149. Highland and its network of affiliates have numerous other connections to this case. HCLOF and other Highland affiliates attempted to intervene in the trial on the Involuntary Petitions.

HCLOF is the

holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash flow from the CLOs. It, in certain ways, controls the CLO vehicle—for example, by virtue of having the ability to make a redemption call after a certain 'no-call' period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A's). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. ('ALF'), which was incorporated under the laws of the island nation of Guernsey, was the CLO equity holder. To be clear, ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the 'ALF Portfolio Management Agreement'— not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements).

Opinion at pp. 12-13 (footnotes omitted).

#### **D. The CLOs, the PMAs, and the Indentures**

150. Acis LP is the portfolio manager for funds of certain Collateralized Loan Obligations ("CLOs"): (i) Acis CLO 2013-1, Ltd. ("CLO-1"), (ii) Acis CLO 2014-3, Ltd ("CLO-3"), (iii) Acis CLO 2014-4, Ltd. ("CLO-4"), (iv) Acis CLO 2014-5, Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6"). *See* Opinion ¶ 24. CLO-1, CLO-3, CLO-4, CLO-5 and CLO-6 are collectively referred to herein as the "Acis CLOs."

151. As relevant herein, Acis LP manages the Acis CLOs through five PMAs.<sup>4</sup> Acis LP generates revenue primarily through the management of the Acis CLOs via the PMAs. See Opinion ¶ 13. True and correct copies of the PMAs are attached hereto as **Exhibit "A."** Each of the Acis CLOs is governed by the Indentures.<sup>5</sup> True and correct copies of the Indentures are attached hereto as **Exhibit "B."**

**XII. FRAUDULENT TRANSFERS**

**A. The ALF PMA Transfer**

152. Prior to October 27, 2017, Acis LP—not ALF—had authority to direct and effectuate an optional redemption under the PMAs. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit "C."** A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit "D."**

<sup>4</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA"). The CLO-1 PMA, CLO-3 PMA, CLO-4 PMA, CLO-5 PMA, and CLO-6 PMA are collectively referred to herein as the "PMAs."

<sup>5</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, CLO-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, CLO-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, CLO-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, CLO-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture"). The CLO-1 Indenture, CLO-3 Indenture, CLO-4 Indenture, CLO-5 Indenture, and CLO-6 Indenture are collectively referred to herein as the "Indentures."

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153. The Second ALF PMA provided broad authority to Acis LP as the portfolio manager of ALF. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

(i) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (ii) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (iii) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (iv) **vote Financial Instruments, participate in arrangements with creditors, the institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.**

Second ALF PMA § 5(a)-(q) (emphasis added).

154. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). Still, the Second ALF PMA provided for the removal of Acis LP as portfolio manager "for cause." *See* ALF PMA § 14(a)-(e).

155. On October 27, 2017, just seven days after Mr. Terry's arbitration award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and those valuable portfolio management rights—for no value—to Highland HCF Advisor, Ltd. ("Highland HCF"), an affiliate of Highland.

156. This transfer of Acis LP's portfolio management rights to Highland HCF was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland HCF on October 27, 2017 (the "October 2017 PMA"), which empowered Highland

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

HCF with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). See October 2017 PMA §§ 1 & 5(a)-(q). A true and correct of the October 2017 PMA is attached hereto as **Exhibit "E."**

As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at p. 19 (footnotes omitted).

157. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, (without expressing its business judgment to this transfer) Acis LP simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland HCF under the October 2017 PMA.

158. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland HCF, HCLOF could not have attempted to direct and effectuate an optional redemption, and deplete Acis's assets, as it is now attempting to do.

**B. ALF Share Transfer**

159. On October 24, 2017, a mere four days after the Final Award was entered, an employee of Highland and representative of Acis LF, Frank Waterhouse and Grant Scott, for CLO Holdco. Ltd., entered into that certain special resolution whereby HCLOF, then known as

ALF acquired back Acis's interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit "F."**

160. By the ALF Share Transfer, HCLOF paid Acis LP \$999,1180.13 for its shares of ALF. HCLOF is an insider of Acis LP. By November 1, 2017, Acis LP had given up its shares of HCLOF and its control of HCLOF.

**C. Note Transfer**

161. On November 3, 2017, Acis LP, Highland, and Highland CLO Management Ltd., a Cayman entity ("Highland CLOM"), an affiliate of Highland, entered into the Agreement for Assignment and Transfer of Promissory Note (the "Assignment and Transfer Agreement"). A true and correct copy of the Assignment and Transfer Agreement is attached here to as **Exhibit "G."** The Assignment and Transfer Agreement, among other things, transferred the \$9.5 million promissory note by Highland in favor of Acis LP (the "Note") from Acis LP to Highland CLOM (the "Note Transfer"). Acis LP received no or insufficient consideration for the Note Transfer.

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses

Opinion at p. 20.

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162. Additionally, the Assignment and Transfer Agreement also purports to initiate the transfer of the PMA between Acis and the CLOs to Highland CLOM. Again, Acis LP is to receive no consideration for transferring its most significant assets, the PMAs. Upon information and belief, Acis LP did not in fact transfer the PMAs pursuant to the Assignment and Transfer Agreement.

**XIII.**  
**CAUSES OF ACTION**

163. The Trustee complains of, and asserts the following claims and causes of action against Counter Defendants and Third Party Defendants:

**XIV.**  
**COUNT I**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(ALF Share Transfer)**

164. The Trustee incorporates by reference the foregoing paragraphs.

165. On or about October 27, 2017, less than two years prior to the Petition Date, HCLOF, formerly known as ALF, received the ALF Share Transfer

166. The ALF Share Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

167. Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer.

168. Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

169. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

170. The ALF Share Transfer was to or for the benefit of insiders, the Highland Enterprise, including HCLOF.

171. The ALF Share Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the ALF Share Transfer pursuant to section 548 of the Bankruptcy Code.

172. To the extent the ALF Share Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT II**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(ALF PMA Transfer)**

173. The Trustee incorporates by reference the foregoing paragraphs.

174. On or about October 27, 2017, less than two years prior to the Petition Date, Highland HCF received the ALF PMA Transfer.

175. The ALF PMA Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

176. Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer.

177. Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

178. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

179. The ALF PMA Transfer was to or for the benefit of insiders, the Highland Enterprise, including Highland HCF.

180. The ALF PMA Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the ALF PMA Transfer pursuant to section 548 of the Bankruptcy Code.

181. To the extent the ALF PMA Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT III**  
**VIOLATION OF FRAUDULENT TRANSFER STATUTE, 11 U.S.C. § 548**  
**(Note Transfer)**

182. The Trustee incorporates by reference the foregoing paragraphs.

183. On or about November 2, 2017, less than two years prior to the Petition Date, Highland CLOM received the Note Transfer.

184. The Note Transfer was made or incurred with actual intent to hinder, delay, or defraud any entity to which Acis LP was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

185. Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer.

186. Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

187. Acis LP intended to incur, or believed that Acis LP would incur, debts that would be beyond Acis LP's ability to pay as such debts matured.

188. The Note Transfer was to or for the benefit of an insider, Highland CLOM.

189. The Note Transfer constitutes a fraudulent transfer avoidable pursuant to section 548 of the Bankruptcy Code. The Trustee seeks a judgment avoiding the Note Transfer pursuant to section 548 of the Bankruptcy Code.

190. To the extent the Note Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 550 of the Bankruptcy Code.

**COUNT IV**  
**11 U.S.C. § 550**

191. The Trustee incorporates by reference the foregoing paragraphs.

192. To the extent not otherwise asserted herein the Trustee seeks appropriate relief against the Highland Enterprise pursuant to section 550 of the Bankruptcy Code.

**COUNT V**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(ALF Share Transfer)**

193. The Trustee incorporates by reference the foregoing paragraphs.

194. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

195. The Trustee is entitled to a judgment avoiding the ALF Share Transfer to HCLOF as fraudulent transfers pursuant to TUFTA as follows:

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

196. To the extent the ALF Share Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VI**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(ALF PMA Transfer)**

197. The Trustee incorporates by reference the foregoing paragraphs.

198. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

199. The Trustee is entitled to a judgment avoiding the ALF PMA Transfer to Highland HCF as fraudulent transfers pursuant to TUFTA as follows:

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

200. To the extent the ALF PMA Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VII**  
**FRAUDULENT TRANSFERS (TUFTA)**  
**(Note Transfer)**

201. The Trustee incorporates by reference the foregoing paragraphs.

202. Pursuant to section 544(b)(1) of the Bankruptcy Code, the Trustee is entitled to stand in the shoes of any of Acis LP's creditors to avoid any transfer or obligation avoidable

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

under applicable law, including pursuant to TUFTA. One or more of such "triggering creditors" exist which may avoid transfers by, or obligations of, Acis LP pursuant to TUFTA.

203. The Trustee is entitled to a judgment avoiding the Note Transfer to Highland CLOM as fraudulent transfers pursuant to TUFTA as follows:

a. Pursuant to section 24.005(a)(1), as transfers made with actual intent to defraud, as to any such triggering creditor whose claim arose before, or whether a reasonable time after, the applicable transfer was made;

b. Pursuant to section 24.005(a)(2) as a constructively fraudulent transfers for which Acis LP did not receive reasonably equivalent value, avoidable by any such triggering creditor whose claim arose before, or within a reasonable time after, the applicable transfer was made;

c. Pursuant to section 24.006 as a constructively fraudulent transfers avoidable by any such triggering creditor whose claim arose before the applicable transfer was made; and

d. Pursuant to section 24.006(b) as to any such triggering creditor whose claim arose before the applicable transfer was made.

204. To the extent the Note Transfer is avoided the Trustee seeks the appropriate remedy pursuant to section 24.008 of the Texas Business and Commerce Code.

**COUNT VIII**  
**SECTION 24.008 OF THE TEXAS BUSINESS AND COMMERCE CODE**

205. The Trustee incorporates by reference the foregoing paragraphs.

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

206. To the extent not otherwise asserted herein the Trustee seeks appropriate relief against the Highland Enterprise pursuant to section 24.008 of the Texas Business and Commerce Code

**COUNT IX**  
**11 U.S.C. § 551**

207. The Trustee incorporates by reference the foregoing paragraphs.

208. Pursuant to section 551 of the Bankruptcy Code, any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code is preserved for the benefit of the estate but only with respect to property of the estate.

**COUNT X**  
**CIVIL CONSPIRACY**

209. The Trustee incorporates by reference the foregoing paragraphs.

210. The Highland Enterprise which is comprised of two or more business entities sought to engage in a series of fraudulent transfers including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

211. The Highland Enterprise which is comprised of two or more business entities had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers , including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

212. The fraudulent transfers (as further described below), including the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer constitute one or more unlawful, overt acts.

213. The Debtors and the Debtors' estates suffered damages as a proximate result of the ALF PMA Transfer, the ALF Share Transfer, and the Note Transfer.

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

214. The Trustee seeks actual, joint and several and exemplary damages for the Highland Enterprise's conspiracy.

**COUNT XI**  
**CONDITIONS PRECEDENT**

215. All conditions precedent to the Trustee’s recovery on its counterclaims asserted in this action have occurred, have been performed, or have been waived.

**COUNT XII**  
**ATTORNEYS’ FEES**

216. The Trustee seeks an award of its reasonable and necessary attorneys’ fees as provided for under Tex. Bus. & Com. Code 24.013.

**COUNT XIII**  
**ATTORNEYS’ FEES**

217. Accordingly, the Trustee prays that upon a final hearing that the Trustee has and recovers judgment against Highland, HCLOF, Highland CLOM and Highland HCF, as follows:

- 218. The Trustee's damages as set forth above;
- 219. The award of the Trustee's costs; and
- 220. For all such and further relief the Trustee may be justly entitled.

Respectfully submitted,

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**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2018, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District. I hereby certify that on July 3, 2018, notice of this document, will be sent via First-Class U.S. Mail to the parties below.<sup>6</sup>

/s/ Annmarie Chiarello

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<sup>6</sup> The attachments referenced herein not be sent via First-Class U.S. Mail unless parties request the undersigned to mail such attachments. Such request may be made to Annmarie Chiarello at [achiarello@winstead.com](mailto:achiarello@winstead.com).

**DEFENDANT’S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS**

VERIFICATION

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

BEFORE ME, the undersigned notary public on this day personally appeared Robin Phelan, Chapter 11 Trustee, as authorized representative of Acis Capital Management, L.P. and Acis Capital Management GP, LLC, who, after being duly sworn stated under oath that he has read the foregoing Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims, and that every statement contained therein is true and correct based on his personal knowledge or information obtained from other persons.

Robin Phelan

SWORN TO and SUBSCRIBED before me on this 2nd day of July, 2018.

Sheryl Precopia  
Notary Public in and for the State of Texas

My Commission Expires:

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DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIMS, AND THIRD PARTY CLAIMS

Solo Page

**EXHIBIT T**

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**COUNSEL FOR REORGANIZED DEBTORS**

**COUNSEL FOR REORGANIZED DEBTORS**

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

<b>In re:</b>	§	<b>Case No. 18-30264-SGJ-11</b>
	§	<b>Case No. 18-30265-SGJ-11</b>
<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC,</b>	§	<b>(Jointly Administered Under Case No. 18-30264-SGJ-11)</b>
<b>Debtors.</b>	§	<b>Chapter 11</b>

<b>ACIS CAPITAL MANAGEMENT, L.P., ACIS CAPITAL MANAGEMENT GP, LLC, Reorganized Debtors,</b>	§	<b>Adversary No. 18-03078</b>
<b>Plaintiffs,</b>	§	<b>(To be consolidated with Adversary Nos. 18-03212 &amp; 19-03103)</b>
<b>vs.</b>	§	
<b>HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND CLO FUNDING, LTD. F/K/A ACIS LOAN FUNDING, LTD., HIGHLAND HCF ADVISOR, LTD., HIGHLAND CLO MANAGEMENT, LTD., and HIGHLAND CLO HOLDINGS, LTD,</b>	§	
<b>Defendants.</b>	§	

**SECOND AMENDED COMPLAINT (INCLUDING CLAIM  
OBJECTIONS AND OBJECTIONS TO ADMINISTRATIVE EXPENSE CLAIM)**

Acis Capital Management, L.P. ("Acis LP") and Acis Capital Management GP, LLC ("Acis GP" together with Acis LP, the "Reorganized Debtors" or "Acis")<sup>1</sup> the reorganized debtors in the above-styled and jointly administered bankruptcy cases (the "Bankruptcy Cases"), and Plaintiffs in the in the above-styled adversary proceeding (the "Adversary Proceeding"), file this *Second Amended Complaint (Including Claim Objections and Objections to Administrative Expense Claim)* (this "Second Amended Complaint"), objections to the proofs of claims filed by Highland Capital Management, L.P. ("Highland Capital"), and objections to the administrative expense claim filed by Highland Capital, and respectfully state as follows:<sup>2</sup>

**ANSWER AND AFFIRMATIVE DEFENSES**

1. Pursuant to Federal Rule of Civil Procedure 41(a), incorporated by Federal Rule of Bankruptcy Procedure 7041, all claims asserted in the *Original Complaint and Request for Preliminary Injunction of Highland CLO Funding, Ltd. and Highland Capital Management Against Chapter 11 Trustee of Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Docket No. 1] (the "Original Complaint") by Highland Capital and Highland CLO Funding, Ltd. ("Highland Funding") have been dismissed without prejudice. *See* Adv. No. 18-03078, Docket No. 79. Accordingly, such dismissal of Highland Capital's and Highland Funding's claims obviates the Trustee's, now Acis's, answer and affirmative defenses thereto;

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<sup>1</sup> On February 15, 2019, the date upon which the Plan (defined below) became effective, Acis was substituted for Robin Phelan, the Chapter 11 Trustee, in the above-referenced consolidated adversary cases. *See* Case No. 18-30264, Docket Nos. 829, 830, & 863. Prior to the date upon which the Plan (defined below) became effective, Acis may be referred to as the "Debtors."

<sup>2</sup> As more fully described below in the Procedural Background, this Second Amended Complaint consolidates: (i) claims, counterclaims, third-party claims, and objections to Highland Capital's proofs of claim brought by the Chapter 11 Trustee, now Acis, in this Adversary No. 18-03078; (ii) claims brought by the Chapter 11 Trustee, now Acis, in Adversary No. 18-03212, which has been consolidated under this Adversary Proceeding; and (iii) objections of the Chapter 11 Trustee, now Acis, against Highland Capital's request for an administrative expense claim, which was converted to Adversary No. 19-03103 and was ordered consolidated under this Adversary Proceeding.

however, Acis reserves all rights with respect to answering or asserting affirmative defenses to any future-filed claims by any parties in this Adversary Proceeding.

2. Additionally, pursuant to Federal Rule of Civil Procedure 41(a)(2), such dismissal of Highland Capital's and Highland Funding's claims is without prejudice to any counterclaims asserted by the Trustee, now Acis, in the *Defendant's Answer, Affirmative Defenses, Counterclaims, and Third Party Claims* [Adv. No. 18-03078, Docket No. 23] (the "Original Answer"), as may be amended, and such counterclaims remain pending for independent adjudication.

### **CLAIMS AND COUNTERCLAIMS**

3. Acis hereby asserts the following claims for affirmative recovery against Highland Capital, Highland Funding, Highland HCF Advisor, Ltd. ("Highland Advisor"), Highland CLO Management Ltd. ("Highland Management"), and Highland CLO Holdings, Ltd. ("Highland Holdings"). Additionally, Acis asserts the following claims and counterclaims against Highland Capital and such claims and counterclaims shall also constitute recoupment or offset to any claim Highland Capital has against Acis.

#### **I. JURISDICTION, VENUE, AND STATUTORY PREDICATE**

4. This Court has subject matter jurisdiction over the Bankruptcy Cases and this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Adversary Proceeding in this district is proper under 28 U.S.C. § 1409.

5. This matter arises under the laws of the United States of America and state common law. The statutory predicates for the relief sought herein are pursuant to sections 362, 502, 503, 541, 542, 544, 547, 548, 550, and 558 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Texas Business & Commerce Code § 24.001 *et seq.* ("TUFTA"), and Federal Rules of Bankruptcy Procedure 3007(b) and 7001.

6. This Adversary Proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Acis hereby consents to the Court's entry of a final judgment resolving this Adversary Proceeding. This Adversary Proceeding includes an objection to Highland Capital's proofs of claim pursuant to Federal Rule of Bankruptcy Procedure 3007(b), and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such proofs of claim, to the extent such claims are otherwise allowed. This Adversary Proceeding also includes an objection to Highland Capital's administrative expense claim, and the claims and counterclaims asserted herein shall constitute recoupment and/or offset to such administrative expense claim, to the extent such claims are otherwise allowed.

## II. PARTIES

7. Acis LP is limited partnership and Acis GP is a limited liability company, both of which were organized under the laws of the State of Delaware, and both of which may be served with pleadings and process in this Adversary Proceeding through the undersigned counsel.

8. Highland Capital is a limited partnership organized under the laws of the State of Delaware, with its principal place of business located at 300 Crescent Court, Suite 700, Dallas, Texas 75201.

9. Highland Funding is an exempted company organized with limited liability under the laws of Guernsey, with its registered office located at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands.

10. Highland Advisor is a company organized under the laws of the Cayman Islands, with its registered office located at Maples Corporate Services Limited, P.O. Box 309 Ugland House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See **Exhibit T*** at 86. Highland Advisor may be served through its President, James Dondero, at 300 Crescent

Court, Suite 700 Dallas, Texas 75201. *See id.* at 89. Highland Advisor may be served through its Secretary, Scott Ellington, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Chief Compliance Officer, Thomas Surgent at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Executive Vice President, Mark Okada at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Treasurer, Frank Waterhouse at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may be served through its Assistant Secretary, Lee "Trey" Parker at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Highland Advisor may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Highland Advisor may also be served through its director John Cullinane at 24 Windjammer Quay, George Town Grand Cayman. Highland Advisor may also be served through its director at Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Advisor by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

11. Highland Management is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Upon information and belief, Highland Management principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. Highland Management may also be served through its director Summit Management, Limited c/o John Cullinane P.O. Box 32311, Suite #4-210 Governors Square 23 Lime Tree Bay Avenue Grand Cayman KY1-1209 Cayman Islands. Acis reserves the right to serve Highland Management by

any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

12. Highland Holdings is a company organized under the laws of the Cayman Islands, with its registered office located at P.O. Box 309 Uglan House, South Church Street, George Town, Grand Cayman KY1-1004. Highland Holding's principal place of business is 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* at 103. Highland Holding's general or managing agent is James Dondero. *See id.* Highland Advisor may be served through its general or managing agent, James Dondero, at 300 Crescent Court, Suite 700 Dallas, Texas 75201. *See id.* Acis reserves the right to serve Highland Holdings by any method that is reasonably calculated to give notice including, but not limited to applicable treaties and conventions between the United States and the Cayman Islands, a British overseas territory.

### III. JURISDICTIONAL BACKGROUND<sup>3</sup>

#### A. Highland Advisor Jurisdictional Background

13. Upon information and belief, on October 26, 2017, Jean Paul Sevilla ("Sevilla"), a Highland employee and associate general counsel, requested Maples and Calder create Highland Advisor. On information and belief, on October 27, 2017, Mr. Sevilla requested that Highland Advisor be established such that Highland is the 100% owner of the "high" share class of Highland Advisor.

14. Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. *See Exhibit T* at 88. Highland Advisor is ultimately, directly or indirectly, owned or controlled by James Dondero

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<sup>3</sup> Any capitalized term not otherwise defined in this Jurisdictional Background shall have the meaning ascribed to it later in this Second Amended Complaint.

("Dondero") and Mark Okada ("Okada"), who ultimately, directly or indirectly, own or control Highland Capital. *See id.* at 89 and Opinion at 8.

15. Upon information and belief, the principals of Highland Capital, Dondero and Okada, serve as the president and executive vice president, respectively, of Highland Advisor. *See* Opinion at 8 and **Exhibit T** at 89. Other Highland Capital employees serve as officers of Highland Advisor including Scott Ellington, Lee "Trey" Parker, Thomas Surgent, and Frank Waterhouse. *See* **Exhibit T** at 89.

16. Dondero signed the November 15, 2017 Portfolio Management Agreement by and between Highland Advisor and Highland Funding (the "November 2017 PMA") on behalf of Highland Advisor. A true and correct copy of the November 2017 PMA is attached hereto as **Exhibit P**.

17. Attached hereto as **Exhibit Q** is the December 13, 2018 (A.M.) hearing transcript from *In re Acis Capital Management, L.P., et al.* At the December 13, 2018 hearing, Hunter Covitz, a Highland Capital employee, testified: "As I understand HCF Advisor is a relying advisor of Highland." *See* **Exhibit Q** at 78, ll. 15-16. Hunter Covitz further testified, "[b]ut HCF Advisor is Highland. . . . That's the distinction between Highland HCF Advisor could be well capitalized, the substance of Highland Capital, its office space, employees, balance sheet, back office, legal, what [have] you, would all be incorporated with HCF Advisor, where Acis with no employees is not looked at that way." *Id.* at 61, ll. 5 & 11-15. Finally, Hunter Covitz testified, "there's really no differentiation between HCF Advisor and Highland." *Id.* at 62, ll. 21-23.

18. Attached hereto as **Exhibit R** are meeting minutes of Acis Loan Funding, Ltd. and Highland Funding, which contain a Highland Funding Bates label and were produced in connection with the Bankruptcy Cases or related adversary case. These meeting minutes reflect that various Highland Capital employees, including Sevilla, Hunter Covtiz, Tim Cournoyer,

David Wilmore, Issace Leventon, and Thomas Surgent appeared at Highland Funding's board meeting on behalf of Highland Advisor. The parties that conduct the day-to-day operations of Highland Advisor are Highland Capital employees that office in Dallas, Texas.

19. Attached hereto as **Exhibit S** is Highland Capital's 2017 Form ADV, which states that Highland Advisor is another business name of Highland Capital.

20. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Advisor's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201—Highland Capital's office and headquarters. Highland Capital's 2019 Form ADV also states that Highland Capital is a shareholder of Highland Advisor and that Highland Advisor is another business name of Highland Capital.

21. The Confirmation Opinion states that "Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland [Advisor]." Confirmation Opinion at 8. Additionally, the Confirmation Opinion states that "Highland [Advisor] (i.e., the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA)." Confirmation Opinion at 19. Additionally, the Confirmation Opinion states that Highland Advisor is an affiliate of Highland Capital. Confirmation Opinion at 21.

## **B. Highland Management Jurisdictional Background**

22. Upon information and belief, on or about October 27, 2017 (7 days after the Arbitration Award), Highland Management was created at the direction of Sevilla, a Highland lawyer and employee, using the same structure as Highland Advisor. Upon information and belief, Highland Management's mailing address is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland's Dallas office and headquarters.

23. Upon information and belief, Highland Management is ultimately, directly or indirectly, owned or controlled by Dondero and Okada, who ultimately, directly or indirectly, own or control Highland Capital.

24. Additionally, in connection with the hearing on the involuntary petitions, Dondero testified at great length regarding the Note Transfer to Highland Management on behalf of Highland Management.<sup>4</sup> Dondero testified upon direct examination by Acis's (at the time, a putative debtor) counsel about the Note Transfer, stating:

Q: Now, if there came a time with litigation costs and other expenses where Acis was unable to pay its expenses when they became due, what was your intent in signing this as to whether or not HCLOM [Highland Management] would honor this and make the payment?

A: We would -- we would honor it and -- and pay as appropriate.

See Exhibit U (March 23, 2018 Hr'g Tr., *In re Acis Capital Management, L.P., et al.* 146:7-12) (emphasis added). When Dondero says "we," Acis contends that he is speaking on behalf of Highland Capital and Highland Management. Additionally, Dondero testified that the Note Transfer was an "economic wash" for him as "it doesn't matter which pocket it goes into." *Id.* at 152:20-24.

25. The Opinion states that, "Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer... **it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach.**" Opinion at 20-21, n. 37 (emphasis added).

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<sup>4</sup> Dondero testified at the trial on the involuntary petitions only after Mr. Terry sought to compel Dondero's deposition and after this Court ordered Dondero to appear at the trial on the involuntary petitions.

26. Upon information and belief, Dondero is the managing or general agent of Highland Management.

27. The Confirmation Opinion states that Highland Management is "an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry's Arbitration Award)." Confirmation Opinion at 19. The Confirmation Opinion further states that "it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach." Opinion at 20-21, n.37. Finally, the Confirmation Opinion states that "Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017)." Confirmation Opinion at 24.

#### C. **Highland Holdings Jurisdictional Background**

28. The Confirmation Opinion states that Highland Holdings is "(yet another entity incorporated in the Cayman Island on October 27, 2017)." Confirmation Opinion at 19.

29. Attached hereto as **Exhibit T** is Highland Capital's 2019 Form ADV, which states that Highland Holding's principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201, Highland Capital's office and headquarters. **Exhibit T** at 103. Highland Capital's 2019 Form ADV also states that Highland Holdings is another business name of Highland Capital. Highland Capital's 2019 Form ADV further states Highland Capital, Dondero, and other Highland affiliates are "control persons" of Highland Holdings.

#### IV. **PROCEDURAL BACKGROUND**

30. On January 30, 2018 (the "Petition Date"), Joshua N. Terry ("Terry"), as petitioning creditor, filed involuntary petitions under section 303 of the Bankruptcy Code against both Acis LP and Acis GP, thereby initiating the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 1 & Case No. 18-30265, Docket No. 1.

31. On April 13, 2018, this Court entered its *Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Involuntary Bankruptcy Petition* [Case No. 18-30264, Docket No. 118 & Case No. 18-30265, Docket No. 113] (the "Opinion") and *Order for Relief in an Involuntary Case* in each of the Bankruptcy Cases [Case No. 18-30264, Docket No. 119 & Case No. 18-30265, Docket No. 114] (the "Orders for Relief"). The Opinion is hereby incorporated by reference as if fully set forth herein.

32. On May 14, 2018, Robin Phelan (the "Trustee") was appointed chapter 11 trustee of the Debtors' bankruptcy estates in the Bankruptcy Cases. *See* Case No. 18-30264, Docket No. 213.

33. On May 30, 2018, Highland Capital and Highland Funding filed their Original Complaint, initiating this Adversary Proceeding, in which Highland Capital and Highland Funding asserted various claims for breach of contract, declaratory relief, and injunctive relief against the Trustee. *See* Adv. No. 18-03078, Docket No. 1.

34. On June 21, 2018, the Trustee filed his *Verified Original Complaint and Application for Temporary Restraining Order and Preliminary Injunction* [Adv. No. 18-03212, Docket No. 1] ("Complaint and Application for TRO"), initiating Adversary No. 18-03212, in which the Trustee sought, *inter alia*, injunctive relief to prevent Highland Capital, Highland Funding, and their affiliates from taking any action to effectuate an optional redemption (which would result in liquidation of the Acis CLOs (defined below)), as well as relief pursuant to 11 U.S.C. § 362(k) for willful violations of the automatic stay for actions taken by Highland Capital and its affiliates, including Highland Funding, in attempting to effectuate an optional

redemption.<sup>5</sup> Highland Capital and Highland Funding subsequently filed their answers to the Trustee's Complaint and Application for TRO. *See* Adv. No. 18-03212, Docket Nos. 32 & 33.

35. On July 2, 2018, the Trustee filed his Original Answer in this Adversary Proceeding, in which the Trustee asserted certain counterclaims and third-party claims against Highland Capital, Highland Funding, Highland Advisor, and Highland Management (collectively and along with Highland Holdings, the "Highlands") in connection with the Highlands' scheme, described more fully below, to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. *See* Adv. No. 18-03078, Docket No. 23.

36. On July 23, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Motion to Dismiss Counterclaims or, Alternatively, for a More Definite Statement* [Adv. No. 18-03078, Docket No. 42] ("Highland's Motion to Dismiss"), in which Highland Capital sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6).

37. Also on July 23, 2018, Highland Funding filed *Highland CLO Funding Ltd.'s Motion to Dismiss* [Adv. No. 18-03078, Docket No. 43] ("Highland Funding's Motion to Dismiss") and *Highland CLO Funding Ltd.'s Brief in Support of its Motion to Dismiss* [Adv. No. 18-03078, Docket No. 44], in which Highland Funding sought, *inter alia*, to dismiss the Trustee's counterclaims pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

38. On August 1, 2018, Highland Capital filed Proof of Claim No. 27 in the claims register for Case No. 18-30264 (the "Highland Acis LP Claim"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services."

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<sup>5</sup> Certain portions of the Complaint and Application for TRO were subsequently dismissed, ultimately leaving only: Count 1 for *Temporary Restraining Order and Preliminary Injunction* (which injunctive relief expired with confirmation of the Plan (defined below)); and Count 2 for *Willful Violation of the Automatic Stay* against Highland Capital and Highland Funding. *See* Adv. No. 18-03212, Docket Nos. 49 & 56.

39. Also on August 1, 2018, Highland Capital filed Proof of Claim No. 13 in the claims register for Case No. 18-30265 (the "Highland Acis GP Claim," together with the Highland Acis LP Claim, the "Highland Capital Claims"), in the amount of \$4,672,140.38, with the basis of the claim listed as "Sub-Advisory Services and Shared Services." The Highland Acis GP Claim is identical to the Highland Acis LP Claim.

40. On August 10, 2018, Highland Capital and Highland Funding filed *Highland Capital Management, L.P. and Highland CLO Funding Ltd.'s Motion for Leave to Amend Adversary Complaint and Brief in Support* [Docket No. 51] (the "Motion to Amend"), in which Highland Capital and Highland Funding sought to amend their Original Complaint to remove all claims against the Trustee, except for one claim by Highland Funding for a declaratory judgment that the Trustee cannot "sell or transfer Highland Funding's property without Highland Funding's consent."

41. On October 9, 2018, the Court heard Highland Capital's Motion to Dismiss, Highland Funding's Motion to Dismiss, and the Motion to Amend. Considering that the Trustee expressed his intent to amend his Original Answer, the parties agreed that all arguments made by Highland Capital and Highland Funding to dismiss the Trustee's counterclaims pursuant to Rule 12(b)(6) were moot. With respect to Highland Funding's argument to dismiss for lack of personal jurisdiction under Rule 12(b)(2), the Court ruled that Highland Funding has minimum contacts with the United States, and that the Court, has personal jurisdiction over Highland Funding in this Adversary Proceeding, and exercising personal jurisdiction over Highland Funding would not violate any traditional notions of fair play and substantial justice. Further, the Court ruled that, even if sufficient minimum contacts did not exist, Highland Funding has waived personal jurisdiction in this Adversary Proceeding.

42. With respect to the Motion to Amend, due to the change in circumstances in the Bankruptcy Cases, Highland Capital and Highland Funding agreed to voluntarily dismiss all claims asserted in the Original Complaint, without prejudice.

43. On November 13, 2018, the Trustee filed his *Defendant's Amended Answer, Counterclaims (Including Claim Objections) and Third-Party Claims* [Adv. No. 18-03078, Docket No. 84] (the "Amended Counterclaims") in this Adversary Proceeding, in which the Trustee asserted numerous counterclaims and third-party claims against Highland Capital and various of its affiliates in connection with, *inter alia*, their scheme to fraudulently transfer Acis LP's assets to the Highlands and otherwise appropriate the business of Acis LP. Additionally, with the Amended Counterclaims, the Trustee included his objections to the Highland Claims pursuant to section 502(b)(1), (b)(4), and (d) of the Bankruptcy Code (the "Objections to Claim"), and further asserted that, to the extent allowed, the Highland Claims should be equitably subordinated pursuant to section 510(c) of the Bankruptcy Code.

44. On December 11, 2018, Highland Capital filed *Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772] (the "Application") for approval of an administrative expense claim pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of \$3,554,224.29 (the "Administrative Claim"), for purportedly providing postpetition services to the Debtors in connection with the Sub Agreements (defined below) and the Universal/BVK Agreement (defined below), which Highland Capital contends were actual, necessary costs and expenses of preserving the estate.

45. On January 10, 2019, the Trustee timely filed his *Objection to Highland Capital Management, L.P.'s Application for Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)* [Case No. 18-30264, Docket No. 772].

46. On January 31, 2019, this Court entered its *Findings of Fact, Conclusions of Law, and Order Granting Final Approval of Disclosure Statement and Confirming the Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC, as Modified* (the "Confirmation Order") [Case No. 18-30264, Docket Nos. 829 & 830], which approves the *Third Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* (the "Plan") and is supplemented by the *Court's Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan* (the "Confirmation Opinion") [Case No. 18-30264, Docket No. 827]. The Confirmation Opinion is hereby incorporated by reference as if fully set forth herein.

47. On February 15, 2019 (the "Effective Date"), the Trustee filed the *Notice of February 15, 2019 Effective Date for the Third Amended Joint Plan for Acis Capital Management, LP and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 863]. On the Effective Date, Acis (as the Reorganized Debtors) became substituted for the Trustee in the above-referenced consolidated adversary cases pursuant to the Plan, which provides:

Upon the Effective Date, the Reorganized Debtor (a) shall automatically be substituted in place of the Chapter 11 Trustee as the party representing the Estate in respect of any pending lawsuit, motion or other pleading pending before the Bankruptcy Court or any other tribunal, and (b) is authorized to file a notice on the docket of each adversary proceeding or the Chapter 11 Cases regarding such substitution. The Reorganized Debtor shall have exclusive standing and authority to prosecute, settle or compromise Estate Claims for the benefit of the Estate in the manner set forth in this Plan.

Plan § 7.03.

48. On March 11, 2019, the Court entered its *Order Consolidating Adversary Case Nos. 18-03078 & 18-03212* [Adv. No. 18-03078, Docket No. 127; Adv. No. 18-03212, Docket No. 63], under which the Court ordered that Adversary Nos. 18-03078 and 18-03212 are

consolidated under Federal Rule of Civil Procedure 42(a), incorporated by Federal Rule of Bankruptcy Procedure 7042. The Court further directed the Clerk to caption the case *as Robin Phelan, Chapter 11 Trustee v. Highland Capital Management, L.P., et al.*, resulting in the designation of the Trustee, now Acis, as the Plaintiff(s) and Highland Capital and its affiliates as Defendants in this Adversary Proceeding.

49. On May 1, 2019, the Court entered its *Order Addressing DE #825 and Directing that: (A) Highland Capital Management, L.P.'s Administrative Expense Request [DE #722] Be Converted from a Contested Matter to Adversary Proceeding; and (B) Counts 27-31 Be Transferred in Adversary Proceeding No. 18-03078 into a New Adversary Proceeding* [Case No. 18-30264, Docket No. 919], whereby the Court converted Highland Capital's Application into a new adversary proceeding, and thereby initiating Adversary No. 19-03103.

50. On June 10, 2019, the Court held a status conference and directed: (i) that Adversary No. 19-03103 should be consolidated under this Adversary No. 18-03078; and (ii) that Acis will file an amended complaint, consolidating all claims, counterclaims, third-party claims against Highland Capital and its affiliates, as well as any objections to the Highland Capital Claims and Administrative Claim, by June 20, 2019.

## V. FACTUAL BACKGROUND

### A. **The Debtors' Business**

51. Dondero, Okada, and Terry formed Acis LP in 2011 as a registered investment advisor to raise money from third-party investors to invest in certain collateralized loan obligation funds (the "CLOs").<sup>6</sup> The CLOs are governed by certain indentures (the

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<sup>6</sup> The Acis CLOs include: (i) Acis CLO 2013-1 Ltd. ("CLO-1"), (ii) Acis CLO 2014-3 Ltd. ("CLO-3"), (iii) Acis CLO 2014-4 Ltd. ("CLO-4"), (iv) Acis CLO 2014-5 Ltd. ("CLO-5"), and (v) Acis CLO 2015-6 Ltd. ("CLO-6").

"Indentures").<sup>7</sup> Acis LP is the portfolio manager for the CLOs and generates revenue primarily through the management of the CLOs via certain portfolio management agreements ("PMAs").<sup>8</sup> See Opinion ¶¶ 22-28. While Dondero made and approved the higher-level financial strategies and decisions of Acis, Terry was responsible for the day-to-day management of Acis.

52. Acis LP's business as portfolio manager for the CLOs has been incredibly successful. Between 2011 and 2017, Acis LP distributed profits of \$11,037,445.00 to Dondero, \$4,598,935.00 to Terry, and \$2,759,361.00 to Okada, its partners. Further, on August 31, 2017, right before Highland Capital began its campaign to denude Acis LP and take over its business, Acis LP also boasted millions of dollars in investment assets and total shareholder equity of roughly \$3.4 million. Without question, Acis LP's business as portfolio manager for the CLOs and others has been very valuable and lucrative.

53. As is common with the numerous Highland Capital affiliates, Acis LP contracted out certain of its administrative functions and portfolio management responsibilities to Highland Capital pursuant to that certain *Sub-Advisory Agreement*, originally dated January 1, 2011 (as amended, the "Sub-Advisory Agreement") and that certain *Shared Services Agreement*, originally dated January 1, 2011 (as amended, the "Shared Services Agreement," and together

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<sup>7</sup> The Indentures include: (i) that certain Indenture, dated as of March 18, 2013, issued by CLO-1, as issuer, Acis CLO 2013-1 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-1 Indenture"); (ii) that certain Indenture, dated as of February 25, 2014, issued by CLO-3, as issuer, Acis CLO 2014-3 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-3 Indenture"); (iii) that certain Indenture, dated as of June 5, 2014, issued by CLO-4, as issuer, Acis CLO 2014-4 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-4 Indenture"); (iv) that certain Indenture, dated as of November 18, 2014, issued by CLO-5, as issuer, Acis CLO 2014-5 LLC, as co-issuer, and U.S. Bank, as trustee (the "CLO-5 Indenture"); and (v) that certain Indenture, dated as of April 16, 2015, issued by CLO-6, as issuer, Acis CLO 2015-6 LLC, as co-issuer and U.S. Bank, as trustee (the "CLO-6 Indenture").

<sup>8</sup> The PMAs include: (i) that certain Portfolio Management Agreement by and between Acis LP and CLO-1, dated March 18, 2013 (the "CLO-1 PMA"); (ii) that certain Portfolio Management Agreement by and between Acis LP and CLO-3, dated February 25, 2014 (the "CLO-3 PMA"); (iii) that certain Portfolio Management Agreement by and between Acis LP and CLO-4, dated June 5, 2014 (the "CLO-4 PMA"); (iv) that certain Portfolio Management Agreement by and between Acis LP and CLO-5, dated November 18, 2014 (the "CLO-5 PMA"); and (v) that certain Portfolio Management Agreement by and between Acis LP and CLO-6, dated April 16, 2015 (the "CLO-6 PMA").

with the "Sub Agreements"). The Sub-Advisory Agreement and Shared Services Agreement have each been amended multiple times.

54. As the Court explained in its Opinion:

Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called), which provides "back office" personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called), which provides "front office" personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements.

Opinion at 14 (footnotes omitted).

55. Prior to entry of the Orders for Relief, Dondero directed, either himself or through Highland Capital employees, all actions taken by Acis. *See* Opinion ¶ 30.

Mr. Dondero [the Chief Executive of Highland] testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) . . . Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington.

*Id.*

56. Highland Funding, formerly known as Acis Loan Funding, Ltd. ("ALF"),<sup>9</sup> holds the subordinated notes issued by the CLOs and receives the "very last cash flow from the CLOs." Opinion at pp. 12-13. "It, in certain ways, controls the CLO vehicle . . . [and] was essentially the equity owner in the CLO special purpose entities." *Id.* Until the ALF PMA Transfer in the Fall of

<sup>9</sup> On October 30, 2017, Acis Loan Funding, Ltd. changed its name to Highland CLO Funding, Ltd. The defined term "ALF" used herein denotes Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. before October 30, 2017.

2017 (described below), Acis LP had complete control of Highland Funding and its valuable subordinated note rights to further enhance its successful portfolio management business.

**B. Section 3.10(a) of the Limited Partnership Agreement**

57. In order to form Acis LP, Acis GP, the general partner, and limited partners The Dugaboy Investment Trust<sup>10</sup> (the "Trust"), Okada, and Terry entered into that certain *Amended and Restated Agreement of Limited Partnership of Acis Capital Management, L.P.* (the "LPA"), dated to be effective as of January 21, 2011.<sup>11</sup> The LPA is attached hereto as **Exhibit A**. The LPA is governed by Delaware Law. LPA § 6.11. At all relevant times herein, the officers of Acis GP are Dondero, as President, and Frank Waterhouse ("Waterhouse")<sup>12</sup>, as Treasurer. Further, at least between October 14, 2015, and December 19, 2017, Dondero was the sole member of Acis GP. *See* Case No. 18-30265, Docket No. 152.

58. Pursuant to the Sub Agreements, Highland Capital received compensation for providing services to Acis LP, but amounts of compensation were subject to certain terms of the LPA. Section 3.10 of the LPA directs compensation and reimbursement of the General Partner and contains subpart (a), which limits compensation and reimbursement of expenses payable to the General Partner and any Affiliate of the General Partner without proper consent:

Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest; provided, however, that the aggregate annual expenses of the Partnership, inclusive of such compensation, *may not exceed 20% of Revenues without the consent of all of the members of the Founding Partner Group.*

LPA § 3.10(a) (emphasis added).

<sup>10</sup> Dondero was the trustee and owned 100% of the Trust, and he was President of Acis GP.

<sup>11</sup> The partnership interests of Acis LP were as follows: Acis GP owned .1%; the Trust owned 59.9%; Okada owned 15%; and Terry owned 25%.

<sup>12</sup> Waterhouse is a partner in Highland Capital and serves as Highland Capital's Chief Financial Officer.

59. An Affiliate under the LPA is defined as:

[A]ny [entity] that directly or indirectly controls, is controlled by, or is under common control with the [entity] in question. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of [an entity], whether through ownership of voting Securities, by contract, or otherwise.

*Id.* § 2.01.

60. Highland Capital was at all times relevant to this Second Amended Complaint, an Affiliate of Acis GP and Acis LP. Further, Highland Capital was at all times relevant to this Second Amended Complaint, an insider of Acis GP and Acis LP.

**C. State Court Litigation and Arbitration**

61. In June 2016, Highland Capital advised Terry that he had been terminated.

62. In September 2016, Highland Capital sued Terry in the 162nd Judicial District Court of Dallas County, Texas (the "State Court") under a variety of legal theories and causes of action, including breach of fiduciary duty/self-dealing, disparagement, and breach of contract. Terry asserted his own claims against Highland Capital, as well as claims against the Debtors, Dondero, and others, and demanded arbitration. Opinion ¶ 8.

63. On September 28, 2016, the State Court stayed the litigation and ordered the parties to arbitrate. *Id.* The parties then participated in a ten-day arbitration proceeding before JAMS, styled as *Terry v. Highland*, JAMS Arbitration No. 1310022713.

**D. The Arbitration Award**

64. On October 20, 2017, Terry obtained an arbitration award (the "Arbitration Award") jointly and severally against the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. The Arbitration Award was based on theories of breach of contract and breach of fiduciary duties. The Arbitration Award is attached hereto as **Exhibit B**.

65. Under the Arbitration Award, the arbitration panel found that Terry's termination by Dondero/Highland Capital was without cause and that, among other things, Acis breached the LPA and breached fiduciary duties owed to Terry as Acis's limited partner. Importantly, the arbitration panel found that Highland Capital had been paid more than 20% of Revenues (as such term is understood under the LPA), without Terry's consent, in violation of Section 3.10(a) of the LPA:

It is undisputed that ACIS habitually paid more than 20% of Revenues to Highland for providing ACIS with overhead and administration. Respondents' evidence and arguments that Terry waived or consented to ACIS's payment of excess expenses is not persuasive. At most, Terry accepted his ACIS distributions without regard to the expenses paid to Highland. This is not consent contemplated by the ACIS LPA.

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The evidence establishes that Terry did not consent to ACIS payments of expenses in excess of 20% of Revenue and Terry has not waived his right to claim damages directly resulting from ACIS's and ACIS GP's breach of contract and breach of fiduciary duty. Clearly, ACIS and ACIS GP ignored Terry's contractual rights and ACIS GP as a general partner has a fiduciary duty not to benefit itself or another at the expense of its limited partner, as they ignore and breach the terms of the partnership agreement and diminish Terry's distributions.

Arbitration Award at pp. 15-16.

66. Additionally, in the analysis of Terry's damages, the arbitration panel stated:

The evidence establishes that ACIS and ACIS GP paid excess expenses to Highland during the years of 2013, 2014, 2015 and January through May 2016. These expenses paid exceeded the 20% of Revenues cap stated in Section 3.10(a) of the ACIS LPA. The payment of these excess expenses reduced Terry's ACIS partnership distributions during this period. Had excess expenses not been paid and only the contractually capped expenses had been paid, Terry would have received additional ACIS profits distributions of \$1,755,481.00 for his 25% partnership interest in ACIS.

Arbitration Award at 20.

67. Finally, in its findings and conclusions, the arbitration panel stated: "ACIS [LP] and ACIS GP paid Highland Capital expenses in excess of the contractual limit imposed by Section 3.10(a) of the ACIS LPA." Arbitration Award at 22, ¶ 7.

68. On December 18, 2017, the 44th Judicial District Court of Dallas County, Texas, entered a final judgment confirming the Arbitration Award. Opinion ¶ 10. The judgment was abstracted in the Official Public Records of Dallas County, Texas, as Instrument No. 201800008611, and writs of garnishment were issued and served pursuant to the judgment.

69. Pursuant to the Arbitration Award, Highland Capital wrongly received at least \$7,021,924.00 (collectively, the "Expense Overpayments") in excess of the clear cap under Section 3.10(a) of the LPA.<sup>13</sup> On information and belief, Highland Capital wrongfully received other overpayments of expenses for many years in excess of the express limitations contained in the LPA. The Expense Overpayments for which the Plaintiffs seek relief herein include all overpayments by Acis LP to Highland Capital in violation of the expense cap pursuant to the LPA whether or not addressed in the Arbitration Award. The Plaintiffs seek a declaratory judgment that such Expense Overpayments to Highland Capital and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable. The Plaintiffs also seek to recover from Highland Capital all such Expense Overpayments, which rightfully belong to Acis LP, as set forth below.

#### **E. Modifications to the Sub-Advisory Agreement and Shared Services Agreement**

70. The Sub-Advisory Agreement has been amended from time to time. The first iteration the Sub-Advisory Agreement by and between Acis LP and Highland Capital dated January 1, 2011 (the "Original Sub-Advisory Agreement") provided that Acis LP was to pay Highland Capital certain amounts for assisting Acis LP with the advisory services required by the PMAs. Under the Original Sub-Advisory Agreement, Acis LP paid Highland Capital 5 bps

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<sup>13</sup> If \$1,755,481.00 represents 25% of the amount overpaid to Highland Capital, then the total amount paid to Highland Capital in excess of the 20% cap would be at least \$7,021,924.00.

of the management fees received by Acis LP pursuant to the various PMAs for the sub-advisory services provided to Acis LP by Highland Capital.

71. On July 29, 2016, the Sub-Advisory Agreement was modified to increase the sub-advisory fee from 5 basis points to 20 basis points (the "Second Amended Sub-Advisory Agreement"). The effective date of the Second Amended Sub-Advisory Agreement was also back-dated to January 1, 2016. The fourfold increase in the sub-advisory fees via the Second Amended Sub-Advisory Agreement siphons off the funds of Acis LP and effectively gifts the additional amounts to Highland Capital. Highland Capital was already contractually obligated to provide the sub-advisory services for the lower 5 basis points fee and no legitimate justification for this fourfold increase was ever presented. Notably, Terry was unjustifiably terminated from Acis in June 2016, roughly one month before Acis and Highland Capital amended the Sub-Advisory Agreement to increase the fee paid fourfold. Further, Dondero consented to the increased sub-advisory fee on behalf of *both* Acis LP and Highland Capital. Dondero signed the Second Amended Sub-Advisory Agreement as president of Highland Capital's general partner, Strand Advisors, Inc., and as president of Acis GP, the general partner of Acis LP.<sup>14</sup>

72. The Shared Services Agreement has also been amended from time to time. The first iteration of the shared services agreement, the Shared Services Agreement by and between Acis LP and Highland Capital, dated January 1, 2011 (the "Original Shared Services Agreement"), provided that Acis LP was to pay Highland Capital certain amounts for providing Acis LP with the back-office services such as book keeping, compliance, human resources and marketing. Under the Original Shared Services Agreement, Acis LP reimbursed Highland Capital for amounts directly attributable to Acis LP for these services. The Shared Services

<sup>14</sup> Dondero also signed the Third Amended and Restated Sub-Advisory Agreement, entered into on March 17, 2017, on behalf of both parties (Acis LP and Highland Capital) to the agreement; this amendment retained the 20 bps fee put in place by the Second Amended Sub-Advisory Agreement.

Agreement was later amended to provide compensation to Highland Capital of 15 to 20 basis points, depending on the nature of the fund for which services were provided. Thus, shortly after Terry was terminated by Acis in June 2016, Acis was paying Highland Capital a total of 35 to 40 basis points for the sub-advisory and shared services it provided.

73. Due to the retroactive nature of the amendments to the Sub-Advisory Agreement and Shared Services Agreement, Highland, at all times relevant to this proceeding, held an antecedent debt related to Acis.

74. Finally, as the Court has already found and as described in more detail below, Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor and Highland Holdings) entered into numerous other transactions through the Fall of 2017 in an attempt to take control of Acis's assets and effectively take over Acis's business. The combination of all of these actions evidence a clear pattern of behavior by Highland Capital, Dondero, and various of their affiliates and insiders (including Highland Funding, Highland Advisor, Highland Management, and Highland Holdings)<sup>15</sup> to hinder, delay or defraud Terry as a creditor and appropriate the going-concern business of Acis LP for the Highlands. Opinion, Section 1.C. (pp. 16-23).

**F. Highland Capital's Mismanagement of the CLOs and the Trustee's Engagement of Brigade Capital Management, L.P.**

75. During the pendency of these Bankruptcy Cases, while acting as sub-advisor, Highland Capital grossly mismanaged the CLOs. Following the Trustee's appointment in these Bankruptcy Cases, in disregard of its duties under the Sub-Advisory Agreement, Highland

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<sup>15</sup> The Debtors were also under Highland Capital and Dondero's control at this time and were active participants in all of Highland Capital and Dondero's schemes to denude the Debtors and make them "judgment proof" as the Debtors' own counsel, Jamie Welton, later boasted. In fact, Highland Funding has admitted that the Debtors were "no more than shell entities" in pleadings recently filed with the Court. Highland Funding's *Motion to Dissolve Preliminary Injunction and Lift the Automatic Stay* at page 21, Docket # 639 in Case No. 18-30264.

Capital failed to purchase a single loan for the CLOs. Yet, at the same time, in an apparent tactical move to accumulate cash in the CLOs (prior to an attempted liquidation), Highland Capital ordered that the Trustee sell numerous loans. Indeed, during this time, Highland Capital's own analysis showed that 19.7% to 32.4% of available loans were eligible for consideration for purchase in the CLOs. Although the Trustee expressed his concerns to Highland Capital about the accumulation of cash in the CLOs and Highland Capital's failure to recommend purchases of eligible collateral in the CLOs, Highland Capital failed to make any change or correction in its sub-advisor role, in abrogation of its duties.

76. In July 2018, considering Highland Capital's mismanagement of the CLOs and the exorbitant amounts attempted to be charged to Acis for its services under the Sub Agreements, the Trustee solicited potential third parties to provide shared services and sub-advisory services to the Debtors. After contacting over 40 parties, the Trustee received bids from nine parties to perform the services provided by Highland Capital under the Sub Agreements. Through this process, the Trustee was able to locate Brigade Capital Management, LP ("Brigade") and Cortland Capital Markets Services LLC ("Cortland") to provide such services to the Debtors at a rate far less than that charged by Highland Capital. As set forth more fully in the *Emergency Motion to Approve Replacement Sub-Advisory and Shared Services Providers, Brigade Capital Management, LP and Cortland Capital Markets Services LLC* [Case No. 18-30264, Docket No. 448] (the "Brigade Motion"), Brigade agreed to sub-advise the CLOs for 15 basis points. As further described by the Brigade Motion, Cortland agreed to provide middle and back office CLO outsourcing (previously provided by Highland Capital under the

Shared Services Agreement) for \$30,000 per month, \$250-\$350 per trade, and a one-time fee of \$75,000. Cortland's fee equates to roughly 3 basis points per month.<sup>16</sup>

77. On August 1, 2018, the Court granted the Brigade Motion, and Brigade and Cortland began performing the services previously provided by Highland Capital under the Sub Agreements. *See* Case No. 18-30264, Docket No. 464. Notably, on the record at the hearing on July 6, 2018, Highland offered to provide the same services it was providing Acis for 17.5 basis points less than it previously charged, a tacit acknowledgement that Highland had grossly overcharged Acis. *See* Case No. 18-30264, Docket No. 369 at 243-44.

78. From approximately August 2, 2018 through December 11, 2018, Brigade directed the purchase of approximately \$300 million in conforming loans for the CLOs. *See* Case No. 18-30264, Docket No. 790 at 100-01 & 134.

**G. The Highlands' Fraudulent Scheme to Take Over Acis's Business and Dismantle Acis's Assets.**

79. After Terry received the Arbitration Award on October 20, 2017, the Highlands immediately began work to systematically transfer the assets of Acis LP to other Highlands. This was done to denude Acis LP of value and make the Debtors "judgment proof." This was also done to ensure that Acis LP's very valuable business as portfolio manager was taken over by other Highlands and remained under Highland Capital and Dondero's control.

80. Prior to the filing of the Bankruptcy Cases, the Highlands' scheme was accomplished through, *inter alia*, the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements (as each is defined

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<sup>16</sup> Thus, the Trustee was paying roughly 18 basis points, instead of the 35 to 40 basis points charged by Highland Capital starting shortly after Terry was terminated by Acis in June 2016, for the work previously performed by Highland Capital under the Sub Agreements. The definitive agreement between the Reorganized Debtors and Brigade removes Cortland and the Reorganized Debtors pay roughly 15 basis points to Brigade for essentially the same services previously provided by Highland Capital.

below), which all occurred in the three months between October 23 and December 19, 2017. Each of these transfers followed the same pattern: Highland Capital caused Acis LP to fraudulently convey valuable economic rights away from Acis LP to offshore (often newly created) Highland Capital affiliates that were not subject to Terry's Arbitration Award and judgment, thus, safely remaining under the control of Highland Capital and Dondero. Further, the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highlands or their representatives.

81. Reference to Acis LP's balance sheets right before and right after the Highlands began their campaign of fraud against Terry and Acis demonstrate just how effective their scheme was. On August 31, 2017—roughly 45 days before the Arbitration Award—Acis LP boasted \$15,441,551 in total assets (including nearly \$4 million in valuable portfolio management investments and the \$9.5 million note) as well as \$3,372,851 in total equity value.<sup>17</sup> After the Arbitration Award and the judgment enforcing it, Acis presented the affidavit of David Klos, Highland Capital's Controller, to the State Court in furtherance of Highland Capital's efforts to get a pathetically small bond for Terry's judgment. The Klos affidavit and attached balance sheet demonstrate that as of February 1, 2018 (the day after the Involuntary Petitions were filed) Acis LP had only \$2,855,050 in total assets, no investment assets or notes, and a paltry \$35,709 in total equity value.<sup>18</sup> Thus, the amount of value destruction and asset concealment caused by the Highlands' brazen fraud in just the few months immediately after the Arbitration Award is staggering.

82. Even the filing of the Bankruptcy Cases did not deter the Highlands from attempting to complete their goal of denuding Acis. During the Bankruptcy Cases, in disregard

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<sup>17</sup> The Balance Sheet as of August 31, 2017, is attached as Exhibit C.

<sup>18</sup> The Declaration of David Klos concerning Defendants' net worth, is attached as Exhibit D.

of the automatic stay, on multiple occasions, the Highlands directed the Trustee to effectuate optional redemptions, which would result in the liquidation of the CLOs and render Acis incapable of reorganizing and paying its creditors.

**1. *The ALF PMA Transfer and the ALF Share Transfer***

83. Prior to October 27, 2017, Acis LP—not ALF (or Highland Funding as it is currently named)—had authority to direct and effectuate an optional redemption and otherwise pervasively control ALF's assets. Acis LP had this authority pursuant to that certain Portfolio Services Agreement by and between Acis LP and ALF, dated August 10, 2015 (the "First ALF PMA") and that certain Portfolio Management Agreement by and between Acis LP and ALF, dated December 22, 2016 (the "Second ALF PMA"). A true and correct copy of the First ALF PMA is attached hereto as **Exhibit E**. A true and correct copy of the Second ALF PMA is attached hereto as **Exhibit F**.

84. The Second ALF PMA granted Acis LP, as the portfolio manager of ALF, extensive rights and discretion to control and manage ALF's assets, including its interests in the Acis CLOs. Section 5 of the Second ALF PMA set out Acis LP's authority, which included authority for and in the name of ALF to:

- (a) invest, directly or indirectly . . . in all types of securities and other financial instruments of United States and non-U.S. entities . . . including without limitation . . . notes representing tranches of debt ('CLO Notes') issued by a special purpose vehicle which issues notes backed by a pool of collateral consisting primarily of loans (which may be represented by a debt or equity security) (a 'CLO') . . . (each of such items, 'Financial Instruments'), (c) provide credit and market research and analysis in connection with the investments and ongoing management of [ALF] and direct the formulation of investment policies and strategies for [ALF] . . . ; (g) possess, transfer, mortgage, pledge or otherwise deal in, and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Financial Instruments and other property and funds held or owned by [ALF] . . . ; (n) cause [ALF] to engage in . . . agency, agency cross, related party principal transactions with affiliates of [Acis LP] . . . ; and (q) vote Financial Instruments, participate in arrangements with creditors, the

institution and settlement or compromise of suits and administrative proceedings and other like or similar matters.

Second ALF PMA § 5(a)-(q) (emphasis added).<sup>19</sup>

85. While ALF did not have authority to terminate the Second ALF PMA, Acis LP could terminate the Second ALF PMA without cause upon at least ninety (90) days' notice. *See* Second ALF PMA § 13(a)-(c). The Second ALF PMA provided that Acis LP could be removed as portfolio manager only "for cause." *See* ALF PMA § 14(a)-(e).

86. On October 27, 2017, just seven days after Terry's Arbitration Award, Acis LP ostensibly terminated its own portfolio management rights under the Second ALF PMA and transferred its authority and its valuable portfolio management rights—for no value—to Highland Advisor, an affiliate of Highland Capital.<sup>20</sup>

87. This transfer of Acis LP's portfolio management rights to Highland Advisor was accomplished by way of a new Portfolio Management Agreement entered into by ALF and Highland Advisor on October 27, 2017 (the "October 2017 PMA"), which empowered Highland Advisor with the same broad authority to direct the management of ALF as was previously held by Acis LP under the ALF PMA (the "ALF PMA Transfer"). *See* October 2017 PMA §§ 1 & 5(a)-(q). A true and correct copy of the October 2017 PMA is attached hereto as **Exhibit G**.

88. As the Court explained:

On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and

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<sup>19</sup> The Highlands contend that the reference to "control" in Section 6 of the Second ALF PMA negates the broad language of Section 5 of the Second ALF PMA. The Plaintiffs disagree.

<sup>20</sup> Although purportedly a Cayman Islands entity, Highland Funding's 2017 Annual Report and Audited Financials lists Highland Advisor's address as Highland Capital's address in Dallas, Texas. This same document also discloses that Highland Capital is the sub-advisor for Highland Advisor, and thus is the party actually in control of Highland Funding's assets. Finally, this same document shows that all of Highland Funding's subordinated notes issued by the CLOs (the primary assets managed by Highland Advisor) are physically held at and are pledged to NexBank, a Dallas bank that is an affiliate of Highland Capital.

entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF. This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.

Opinion at 19 (footnotes omitted).

89. Under the prior ALF PMA, Acis LP's consent to the termination of the ALF PMA was required in order to effectuate the ALF PMA Transfer. So, Dondero, on behalf of Acis LP, simply signed the October 2017 PMA, consenting and agreeing to its removal and replacement, and transferring all authority and management rights as portfolio manager of ALF to Highland Advisor under the October 2017 PMA. Acis received no consideration for this transfer.

90. Without this ALF PMA Transfer, which transferred Acis LP's valuable rights under the ALF PMA to Highland Advisor, Highland Funding could not have attempted to liquidate the CLOs, by directing optional redemptions, and further deplete Acis's assets.<sup>21</sup>

91. On October 24, 2017, a mere four days after the Arbitration Award was entered, Waterhouse, on behalf of Acis LP, and Grant Scott, for CLO Holdco Ltd., entered into that certain special resolution whereby Highland Funding, then known as ALF, acquired back Acis's equity interest in ALF (the "ALF Share Transfer"). A true and correct copy of the special resolution is attached hereto as **Exhibit H**. Pursuant the ALF Share Transfer, ALF paid Acis LP \$991,180.13 for all of its shares of ALF.

92. Thus, by virtue of the ALF PMA Transfer and the ALF Share Transfer, by October 31, 2017, Acis LP had given up all of its shares of ALF and all of its control of ALF.

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<sup>21</sup> After the ALF PMA Transfer, Highland Funding and Highland Advisor have issued at least three different optional redemption notices, in an attempt to terminate the PMAs and cut off the Debtors' primary source of cash. All three notices have been withdrawn and/or enjoined by this Court.

93. On November 15, 2017 – only days after the ALF Share Transfer and ALF PMA Transfer were completed – Highland Funding,<sup>22</sup> Highland Advisor and CLO Holdco, Ltd. (another Highland Capital affiliate) entered into a subscription agreement whereby Highland Funding completed a private placement of its equity (including, upon information and belief, the equity acquired in the ALF Share Transfer) to third-party investors. The Plaintiffs believe both the ALF PMA Transfer and the ALF Share Transfer were concocted by Highland Capital and Highland Funding to complete this private placement, which was of great value to Highland Funding (then known as Acis Loan Funding, Ltd.) and Highland Capital, but after the transfers, of no value to Acis.<sup>23</sup> Without the ALF PMA Transfer and the ALF Share Transfer, control of Highland Funding's assets, and the Highland Funding stock held by Acis, would be vested in an entity (Acis LP) that was subject to a looming judgment based on Terry's recently acquired Arbitration Award. That would compromise the Highlands' control of Highland Funding.

## 2. *The Note Transfer*

94. On November 3, 2017, Acis LP, Highland Capital, and Highland Management (a newly created, offshore Highland Capital affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). A true and correct copy of the Note Assignment and Transfer Agreement is attached hereto as **Exhibit I**. The Note Assignment and Transfer Agreement, among other things, transferred the

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<sup>22</sup> ALF had changed its name to Highland Funding at this point.

<sup>23</sup> Highland Funding's (then Acis Loan Funding Ltd.) board of director minutes from October 6, 2017, disclose that the private placement investment would bring \$150 million in new investment in Highland Funding and that they were "confident that they could develop further interest and ... bring the total capital to up to around \$325 million." The Arbitration Award was issued against Acis LP exactly two weeks later, throwing a huge monkey wrench in Highland Funding's plans to raise hundreds of millions of dollars for Highland Capital and its cronies. Testimony in the bankruptcy case as well as the subscription agreement demonstrate that numerous Highland Capital executives, as well as Highland Capital itself, received Highland Funding stock in connection with this private placement. Thus, they were highly motivated to close this transaction and also deprive the Acis LP of any value in this transaction.

\$9.5 million promissory note executed by Highland Capital and payable to Acis LP (the "Note") from Acis LP to Highland Management (the "Note Transfer"). As noted in the Opinion:

The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.

The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, Highland CLO Management Ltd. agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.

Opinion at 20.

95. Acis LP received no or insufficient consideration for the Note Transfer.

96. The Note Transfer was also of great benefit to Highland Capital because it transferred Highland Capital's liability under the Note away from Acis LP (and its legal woes with Terry) and allowed Highland Capital's liability under the Note, and any payments made thereunder, to stay well within the control of the Highlands. Just as importantly to Highland Capital and Dondero, and in furtherance to their ongoing feud with Terry, the Note Transfer took away the Note as an asset from which Terry could collect his judgment and allowed Highland Capital to argue (as repeatedly argued in the Bankruptcy Cases) that Terry got his judgment against the "wrong" entities and that Highland Capital has no liability related to Terry's claim.

97. Additionally, the Note Assignment and Transfer Agreement also purports to initiate the transfer of the PMAs between Acis and the CLOs to Highland Management.<sup>24</sup> Again,

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<sup>24</sup> Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer (and on the exact day of the ALF PMA Transfer). Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the PMAs in an international forum that would be difficult for Terry to reach, similar

Acis LP was to receive no consideration for transferring its most significant assets, the PMAs. As the Court is aware, Acis LP did not in fact transfer the PMAs pursuant to the Note Assignment and Transfer Agreement, but it was clearly the plan as outlined in that agreement and further evidence of Highland Capital's intent to steal Acis LP's valuable going-concern business.

### 3. *The Acis CLO 2017-7 Transfers*

98. On December 19, 2017, Acis LP and Highland Holdings (another newly created, offshore Highland Capital affiliate)<sup>25</sup> entered into that certain Agreement for Assignment and Transfer (the "2017-7 Assignment and Transfer Agreement"). A true and correct copy of the 2017-7 Assignment and Transfer Agreement is attached hereto as **Exhibit J**. The 2017-7 Assignment and Transfer Agreement focused on Acis CLO Management, LLC ("Acis CLO Management"), which is an entity that had been formed to enter into a portfolio management agreement with Acis CLO 2017-7, Ltd. ("CLO 2017-7"). CLO 2017-7 is the last CLO the Highlands formed. Acis CLO Management was indirectly owned by Acis LP, and Acis LP and Acis CLO Management had entered into a Master Sub-Advisory Agreement and a Staff and Services Agreement (the "2017-7 Agreements") that allowed Acis LP to manage the CLO 2017-7 portfolio and collect management fees for CLO 2017-7.

99. The 2017-7 Assignment and Transfer Agreement, among other things, transferred to Highland Holdings all of Acis LP's interest in the 2017-7 Agreements. The 2017-7 Assignment and Transfer Agreement also transferred to Highland Holdings all of Acis LP's

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to the transferees for the ALF PMA Transfer (Highland Advisor, a Cayman Island entity) the ALF Share Transfer (Highland Funding, a Guernsey entity) and the 2017-1 Assignment and Transfer Agreement (Highland Holdings, a Cayman Island entity). Thus, not only did Highland Capital and Dondero scheme to transfer Acis LP's assets away from it, but they also slyly chose entities in offshore jurisdictions that would be hard for a judgment creditor to reach.

<sup>25</sup> Like Highland Management, Highland Holdings was registered in the Cayman Islands on October 27, 2017.

equity interests in various entities that constituted Acis LP's indirect equity interests in Acis CLO Management (the "2017-7 Equity"). Thus, similar to the ALF PMA Transfer and the ALF Share Transfer that occurred roughly two months before, Acis LP was divested of both its ownership in Acis CLO Management and its control of Acis CLO Management (and related management fee stream) in one fell swoop on December 19, 2017, which is the day after Terry received his judgment based on the Arbitration Award. Also, importantly, the 2017-7 Assignment and Transfer Agreement rendered Acis non-compliant with relevant U.S. and European risk retention requirements.

100. Significantly, also on December 19, 2017, Highland Capital entered into an agreement with Highland Holdings that allowed Highland Capital to sub-advise and manage CLO 2017-7 and get paid the management fees that otherwise would have flowed to Acis LP. So, like the numerous transfers before it, Highland Capital effectuated the transfer of the 2017-7 Agreements and 2017-7 Equity to cut out Acis LP, while Highland Capital stayed in complete control of CLO 2017-7 and its stream of management fees.

101. As the Court noted in the Opinion:

On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP "risk retention structure" (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017).

In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7. In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.

Opinion at 20-21.

102. The purported consideration for the 2017-7 Equity transferred in the 2017-7 Assignment and Transfer Agreement was the forgiveness of a \$2,804,870 payable allegedly owed by Acis LP to Highland Capital and transferred to Highland Funding sometime before the agreement was entered. According to Acis LP's financial statements, this payable to Highland Capital entirely comprises amounts due under the Sub-Advisory Agreement and Shared Services Agreement. Thus, the "consideration" provided in exchange for the 2017-7 Assignment and Transfer Agreement would suffer from the same defects as outlined throughout this Second Amended Complaint related to the Sub Agreements; i.e., Acis only "owed" Highland Capital these amounts because Highland Capital grossly overcharged Acis. Finally, like the Note Transfer, the 2017-7 Equity transfer allowed Highland Capital to effectively collect all of the \$2.8 million owed by Acis LP (assuming it is even a valid debt) through the use of an offshore intermediary.

103. Further, the 2017-7 Assignment and Transfer Agreement itself discloses that no consideration was provided for the transfer of the 2017-7 Agreements. Rather, the justification for the transfer of the 2017-7 Agreements is Highland Capital's self-serving refusal to continue to do business with Acis LP after the Arbitration Award and related judgment.

**4. *Thwarted Attempts to Transfer the Universal/BVK Agreement and Force an Optional Redemption***

104. Highland Capital and the other Highlands did not stop with the transfers in the Fall of 2017. Immediately after the Involuntary Petitions were filed on January 30, 2018, Highland Capital conspired with Acis LP's own bankruptcy counsel in an effort to appropriate Acis LP's valuable sub-advisor rights under the Agreement for the Outsourcing of Asset Management (the "Universal/BVK Agreement") between Acis LP and Universal–Investment-

Luxembourg S.A. ("Universal"), which provided sub-advisory services for a German fund called BayVK R2 Lux S.A., SICAV-FIS ("BVK").<sup>26</sup> Like the many transfers before it, Highland Capital's plan (as clearly outlined in an email from Isaac Leventon to Mike Warner) was "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."<sup>27</sup> Immediately after Highland Capital sought (and presumably received) advice from Acis's own counsel, Highland Capital reached out to Universal and BVK to solicit their participation in Highland Capital's scheme. In fact, BVK acknowledged in its very first email with Highland Capital after Acis LP's bankruptcy filing that Highland Capital's plan was to replace Acis LP.

105. Over the several weeks leading up to this Court's ruling on the Orders for Relief, Highland Capital and Universal/BVK did, in fact, frequently discuss replacing Acis LP, conducted extensive due diligence in order to replace Acis LP and even negotiated and prepared a new asset management agreement between Highland Capital and Universal that was to take effect once Acis LP and its bankruptcy were out of the way. But even after the Orders for Relief were entered and the Debtors were under the control of a trustee, the communications did not stop. Among other things, Highland Capital volunteered to pay Universal and BVK's legal costs incurred in terminating Acis LP and making Highland Capital the new sub-advisor for Universal and BVK, Highland Capital repeatedly criticized the Trustee for his management of Acis, and Highland Capital repeatedly expressed its desire to negotiate with Universal and to "onboard" Highland Capital as Universal's new sub-advisor. And even after Highland Capital was fired by the Trustee as Acis LP's sub-advisor and replaced with Brigade and Cortland, the

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<sup>26</sup> The Court held a lengthy hearing on the Universal/BVK Agreement and related lift stay issues on September 11, 2018.

<sup>27</sup> Email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer), attached as Exhibit K.

communications did not stop. Highland Capital's scheme to transfer the Universal/BVK Agreement to Highland Capital or its affiliate was apparently only prevented by this Court imposing 11 U.S.C. § 363, effectively taking away Acis LP's right to operate outside the ordinary course of business without Court authority under 11 U.S.C. § 303(f) and then later not immediately lifting the automatic stay as to the Universal/BVK Agreement.

106. Finally, Highland Advisor and its sub-manager Highland Capital, used its newly acquired management rights (by way of the ALF PMA Transfer) to attempt to destroy the Debtor, as further described below.

### **5. *The First Optional Redemption Notices***

107. On April 30, 2018, without requesting relief from the automatic stay, Highland Funding sent five notices purportedly requesting optional redemption pursuant to Section 9.2 of each of the Indentures (the "First Optional Redemption Notices").<sup>28</sup> True and correct copies of the First Optional Redemption Notices are attached hereto as **Exhibit L**.

108. The First Optional Redemption Notices directed Acis LP to effectuate an Optional Redemption (as defined under each Indenture). Under Section 9.2 of each Indenture, upon the receipt of a notice of redemption, Acis, in its discretion, is to direct the sale of the Collateral Obligations (as defined by each Indenture) and other Assets. *See* CLO-1 Indenture, § 9.2; CLO-3 Indenture, § 9.2(b); CLO-4 Indenture, § 9.2; CLO-5 Indenture, § 9.2; & CLO-6 Indenture, § 9.2. In the Indentures, "Assets" is defined to include the PMAs. *See* CLO-1 Indenture, p. 8; CLO-3 Indenture, p. 10; CLO-4 Indenture, p. 10; CLO-5 Indenture, p. 10; & CLO-6 Indenture p. 10. Consequently, an Optional Redemption directs Acis LP to liquidate assets of the CLOs over which Acis has certain property rights, including, effectively, the PMAs.

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<sup>28</sup> Nexpoint Strategic Opportunities Fund (f/k/a NexPoint Credit Strategies Fund) ("Nexpoint") and Drexel Limited ("Drexel") joined in one of the Optional Redemption Notices. Like HCLOF, Nexpoint is an affiliate of Highland.

109. The Trustee analyzed the First Optional Redemption Notices and determined there were various defects which rendered them ineffective. Therefore, on May 22, 2018, the Trustee sent his responses to the five First Optional Redemption Notices (the "Redemption Responses"). True and correct copies of the Redemption Responses are attached hereto as **Exhibit M**.

**6. *The Temporary Restraining Order Against the Highlands***

110. On May 30, 2018, Highland Capital and Highland Funding initiated this Adversary Proceeding and alleged, among other things, that the Trustee breached the PMAs by failing to effectuate an Optional Redemption pursuant to the First Optional Redemption Notices.

111. The next day, on May 31, 2018, upon the request of the Trustee, the Court held a status conference in the Bankruptcy Cases, and the Trustee explained that, almost immediately after his appointment, he began exploring plan options regarding a potential transaction that would transfer rights under the PMAs, the Sub-Advisory Agreement, the Shared Services Agreement, and the subordinated notes, with respect to CLO-3, CLO-4, CLO-5, and CLO-6, with the goal of maximizing value for all parties. The Trustee informed the Court that he was in the process of negotiating a transaction with a party that would potentially provide enough value to pay all parties, including potentially all of Acis's creditors in full.

112. On May 31, 2018, at the conclusion of the status conference, the Court, *sua sponte*, issued a temporary restraining order, which prevented all parties from taking any action in furtherance of the Optional Redemption for fourteen (14) days.

113. On June 6, 2018 the Court entered its *Temporary Restraining Order* (the "TRO"), whereby the Restrained Parties (as defined in the TRO) were enjoined until 12:01 a.m. on June 15, 2018, from:

- a) proceeding with, effectuating, or otherwise taking any action in furtherance of the Optional Redemption, call, or other liquidation of the Acis CLOs; and
- b) sending, mailing, or otherwise distributing any notice to the holders of the Acis CLOs in connection with the Optional Redemption, call, or other liquidation of the Acis CLOs.

114. On June 11, 2018, the Trustee filed his *Motion to Extend the Temporary Restraining Order* (the "Motion to Extend the TRO"), in which the Trustee sought to extend the TRO for an additional 14 days. *See* Docket No. 275.

115. Also on June 11, 2018, Highland Funding filed its *Memorandum of Law in Opposition to the Continuance of the Temporary Restraining Order* (the "Brief in Opposition to Extending the TRO"). *See* Case No. 18-3264, Docket. No. 271. This pleading did not mention that Highland Capital apparently violated the TRO by initiating approximately \$23 million of sales of CLO assets pursuant to the Optional Redemption after the Court issued its *sua sponte* TRO on May 31.

#### **7. *The Second Optional Redemption Notices***

116. On June 13, 2018, the day before the hearing on the Motion to Extend the TRO, Highland Funding advised the Trustee that Highland Funding would withdraw the First Optional Redemption Notices. Highland Funding's correspondence with the Trustee indicating its intent to withdraw the First Optional Redemption Notices is attached hereto as **Exhibit N** and incorporated herein for all purposes. Thereafter, the Trustee advised the Court that Highland Funding was withdrawing the First Optional Redemption Notices, and the Trustee therefore did not intend to go forward with the Motion to Extend the TRO on June 14.

117. On June 14, 2018, counsel for Highland Funding advised the Court that Highland Funding had withdrawn the First Optional Redemption Notices. Counsel for Highland Funding

further advised the Court that the First Optional Redemption Notices were withdrawn to bring "some sanity to this process":

That was done obviously for multiple reasons. My client doesn't believe that this is the appropriate time to be effectuating such a redemption for its own economic reasons, setting aside the complications it's obviously caused for others in this room. But needless to say, that, too, is an effort to try to bring, as I believe the Court has requested, and others have, some sanity to this process.<sup>29</sup>

118. On June 15, 2018, at 12:01 a.m., the TRO expired.

119. Later on June 15, 2018, despite the fact that Highland Funding had just withdrawn the First Optional Redemption Notices, had advised the Court of the same, and the Trustee and the Court acted in reliance on same, (again, without requesting relief from the automatic stay) Highland Funding gave notice to the Trustee that it was again requesting an Optional Redemption pursuant to the Section 9.2 of each of the Indentures (the "Second Optional Redemption Notices," and together with the First Optional Redemption Notices, the "Optional Redemption Notices"). The Second Optional Redemption Notices are attached hereto as **Exhibit Q** and are incorporated herein for all purposes.

120. By the Second Optional Redemption Notices, Highland Funding directed the Issuers:

to effect an Optional Redemption of all Secured Notes and the Subordinated Notes in full on July 30, 2018 for the express purpose of placement of a portion of the portfolio of assets held by the Co-Issuers into a warehouse arrangement or a total return swap or other derivative arrangement with Highland Capital Management, L.P. acting as the Sub-Advisor pursuant to a Sub-Advisory Agreement.

121. On June 20, 2018, Highland Capital presented to the Trustee hundreds of millions of dollars of "proposed trades" pursuant to this second Optional Redemption. In its correspondence to the Trustee regarding such proposed trades, Highland Capital further stated:

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<sup>29</sup> See Docket No. 298 at 7, ll. 16-22 (June 14, 2018 Hr'g Tr.).

**In order to effectuate the Transaction and obtain best execution, Highland requests your consent by no later than 2pm tomorrow, Thursday June 21, 2018 (the "Deadline").** The Acis Accounts may incur losses as a result of your failure to respond by the Deadline.

**Highland believes it has an independent fiduciary obligation to the CLOs. If you instruct Highland not to proceed to undertake the Optional Redemption, Highland reserves its rights to seek appropriate protection and redress at law or in equity.**<sup>30</sup>

#### H. Preferential Transfers Made within One Year of the Petition Date

122. Acis's Statement of Financial Affairs [ Case No. 18-30264, Docket No. 165] (the "SOFA")<sup>31</sup> and its general ledger disclose more than two dozen payments totaling \$16,113,790.14 made to Highland Capital within one year of the Petition Date based on four categories (the "Prepetition Payments"):

- (i) Contractual Payments: \$5,011,836.72
- (ii) Services: \$7,672,145.25<sup>32</sup>
- (iii) Unsecured Loan Repayments Including Interest: \$3,311,497.65
- (iv) Expense Reimbursement: \$118,311.32

123. The Prepetition Payments were made for the benefit of Highland Capital for or on account of an antecedent debt owed by the Debtors before the Prepetition Payments were made. Acis was insolvent at all times when the Prepetition Payments were made. Based on Terry's pending—or already decided—claims, as well as Highland Capital's absolute operational and financial control of Acis, Highland Capital was aware that Acis was insolvent or reasonably should have been aware Acis was insolvent at all times when the Prepetition Payments were made. The Prepetition Payments were made within one year of the Petition Date. At the time the

<sup>30</sup> Emphasis in original email correspondence.

<sup>31</sup> The SOFA is sworn under penalty of perjury and signed by Issac Leventon, a Highland employee and associate general counsel.

<sup>32</sup> The Statement of Financial Affairs, filed in the bankruptcy cases by Acis while under Highland Capital control, fails to list an additional \$1,868,203.44 in transfers to Highland Capital for "Services" that were made shortly before the Petition Date.

Prepetition Payments were made Highland Capital was an insider of the Debtors. The Prepetition Payments enabled Highland Capital to receive more than Highland Capital would have received if the cases were a case under chapter 7 of the Bankruptcy Code and if the Prepetition Payments had not been made. Highland Capital received the Prepetition Payments. *See Williams v. Mckesson Corp. (In re Quality Infusion Care, Inc.)*, Nos. 10-36675, 13-3056, 2013 Bankr. LEXIS 5044 (Bankr. S.D. Tex. Nov. 25, 2013) (citing *Palmer Clay Prods. Co. v. Brown*, 297 U.S. 227, 229 (1936) and stating the 547(b)(5) is to be analyzed as of the Petition Date).

124. Further, to the extent that the Acis LP payables that served as the consideration for the Note Transfer and the 2017-7 Equity transfer were valid, these transfers would also constitute preferential payments to Highland Capital, Highland Management and Highland Holdings. The SOFA discloses that Highland Management is an "affiliate" of the Debtors and the Note Transfer is included on the list of "payments, distributions, withdrawals credited, or given to insiders" within one year before filing the Bankruptcy Cases. *See* SOFA p. 12.

## VI. CAUSES OF ACTION<sup>33</sup>

### ***Count 1: Declaratory Judgment that Expense Overpayments to Highland Capital Were Ultra Vires in Violation of the LPA [Against Highland Capital]***

125. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

126. Under Delaware law, *ultra vires* corporate acts are either void or voidable. *See Klaassen v. Allegro Dev. Corp.*, C.A. No. 8626-VCL, 2013 Del. Ch. LEXIS 247, at \*48-50 (Oct. 11, 2013); *see also Stephen A. Solomon v. Armstrong*, 747 A.2d 1098, 1114 n.45 (1999) (explaining the difference between void and voidable acts). Delaware courts apply the doctrine

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<sup>33</sup> All causes of action asserted herein are also asserted as counterclaims to the Highland Capital Claims pursuant to section 16.069 of the Texas Civil Practice & Remedies Code and other applicable law.

of *ultra vires* to partnerships by analogy. See, e.g., *In re Mesa Ltd. P'ship Preferred Unitholders Litig.*, Civil Action No. 12,243, 1991 Del. Ch. LEXIS 214, at \*20 (Dec. 10, 1991).

127. Highland Capital invoiced Acis for, and received payments for, at least \$7,021,924.00 in excess of 20% of Revenues, in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA.

128. Such Expense Overpayments, and any agreements supporting such Expense Overpayments, were economically irrational, not in the interest of Acis LP, and are therefore void; however, if not void, such actions are voidable because they were done without the consent or ratification of all members of the Founding Partner Group. The payments to Highland Capital of the Expense Overpayments in the amount of at least \$7,021,924.00 and any agreements supporting such overpayments were unauthorized or *ultra vires* acts of the partnership in violation of the LPA, and are therefore void or voidable.

***Count 2: Turnover of Property of the Estate under 11 U.S.C. § 542(a)  
for Unauthorized Overpayments  
[Against Highland Capital]***

129. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

130. Under section 542(a) of the Bankruptcy Code, "an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 . . . shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

131. Under section 541(a) of the Bankruptcy Code, property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a). Further, the "estate is comprised of [such] property, wherever located and by whomever held." *Id.*

132. Highland Capital wrongfully received Expense Overpayments of at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA.

133. The property, or value of such property, from the overpayment of funds wrongfully transferred to Highland Capital totaling at least \$7,021,924.00, in Highland Capital's possession, custody, or control is property of the estate, and the value of such property is not of inconsequential value or benefit to the estate.

134. Pursuant to section 542(a) of the Bankruptcy Code, Highland Capital must deliver to the Trustee the property or value of such property, totaling at least \$7,021,924.00, wrongfully transferred to Highland Capital.

135. Therefore, the Plaintiffs, now vested with all claims of the Trustee, seek turnover of the funds, totaling at least \$7,021,924.00, transferred to Highland Capital, to the extent allowed pursuant to section 542 of the Bankruptcy Code.

***Count 3: Money Had and Received for Overcharges and Unauthorized Overpayments  
[Against Highland Capital]***

136. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

137. "An action for money had and received arises when the defendant obtains money which in equity and good conscience belongs to the plaintiff. This action . . . looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.—El Paso 1997, no pet.) (internal citations omitted).

138. Highland Capital invoiced Acis for, and received Expense Overpayments for, at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, an Affiliate of Acis GP, accepted such funds in violation of Section 3.10(a) of the LPA. Highland

Capital was therefore unjustly enriched in the amount of the Expense Overpayments of at least \$7,021,924.00.

139. Highland Capital invoiced Acis and accepted such Expense Overpayments from Acis despite Highland Capital's knowledge of the LPA. This money rightfully belongs to Acis, and the overpayment creates a debt in favor of Acis. Therefore, the Plaintiffs are entitled to damages on behalf of Acis in the amount of at least \$7,021,924.00. In addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 4: Conversion for Unauthorized Overpayments  
[Against Highland Capital]***

140. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

141. "Conversion is defined as the wrongful exercise of dominion and control over another's property in denial of or inconsistent with his rights." *Green Int'l v. Solis*, 951 S.W.2d 384, 391 (Tex. 1997).

142. Highland Capital wrongfully exercised dominion and control over at least \$7,021,924.00 in excess of 20% of Revenues in violation of the LPA. Highland Capital, through the common control of Dondero, was aware that it was prohibited from receiving payment in excess of 20% of Revenues without the consent of all members of the Founding Partner Group. Highland Capital also had actual notice of the Arbitration Award through Dondero (who was represented at the arbitration proceeding) that Highland Capital was wrongfully in possession of such money. Despite Highland Capital's actual knowledge that the money does not rightfully belong to Highland Capital, Highland Capital continues to improperly retain the overpaid funds. Therefore, the Plaintiffs are entitled to damages in the amount of at least \$7,021,924.00. In

addition, Highland Capital charged Acis more than a market rate under the Second Amended Sub-Advisory Agreement and the Third Amended Shared Services Agreement and is liable to Acis in the amount of these overcharges.

***Count 5: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A) related to the Sub-Advisory Agreement [Against Highland Capital]***

143. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

144. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

145. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments

thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.

- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) the transfer/obligation incurred was to an insider.

146. Therefore, such modifications to the Sub-Advisory Agreements and payments to Highland Capital pursuant to such modifications should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 6: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) related to the Sub-Advisory Agreement [Against Highland Capital]***

147. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

148. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

149. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement, and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement because such modifications and payments were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The modifications to the Sub-Advisory Agreement were made shortly after Terry's termination and just prior to litigation with Terry;
- (ii) The modifications to the Sub-Advisory Agreement—entered into by Dondero on behalf of Acis and Highland Capital—and payments thereunder were made with the actual intent to divert assets to and for the benefit of Highland Capital, in fraud upon Acis's creditors, namely Terry.
- (iii) Acis was or became insolvent as a result of the modifications to the Sub-Advisory Agreement and payments thereunder;
- (iv) The modifications to the Sub-Advisory Agreement and payments thereunder occurred both before and after substantial debts were incurred by Acis;
- (v) The consideration received by Acis for the modifications to the Sub-Advisory Agreement and payments thereunder were not reasonably equivalent in value; and
- (vi) The transfer/obligation incurred was to an insider.

150. Therefore, Acis's creditors have the right to avoid the Sub-Advisory Agreement and payments thereunder under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs, now vested with all claims of the Trustee, can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 7: Constructive Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(B) related to the Sub-Advisory Agreement [Against Highland Capital]***

151. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

152. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

153. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder;
- (ii) was or became insolvent as the result of the modifications to the Sub-Advisory Agreement and payments made thereunder; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

154. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B).

***Count 8: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) related to the Sub-Advisory Agreement  
[Against Highland Capital]***

155. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

156. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

157. As described above, Acis LP did not receive reasonably equivalent value in exchange for the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, and creditors at the time of such modifications and payments could have avoided such modifications and payments under section 24.005(a)(2) of the Texas Business and Commerce Code.

158. At the time of the modifications to the Sub-Advisory Agreement and payments made thereunder to Highland Capital, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

159. Moreover, as described above, Acis was insolvent or became insolvent by the modifications to the Sub-Advisory Agreement and payments made thereunder.

160. Therefore, the modifications to the Sub-Advisory Agreement made in the Second Amended Sub-Advisory Agreement and the Third Amended Sub-Advisory Agreement, any obligations incurred by Acis in connection with these modifications to the Sub-Advisory Agreement and any payments made (including increase in payments made) by Acis to Highland Capital in connection with these modifications to the Sub-Advisory Agreement are avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 9: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

161. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

162. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or

defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

163. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP;
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;
- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

164. Therefore, the ALF PMA Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 10: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

165. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

166. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

167. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF PMA Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF PMA Transfer was made just seven days after Terry's Arbitration Award against Acis;
- (ii) The ALF PMA Transfer was made with the actual intent to divert Acis LP's contractual rights under the ALF PMA to and for the benefit of Highland Advisor, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF PMA Transfer or became insolvent as a result of the ALF PMA Transfer;
- (iv) The ALF PMA Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF PMA Transfer;

- (vi) The transfer was made to an insider (Highland Advisor) and for the benefit of insiders (Highland Funding and Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

168. Therefore, Acis's creditors have the right to avoid the ALF PMA Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 11: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

169. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

170. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

171. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF PMA Transfer;
- (ii) was insolvent on the date the ALF PMA Transfer was made or became insolvent as the result of the ALF PMA Transfer;

- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

172. Therefore, ALF PMA Transfer is avoidable under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 12: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF PMA Transfer  
[Against Highland Capital, Highland Funding, and Highland Advisor]***

173. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

174. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the

Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

175. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF PMA Transfer, and creditors at the time of the ALF PMA Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

176. At the time of the ALF PMA Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

177. Moreover, as described above, Acis was insolvent or was rendered insolvent by the ALF PMA Transfer.

178. The ALF PMA Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 13: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the ALF Share Transfer  
[Against Highland Capital and Highland Funding]***

179. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

180. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

181. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

182. Therefore, the ALF Share Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 14: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the ALF Share Transfer [Against Highland Capital and Highland Funding]***

183. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

184. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

185. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the ALF Share Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The ALF Share Transfer was made just four days after Terry's Arbitration Award against Acis;
- (ii) The ALF Share Transfer was made with the actual intent to divert Acis LP's interest and control in ALF to and for the benefit of Highland Funding, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the ALF Share Transfer or became insolvent as a result of the ALF Share Transfer;
- (iv) The ALF Share Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the ALF Share Transfer;
- (vi) The transfer was made to an insider (Highland Funding) and for the benefit of an insider (Highland Capital); and

- (vii) Highland Capital (as sub-advisor to Highland Advisor) retained effective possession and control of the property transferred after the transfer.

186. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 15: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the ALF Share Transfer  
[Against Highland Capital and Highland Funding]***

187. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

188. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

189. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the ALF Share Transfer;
- (ii) was insolvent on the date the ALF Share Transfer was made or became insolvent as the result of the ALF Share Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

190. Therefore, ALF Share Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 16: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the ALF Share Transfer  
[Against Highland Capital and Highland Funding]***

191. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

192. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

193. As described above, Acis LP did not receive reasonably equivalent value in exchange for the ALF Share Transfer, and creditors at the time of the ALF Share Transfer could

have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

194. At the time of the ALF Share Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

195. Moreover, as described above, Acis was insolvent or rendered insolvent by the ALF Share Transfer.

196. The ALF Share Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 17: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the Note Transfer  
[Against Highland Capital and Highland Management]***

197. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

198. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

199. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;

- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

200. Therefore, the Note Transfer should be avoided to the extent avoidable under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 18: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1)  
for the Note Transfer  
[Against Highland Capital and Highland Management]***

201. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

202. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

203. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the Note Transfer because such transfer was made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The Note Transfer was made shortly after Terry's Arbitration Award against Acis;
- (ii) The Note Transfer was made with the actual intent to divert the \$9.5 million promissory note by Highland Capital in favor of Acis LP to and for the benefit of Highland Management, in fraud upon Acis LP's creditors, namely Terry.
- (iii) Acis LP was insolvent at the time of the Note Transfer or became insolvent as a result of the Note Transfer;
- (iv) The Note Transfer occurred both before and after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the Note Transfer;
- (vi) The transfer was made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

204. Therefore, Acis's creditors have the right to avoid the ALF Share Transfer under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code..

*Count 19: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the Note Transfer  
[Against Highland Capital and Highland Management]*

205. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

206. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation; (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

207. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the Note Transfer;
- (ii) was insolvent on the date the Note Transfer was made or became insolvent as the result of the Note Transfer;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and
- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

208. Therefore, Note Transfer is avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

*Count 20: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the Note Transfer [Against Highland Capital and Highland Management]*

209. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

210. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

211. As described above, Acis LP did not receive reasonably equivalent value in exchange for the Note Transfer, and creditors at the time of the Note Transfer could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

212. At the time of the Note Transfer, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they

became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

213. Moreover, as described above, Acis was insolvent or rendered insolvent by the Note Transfer.

214. The Note Transfer is therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 21: Actual Fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A)  
for the 2017-7 Equity and 2017-7 Agreement Transfers  
[Against Highland Capital and Highland Holdings]***

215. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

216. Section 548(a)(1)(A) of the Bankruptcy Code provides that a trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, if the debtor made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.

217. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7

Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;

- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Holdings) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfer.

218. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity should be avoided under section 548(a)(1)(A) of the Bankruptcy Code.

***Count 22: Actual Fraudulent Transfer under Tex. Bus. & Com. Code § 24.005(a)(1) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]***

219. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

220. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(1) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation with an actual intent to hinder, delay or defraud any creditor of the debtor. Pursuant to section 544 of the Bankruptcy

Code, the Trustee may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(1).

221. The Plaintiffs, now vested with all claims of the Trustee, seek to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity because such transfers were made with an actual intent to hinder, delay, or defraud Terry, a creditor of Acis, demonstrated by, among other things, that:

- (i) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made shortly after Terry's Arbitration Award against Acis and immediately after Terry's judgment against Acis;
- (ii) The transfers of the 2017-7 Agreements and the 2017-7 Equity were made with the actual intent to divert the 2017-7 Agreements and the 2017-7 Equity from Acis LP to Highland Holdings, in fraud upon Acis LP's creditors, namely Terry;
- (iii) Acis LP was insolvent at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity or became insolvent as a result of the transfers;
- (iv) The transfers of the 2017-7 Agreements and the 2017-7 Equity occurred shortly after substantial debts were incurred by Acis LP; and
- (v) Acis LP received less than a reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (vi) The transfers were made to an insider (Highland Management) and for the benefit of an insider (Highland Capital); and
- (vii) Highland Capital retained effective possession and control of the property transferred after the transfers.

222. Therefore, Acis's creditors have the right to avoid the transfers of the 2017-7 Agreements and the 2017-7 Equity under section 24.005(a)(1) of the Texas Business and Commerce Code, and the Plaintiffs can seek to enforce that right under section 544 of the Bankruptcy Code.

***Count 23: Constructive Fraudulent Transfers under 11 U.S.C. § 548(a)(1)(B)  
for the 2017-7 Equity and 2017-7 Agreement Transfers  
[Against Highland Capital and Highland Holdings]***

223. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

224. Section 548(a)(1)(B) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property, or any obligation incurred by the debtor, if the debtor (i) received less than reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was insolvent on the date the transfer was made or the obligation was incurred, or became insolvent as the result of the transfer or obligation: (B) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; or (C) intended to incur, or believed the debtor would incur, debts that would be beyond the debtors' ability to pay such debts.

225. As described above, among other things, Acis LP:

- (i) received less than reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity;
- (ii) was insolvent on the date the transfers of the 2017-7 Agreements and the 2017-7 Equity were made or became insolvent as the result of the transfers;
- (iii) was engaged in business or a transaction, or was about to engage in business or a transaction for which any remaining property was unreasonably small capital; and

- (iii) intended to incur, or believed Acis would incur, debts that would be beyond Acis's ability to pay such debts.

226. Therefore, the transfers of the 2017-7 Agreements and the 2017-7 Equity are avoidable by the Plaintiffs, now vested with all claims of the Trustee, under section 548(a)(1)(B) of the Bankruptcy Code.

***Count 24: Constructive Fraudulent Transfer under Tex. Bus. & Com. Code §§ 24.005(a)(2) and 24.006(a) for the 2017-7 Equity and 2017-7 Agreement Transfers [Against Highland Capital and Highland Holdings]***

227. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

228. Section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers or obligations that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.005(a)(2) provides that a current or future creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) (A) was engaged or about to engage in a business or transaction for which the remaining assets were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed, that the debtor would incur debts beyond the debtor's ability to pay as they became due. Similarly, Texas Business and Commerce Code section 24.006(a) provides that a current creditor may avoid a transfer if the debtor made the transfer or incurred the obligation (i) without receiving reasonably equivalent value in exchange for the transfer or obligation; and (ii) the debtor was insolvent or rendered insolvent by the transfer or obligation sought to be avoided. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis, or obligations incurred by Acis, pursuant to Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

229. As described above, Acis LP did not receive reasonably equivalent value in exchange for the transfers of the 2017-7 Agreements and the 2017-7 Equity, and creditors at the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity could have avoided such transfer under section 24.005(a)(2) of the Texas Business and Commerce Code.

230. At the time of the transfers of the 2017-7 Agreements and the 2017-7 Equity, Acis intended to incur, or believed or reasonably should have believed that Acis would incur, debts beyond its ability to pay as they became due, and/or was engaged, or was about to engage in a business or transaction for which the remaining assets of Acis were unreasonably small in relation to such business or transaction.

231. Moreover, as described above, Acis was insolvent or rendered insolvent by the transfers of the 2017-7 Agreements and the 2017-7 Equity.

232. The transfers of the 2017-7 Agreements and the 2017-7 Equity are therefore avoidable under Texas Business and Commerce Code sections 24.005(a)(2) and 24.006(a).

***Count 25: Preferential Transfers to Highland Capital, Highland Holdings and Highland Management under 11 U.S.C. § 547(b) and Texas Business and Commerce Code § 24.006(b) [Against Highland Capital, Highland Holdings, and Highland Management]***

233. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

234. Section 547(b) of the Bankruptcy Code provides that a trustee may avoid any transfer of any interest of the debtor in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the debtor was insolvent; (iv) made within one year to an insider; and (v) that enables such creditor to receive more than such creditor would receive in a hypothetical chapter 7 liquidation.

235. Likewise, section 544 of the Bankruptcy Code provides the Trustee with the ability to avoid transfers that would be avoidable by certain prepetition creditors of Acis. Texas Business and Commerce Code section 24.006(b) provides that a current creditor may avoid a

transfer if the debtor made the transfer to an insider for an antecedent debt, the debtor was insolvent, and the insider had reasonable cause to believe that the debtor was insolvent. Pursuant to section 544 of the Bankruptcy Code, the Plaintiffs, now vested with all claims of the Trustee, may seek to avoid transfers made by Acis pursuant to Texas Business and Commerce Code section 24.006(b).

236. Within one year of the Petition Date, Highland Capital received the Prepetition Payments in the amount \$16,113,790.14 from Acis on account of purported debt claims owed by Acis. To the extent that the Prepetition Payments satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

237. Similarly, the 2017-7 Equity transfer and the Note Transfer are purportedly in satisfaction of payables owed by Acis LP to Highland Capital (later conveyed to Highland Holdings and Highland Management). To the extent that these transfers satisfied legitimate debt claims not avoided by any of the causes of action asserted herein, these transfers are avoidable under section 547(b) of the Bankruptcy Code and Texas Business and Commerce Code sections 24.006(b).

***Count 26: Liability for Avoided Transfers under 11 U.S.C. § 550  
[Against All Defendants]***

238. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

239. Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under section 544, 547 or 548, the trustee may recover the property transferred or the value of the property transferred from (i) the initial transferee of such transfer or (ii) the entity for whose benefit such transfer was made.

240. Highland Capital is an initial transferee of all transfers sought to be avoided in Counts 5 – 8 and 25 above. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Capital pursuant to section 550, specifically including any transfers made in connection with any obligations avoided through Counts 5 – 8 above.

241. Highland Advisor is an initial transferee of all transfers sought to be avoided in Counts 9 – 12 above, and Highland Capital are entities for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Advisor, Highland Funding, and Highland Capital pursuant to section 550.

242. Highland Funding is an initial transferee of all transfers sought to be avoided in Counts 13 – 16 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Funding and Highland Capital pursuant to section 550.

243. Highland Management is an initial transferee of all transfers sought to be avoided in Counts 17 – 20 and 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Management and Highland Capital pursuant to section 550.

244. Highland Holdings is an initial transferee of all transfers sought to be avoided in Counts 21 – 25 above, and Highland Capital is an entity for whose benefit such transfers were made. The Plaintiffs, now vested with all claims of the Trustee, may recover all avoided transfers from Highland Holdings and Highland Capital pursuant to section 550.

***Count 27: Civil Conspiracy to Commit Fraud, Including Fraudulent Transfers  
[Against Highland Capital, Highland Advisor, Highland Management, and Highland  
Holdings]***

245. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

246. Highland Capital, Highland Advisor, Highland Management, Highland Holdings, Dondero, and Waterhouse (collectively, the "Highland Enterprise")<sup>34</sup> sought to engage in a series of fraudulent transfers and other fraudulent schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer in order to denude Acis's assets and take over Acis LP's valuable business.

247. The Highland Enterprise, which is comprised of two or more business entities and individuals, had a meeting of the minds on the object or course of action related to the foregoing fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

248. The fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer, constitute one or more unlawful, overt acts.

249. The Debtors and the Debtors' estates suffered damages as a proximate result of the fraudulent transfers and schemes, including the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, the 2017-7 Equity transfer, the 2017-7 Agreements transfer and the thwarted Universal/BVK Agreement transfer.

250. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for the Highland Enterprise's conspiracy.

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<sup>34</sup> This is without limitation to other entities or individuals that may ultimately be shown to be part of Highland Enterprise.

***Count 28: Tortious Interference with the Universal/BVK Agreement  
[Against Highland Capital]***

251. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

252. Under Texas law, a claim for tortious interference with contract requires: "(1) an existing contract subject to interference, (2) a willful and intentional act of interference with the contract, (3) that proximately caused the plaintiff's injury, and (4) caused actual damages or loss." *Official Brands, Inc. v. Roc Nation Sports, LLC*, 2015 U.S. Dist. LEXIS 167320 \*7 (N.D. Tex.) (J. Boyle) (quoting *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000)). The fact that a contract is an at-will agreement is no defense to a tortious interference claim. *Id.*

253. The Universal/BVK Agreement is an existing contract to which Acis LP is a party. The Universal/BVK Agreement is an existing contract that is subject to interference.

254. From nearly day one of these Bankruptcy Cases, Highland Capital has sought to terminate Acis LP as the manager under the Universal/BVK Agreement, and replace Acis LP with Highland Capital or one of its affiliates. Highland Capital's actions involve communications over many months with Universal and BVK, including numerous communications after Highland Capital was terminated as sub-advisor on August 1, 2018 and no longer had any legitimate reason to communicate with Universal or BVK. Highland Capital even prepared and sent to Universal and BVK a new outsourcing agreement, which would be entered once Acis LP and its bankruptcy were out of the way.

255. Acis LP and its estate have suffered and will suffer actual damages as a proximate result of the interference of Highland Capital.

256. The Plaintiffs, now vested with all claims of the Trustee, seek actual and exemplary damages for Highland Capital's tortious interference with the Universal/BVK Agreement.

***Count 29: Breach of Contract by Highland Capital under the Sub-Advisory Agreement and Shared Services Agreement  
[Against Highland Capital]***

257. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

258. Under Texas law, to prevail on a breach of contract claim, a party must show: "(1) the existence of a valid contract; (2) the plaintiff performed or tendered performance as the contract required; (3) the defendant breached the contract by failing to perform or tender performance as the contract required; and (4) the plaintiff sustained damages as a result of the breach." *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018).

259. The Sub-Advisory Agreement is a valid contract between Acis LP and Highland Capital, under which Highland Capital was obligated to, *inter alia*:<sup>35</sup>

- (i) make recommendations to Acis LP for the purchase, retention, or sale of specific loans or assets in the CLOs;
- (ii) place orders with respect to the purchase or sale of specific loans or assets for the CLOs, upon instruction from Acis LP;
- (iii) identify, evaluate, recommend to Acis LP, and, if applicable, negotiate the structure or terms of investment opportunities for the CLOs;
- (iv) assist Acis LP in performing its due diligence on prospective investments for the CLOs; and

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<sup>35</sup> Although the Plaintiffs plead herein that certain provisions of the Sub-Advisory Agreement, which are in violation of the LPA, are unauthorized and *ultra vires*, section 15 of the Sub-Advisory Agreement provides that any such invalid provision does not affect or render "invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part."

(v) provide information to Acis LP regarding any investments in the CLOs, and, if requested by Acis LP, provide information to assist in monitoring and servicing investments by the CLOs.

See Sub-Advisory Agreement § 1(b). Further, "[n]otwithstanding the foregoing, all investment decisions will ultimately be the responsibility of, and will be made by and at the sole discretion of, [Acis LP]." *Id.*

260. Section 4(a) of the Sub-Advisory Agreement specifically provides:

[T]he Sub-Advisor will perform its obligations [under the Sub-Advisory Agreement] in good faith with reasonable care using a degree of skill and attention no less than that which the Sub-Advisor uses with respect to comparable assets that it manages for others and, without limiting the foregoing, in a manner which the Sub-Advisor reasonably believes to be consistent with the practices and procedures followed by institutional managers of national standing relating to assets of the nature and character of the Portfolios[.]

261. Since at least the time the Trustee was appointed in these Bankruptcy Cases, while acting as sub-advisor, Highland Capital failed to purchase a single loan for the CLOs, and only provided for the sale of loans, in an attempt to complete a stealth liquidation of the CLOs for the Highlands' benefit, and to the detriment of Acis LP. Such practice is inconsistent with the practices and procedures followed by institutional managers of national standing, such as Brigade, relating to assets of the nature and character of the CLOs. Highland Capital's activities are, however, completely consistent with the Highlands' ultimate goal to take away Acis LP's valuable assets and take over Acis LP's valuable business as portfolio manager of the CLOs.

262. Highland Capital grossly mismanaged the CLOs, in abrogation of its duties and disregard of the standard of care under the Sub-Advisory Agreement. Accordingly, Highland Capital has breached its obligations under the Sub-Advisory Agreement, and such breach caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

263. Further, to the extent any of the above-mentioned acts constitute services Highland Capital asserts it provided pursuant to the Shared Services Agreement, such services failed to meet the "Standard of Care" set forth in the Shared Services Agreement and were committed in bad faith or were the result of gross negligence, fraud, and/or willful misconduct. Highland Capital's breach of the Shared Services Agreement caused economic damages to Acis LP. Acis LP is therefore entitled to recover, to the fullest extent under applicable law, the amount of such damages from Highland Capital.

***Count 30: Breach of Fiduciary Duties by Highland Capital  
[Against Highland Capital]***

264. The Plaintiffs incorporate the preceding paragraphs as if fully set forth herein.

265. Pursuant to the Sub-Advisory Agreement, a principal-agent relationship existed between Acis LP and Highland Capital. As its investment adviser, Highland Capital owed Acis LP fiduciary duties. *See Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191, (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248. 17, C.F.R. Part 276 (June 5, 2019). Further, based on Highland Capital's role as sub-advisor and investment adviser to Acis LP, a special relationship of trust and confidence existed between Acis LP and Highland Capital. *See W. Reserve Life Assur. Co. of Ohio v. Graben*, 233 S.W.3d 360, 373-74 (Tex. App.—Fort Worth 2007, no pet.). Accordingly, in its capacity of sub-advisor to Acis LP, Highland Capital owed fiduciary duties to Acis LP.

266. Highland Capital, while acting as sub-advisor for Acis LP, purposefully engaged in conduct that was detrimental to Acis LP in order to enrich itself. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates and amounts in

excess of the compensation limits of the LPA. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the Fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as Acis's own counsel later boasted, and in order to ensure that Terry would never receive payment on his judgment, as Dondero has threatened. These transfers, while very damaging to Acis LP, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, Highland Capital sought to transfer the Universal/BVK Agreement away from Acis LP and to itself or an affiliate, including while Highland Capital was serving as sub-advisor (and as a fiduciary) for such agreement.

267. By its actions, Highland Capital specifically intended to cause harm to Acis LP by denuding it of its assets and enriching Highland Capital. In doing so, Highland Capital breached its fiduciary duties to Acis LP.

268. As a consequence, the Plaintiffs, now vested with all claims of the Trustee, are entitled to an award of punitive damages against Highland Capital in an amount to be determined by the Court.

***Count 31: Punitive Damages  
[Against All Defendants]***

269. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

270. The Highlands, led by Highland Capital and Dondero, engaged in fraud against Acis and its creditors, acted with malice toward Acis and its creditors, and were, at best, grossly negligent in their dealings with Acis.

271. Further, Plaintiffs are entitled to punitive damages in connection with Highland Capital's: (i) breach of fiduciary duties to Acis due to its fraudulent conduct, (ii) tortious interference, and (iii) violations of TUFTA. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W. 3d 213, 232 (Tex. 2019) (fiduciary duties); *Texas Beef Cattle Co. v. Green*, 921 S.W.2d 203, 210 (Tex. 1996) (tortious interference); *Mullins v. Testamerica, Inc.*, CIV.A. 3:02-CV-0106-, 2006 WL 2167401, at \*10 (N.D. Tex. Aug. 2, 2006) (TUFTA).

272. Thus, the Plaintiffs, now vested with all claims of the Trustee, are entitled to punitive damages, and the Plaintiffs plead for such damages in connection with each Count pleaded herein that will support a claim for punitive damages.

***Count 32: Disregarding the Corporate Form/Alter Ego/Collapsing Doctrine/Unjust  
Enrichment  
[Against All Defendants]***

273. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

274. Under Texas law, ignoring the separateness of business entities and holding affiliated entities liable for all debts of the fraudulent enterprise is appropriate "when the corporate form has been used as part of a basically unfair device to achieve and inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation . . . or justify a wrong." *SSP Partners v. Gladstrong Inv. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008); *see also Flores v. Bodden*, 488 Fed. App'x 770, 775-76 (5th Cir. 2012) (listing "six situations in which a court may disregard the corporate form"); *Bridas S.A.P.I.C. v. Gov't of Turkmenistan*, 447 F.3d 411, 416 (5th Cir. 2006) (finding alter ego present).<sup>36</sup>

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<sup>36</sup> To the extent Delaware law applies to any of the alter ego claims, Delaware also recognizes alter ego on similar grounds. "Delaware does, however, recognize the traditional alter ego doctrine as grounds to pierce the corporate veil in cases involving the members of a corporate group. To state an alter ego claim under Delaware law, the [plaintiff] must plead (1) that [the] defendants 'operated as a single economic entity' and (2) that an 'overall element

275. Highland Capital, Highland Funding, Highland Adviser, Highland Management, and Highland Holdings (the "Alter Egos") are all controlled by the CEO and ultimate majority owner of Highland Capital, Dondero. Each of the Alter Egos should be held liable for any damages awarded under any Count in this Second Amended Complaint, as each is the alter ego of the others. Further, each of the Alter Egos should be held liable for any debts of the Debtors, as they are also the alter ego of the Debtors.

276. In this case, the Alter Egos unquestionably used the corporate form as a means of perpetuating the fraudulent scheme set forth above. For example, creating shell corporations in the Cayman Islands days after the Arbitration Award in order to avoid payment of Acis's creditors is precisely the type fraud or injustice that warrants disregarding the corporate form. Such actions satisfy, at a minimum, the first three situations in which a court may disregard the corporate form.

277. Further, "multistep transactions can be collapsed when the steps of the transaction are `part of one integrated transaction.'" *In re Yazoo Pipeline Co., L.P.*, 448 B.R. 163, 187 (Bankr. S.D. Tex. 2011) (J. Isgur) (internal citations omitted). The Supreme Court likewise has held that a bankruptcy court, as a court of equity, may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate. *Pepper v. Litton*, 308 U.S. 295, 304-05 (1939).

278. The ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements should be collapsed and recognized for what they are: Highland Capital using offshore entities to take over Acis LP's assets and business while Highland Capital maintains absolute control over such assets and business, and even using

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of injustice or unfairness' is present. *Precht v. Global Tower LLC*, No. 2:14-CV-00743, 2016 U.S. Dist. LEXIS 177910, at \*9 (W.D. La. Dec. 22, 2016) (internal citations omitted).

alleged debt owed to Highland Capital as the purported consideration for these transactions in order to mask Highland Capital's otherwise clear liability for avoidable transfers.

279. Finally, unjust enrichment is an equitable theory of recovery holding that one who receives benefits unjustly should make restitution for those benefits. *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 927 (Tex. App.--Fort Worth 1994). A party is unjustly enriched when it obtains a "benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992).

280. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee. Each of the Highlands should be held liable for benefits unjustly received and make restitution to the Debtors and their estates for those benefits.

***Count 33: Willful Violation of the Automatic Stay  
[Against Highland Capital and Highland Funding]***

281. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

282. A willful violation of the automatic stay does not require a specific intent.

Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded.

*Campbell v. Countrywide Home Loan, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008) (quoting *In re Chestnut*, 422 F.3d.298, 302 (5th Cir. 2005).

283. "It is not up to a party exercising a self-help remedy to determine, to the preclusion of this court, what is or is not property of the estate." *Chesnut v. Brown (In re Chesnut)*, 300 B.R. 880, 887 (Bankr. N.D. Tex. 2003).

284. Section 362(k)(1) of the Bankruptcy Code provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The Fifth Circuit has indicated that remedies under 362(k)(1) are available to trustees. *St Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539-540 (5th Cir. 2009). The term "individual" is not defined by the Bankruptcy Code, but it is used throughout the Code to refer to debtors and non-debtors. *See Homer Nat'l Bank v. Namie*, 96 B.R. 652, 654 (W.D. La. 1989) (citing, *inter alia*, 11 U.S.C. §§ 522(b) (individual as debtor), 321(a)(1) (individual as trustee)).

285. Further, pursuant to section 105(a) of the Bankruptcy Code, "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01 (collecting cases). This is consistent with the broad equitable authority of the bankruptcy courts. *See United States v. Energy Resources Co., Inc.*, 495 U.S. 545, 549 (1990).

286. Highland Capital knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including when it demanded on June 20, 2018, that the Trustee take actions to effectuate the optional redemption by June 21, 2018.

287. Highland Funding knew the automatic stay was in effect when it intentionally acted, without Court approval, to force the Trustee to effectuate the optional redemptions, including each occasion described herein when it sent the Trustee the Optional Redemption Notices.

288. Pursuant to section 362(k)(1), the Plaintiffs seek recovery of damages commensurate with its injury, due to Highland Capital's and Highland Funding's violations of the automatic stay. Further, given Highland Capital's and Highland Funding's blatant and willful violation of the automatic stay (as well as the TRO), the Plaintiffs seek attorneys' fees, punitive damages, and sanctions, as the Court finds appropriate, pursuant to section 105(a) of the Bankruptcy Code.

***Count 34: Attorneys' Fees and Costs,  
Including all Allowed Professionals' Fees and Expenses in the Bankruptcy Cases  
[Against All Defendants]***

289. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

290. Pursuant to Texas Business and Commerce Code section 24.013, Civil Practice and Remedies Code section 38.001, TUFTA, and any other applicable law, the Plaintiffs may recovery attorneys' fees and costs incurred in bringing this Adversary Proceeding.

291. Plaintiffs further seek recovery from Highland Capital of all allowed professionals' fees and expenses in the Bankruptcy Cases, which were losses to Acis resulting from Highland Capital's breach of fiduciary duties to Acis. *See Meyers v. Moody*, 693 F.2d 1196, 1214 (5th Cir. 1982).

**VII. REQUEST FOR DISGORGEMENT**

292. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

293. "Under the equitable remedy of disgorgement or fee forfeiture, a person who renders service to another in a relationship of trust may be denied compensation for his service if he breaches that trust." *McCullough v. Scarbrough, Medlin & Assocs.*, 435 S.W.3d 871, 904-05 (Tex. App.—Dallas 2014) (citing *Burrow v. Arce*, 997 S.W.2d 229, 237 (Tex. 1999)). "The remedy essentially returns to the principal the value of what it paid for because it did not receive the trust or loyalty." *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237-38).

"The amount of disgorgement is within the trial court's discretion; the court may 'deny him all compensation or allow him a reduced compensation or allow him full compensation.'" *McCullough*, 435 S.W.3d at 905 (citing *Burrow*, 997 S.W.2d at 237 (quoting RESTATEMENT (SECOND) OF TORTS § 243 (1959))).

294. "Equitable disgorgement is distinct from an award of actual damages in that the disgorgement award 'serves a separate function of protecting fiduciary relationships.'" *McCullough*, 435 S.W.3d at 905 (quoting *Saden v. Smith*, 415 S.W.3d 450, 469 (Tex. App.—Houston [1st] Dist. 2013, pet. denied)); *see also Burrow*, 997 S.W.2d at 238 ("[T]he central purpose of the equitable remedy of [disgorgement] is to protect relationships of trust by discouraging agent's disloyalty.").

295. The basis for the disgorgement award against Highland Capital stems from its liability in connection with its breach of fiduciary duty, as pleaded herein, and should be "phrased in terms of the salary, profits or other income [Highland Capital] received during the time [it] committed the tortious conduct." *McCullough*, 435 S.W.3d at 905 (internal quotation marks omitted).

296. Accordingly, Plaintiffs request disgorgement of all funds received by Highland Capital, who breached its fiduciary duties to Acis.

### **VIII. REQUEST FOR IMPOSITION OF CONSTRUCTIVE TRUST**

297. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

298. "A constructive trust is not a cause of action under Texas law." *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010). Rather, "[a] constructive trust is an equitable remedy used to prevent unjust enrichment." *Baxter v. PNC Bank Nat'l Ass'n*, 541 Fed. App'x 395, 398 (5th Cir. 2013) (citing *Everett v. TK-Taito, LLC*, 178 S.W.3d 844, 859 (Tex. App.—Fort Worth 2005, no pet.)); *see also Messier v. Messier*, 458 S.W.3d 155, 164 (Tex. App.—Houston [14th Dist.] 2015,

no pet.) ("A constructive trust is imposed when one party holds property that legally belongs to the other.")). "In order to establish a constructive trust, the proponent must prove: (1) breach of a special trust, fiduciary relationship, or actual fraud; (2) unjust enrichment of the wrongdoer; and, (3) tracing to an identifiable res." *Baxter*, 541 Fed. App'x at 398; *accord Clapper v. Am. Realty Inv'rs, Inc.*, 3:14-CV-2970-D, 2015 U.S. Dist. LEXIS 71543, at \*26 (N.D. Tex. June 3, 2015).

299. As described herein, Highland Capital breached its fiduciary duties to Acis, and the Highlands acted in concert to perpetrate the series of fraudulent transfers in order to strip Acis of its assets for the benefit of Highlands.

300. The Highlands were unjustly enriched because they benefitted from the "fraud [and] the taking of an undue advantage" against Acis. *See Heldenfels Bros.*, 832 S.W.2d at 41. Each of the Highlands, and in particular Highland Capital and Highland Funding, benefitted from the property transferred, which is traceable and identified herein, as a result of the ALF PMA Transfer, the ALF Share Transfer, the Note Transfer, and the transfer of the 2017-7 Equity and the 2017-7 Agreements even if they were not the direct transferee.

301. Further, Highland Capital, who breached its fiduciary duties to Acis, was unjustly enriched in connection with the Expense Overpayments as well as by the payments received as a result of the modifications to the Sub Agreements, and such benefits may be traced and identified by the payments from Acis LP to Highland Capital under the modified Sub Agreements.

302. Accordingly, the Plaintiffs requests that a constructive trust is established for those benefits unjustly received by the Highlands.

**IX. OBJECTIONS TO HIGHLAND CAPITAL PROOFS OF CLAIM**

303. The Plaintiffs incorporate the preceding paragraphs as if set forth fully herein.

304. The Highland Capital Claims are allegedly based on claims arising from the Sub-Advisory Agreement and the Shared Services Agreement. The Highland Capital Claims<sup>37</sup> are summarized as follows:

<b>Alleged Pre-Petition Claim<sup>38</sup></b>	<b>Alleged Claim Amount</b>
Sub-Advisory Agreement	\$1,605,362.41
Shared Services Agreement	\$1,017,213.62
Total alleged Pre-Petition Claim	\$2,622,576.03
<b>Alleged 502(f) Claim<sup>39</sup></b>	<b>Alleged 502(f) Claim Amount</b>
Sub-Advisory Agreement	\$1,170,147.06
Shared Services Agreement	\$ 879,417.29
Total alleged 502(f) Claim	\$2,049,564.35
<b>Total Claim Amount</b>	<b>\$4,672,140.38</b>

<sup>37</sup> Highland Capital filed identical claims against both Acis LP and Acis GP. Acis GP is not a party to the Sub-Advisory Agreement or the Shared Services Agreement. Presumably, Highland Capital is relying on Delaware partnership law to argue that Acis GP is also liable under the Sub-Advisory Agreement and Shared Services Agreement. See 6 Del. C. § 17-403(b) ("Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to the partnership and to the other partners."); see also 6 Del. C. § 15-306(a) ("(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law"). If this is the case, Acis does not dispute this basic tenet of partnership law; however, Acis disputes the Highland Capital Claims for the reasons set forth herein. Accordingly, all arguments set forth herein are applicable to both Highland Capital Claims.

<sup>38</sup> The Alleged Pre-Petition Claim relates to Highland Capital's alleged claim arising prior to the Petition Date.

<sup>39</sup> The Alleged 502(f) Claim relates to Highland Capital's alleged claim arising after the Petition Date and prior to April 13, 2018, the date the Court entered the Orders for Relief.

The Highland Capital Claims also include contingent indemnity claims arising under the Sub Agreements.

305. The Highland Capital Claims should be disallowed under (i) section 502(b)(1) of the Bankruptcy Code; (ii) section 502(b)(4) of the Bankruptcy Code; (iii) and section 502(d) of the Bankruptcy Code. The Highland Capital Claims are unenforceable against the Debtors under the LPA and applicable law. The Highland Capital Claims are for services of an insider of the Debtors and exceed the reasonable value of the services. As set forth above, Plaintiffs have asserted avoidance actions against Highland Capital such that the Highland Capital Claims should be disallowed. Finally, to the extent allowed at all, the Highland Capital Claims should be equitably subordinated under section 510(c) of the Bankruptcy Code.

306. Pursuant to section 502(b) and (d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3007, the Plaintiffs seek entry of an order disallowing and expunging the Highland Capital Claims from the Debtors' claims registers.

**A. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(1).**

307. "Section 502(b)(1) provides that a claim is allowed except to the extent it is unenforceable under applicable law." *In re White*, No. 06-50247-RLJ-13, 2008 Bankr. LEXIS 167, at \*17-18 (Bankr. N.D. Tex. Jan. 28, 2008). "[T]he the validity of a creditor's claims against the debtor at the time the bankruptcy petition is filed 'is to be determined by reference to state law.'" *Carrieri v. Jobs.com, Inc.*, 393 F.3d 508, 529 (5th Cir. 2004) (quoting *Kellogg v. United States (In re W. Tex. Mktg. Co.)*, 54 F.3d 1194, 1196 (5th Cir. 1995)).

308. As set forth more fully above, the Highland Capital Claims are based entirely on amounts alleged to be due pursuant to the Sub Agreements. As outlined in the causes of action above, there are significant amounts due to Acis LP by Highland Capital under or in connection with the Sub Agreements, which constitute a right of recoupment and/or offset to the entirety of

the Highland Capital Claims. Further, any portion of the Highland Capital Claims that are based on *ultra vires* acts, as alleged in Count 1 above, are void or voidable. Accordingly, the Highland Capital Claims are not enforceable under applicable law, and the Highland Capital Claims should therefore be disallowed.

**B. The Highland Capital Claims Should be Disallowed under 11 U.S.C. § 502(b)(4).**

309. The Highland Capital Claims are claims for services by an insider, Highland Capital, and the Highland Capital Claims exceed the reasonable value of the services provided by Highland Capital. Section 502(b)(4) of the Bankruptcy Code provides, in relevant part, that a claim for services of an insider or attorney of a debtor shall not be allowed to the extent that "such claim exceeds the reasonable value of such services."

310. The purpose of section 502(b)(4) is: "(1) to prevent insiders of a debtor from extracting inflated compensation from the debtor at the expense of the debtor's creditors; and (2) to prevent over-generosity of a debtor prior to a bankruptcy filing." *Faulkner v. Canada (In re Heritage Org., L.L.C.)*, Case No. 04-35574-BJH-11, Adv. No. 04-3338, 2006 Bankr. LEXIS 4662, at \*22-23 (Bankr. N.D. Tex. Jan. 5, 2006); *see also In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("The purpose underlying 11 U.S.C. § 502(b)(4) is to prevent officers and directors (insiders) of a debtor from extracting inflated amounts for their services at the expense of the creditors.").

**1. Highland Capital is an Insider of the Debtors.**

311. Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, etc. Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See In re Missionary Baptist Foundation of Am., Inc.*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly

known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018).

312. The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992).

313. Highland Capital is a statutory insider, a non-statutory insider, an admitted insider, and an adjudicated insider. The statutory definition of "insider" includes an "affiliate" of the debtor. 11 U.S.C. § 101(31)(E). Prior to the entry of the Orders for Relief, Highland Capital met the statutory definition of "affiliate" because Highland Capital "operate[d] the business or substantially all of the property of the [D]ebtor under a[n] . . . operating agreement." *See* 11 U.S.C. § 101(2)(D). Under the Sub Agreements, Acis LP effectively ceded control over its operations to Highland Capital.<sup>40</sup>

314. Highland Capital is a non-statutory insider because Dondero controlled both Acis and Highland Capital prior to the date the Court entered the Orders for Relief. The closeness of the Highland Capital-Acis relationship is demonstrated by the fact that both companies are under Dondero's common control, Acis had no employees and Acis was operated exclusively by Highland Capital employees. Transactions were not conducted at arm's length. Indeed, Dondero

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<sup>40</sup> For purposes of section 502(b)(4), courts examine whether a party is an "insider" on the date the operative document was executed. Here, it is indisputable that Highland Capital was an insider when the Sub-Advisory Agreement and the Shared Services Agreement were executed, and Highland Capital was an insider on the Petition Date. *See Faulkner*, 2006 Bankr. LEXIS 4662, at \*17 ("The determination of insider status is made as of the time the claimant provided services to the debtor."); *In re Allegheny Int'l*, 158 B.R. 332, 339 (Bankr. W.D. Pa. 1992) ("[T]he relevant time for determining one's status as an insider, under 11 U.S.C. § 502(b)(4), is the time services were rendered and when the compensation contracts for such services were formed[.]").

signed both the Sub-Advisory Agreement and the Shared Services Agreement for Highland Capital and Acis.

315. Highland Capital is an admitted insider and an adjudicated insider. During the trial on the involuntary petitions, the Debtors, controlled by Highland Capital, admitted that Highland Capital is an insider of the Debtors.<sup>41</sup> Acis LP's SOFA lists payments to Highland Capital in the section titled "Payments or transfers of property made within 1 year before the filing of this case that benefited any insider." The SOFA is signed by Isaac Leventon, an employee of Highland Capital (who, on information and belief, had no official title or position with the Debtors). Additionally, this Court has found that Highland Capital is an insider of the Debtors, stating: "the court believes it necessary to remove certain *insider* creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code. *This would clearly include Highland Capital* (the Alleged Debtors do not dispute this)." Opinion ¶ 38 (footnotes omitted) (emphasis added).

## 2. The Highland Capital Claims Exceed the Reasonable Value of the Services Provided.

316. "In analyzing the reasonableness of a claim for services under § 502(b)(4), a court should consider the totality of the circumstances involved at the time that the services were rendered." *Faulkner*, 2006 Bankr. LEXIS 4662, at \*23 (citing *In re Gutierrez*, 309 B.R. 488, 493 (Bankr. W.D. Tex. 2004)). "Reasonable value" under Section 502(b)(4) is "synonymous with 'market value.'" *In re Delta Air Lines, Inc.*, No. 05-17923 (cgm), 2010 Bankr. LEXIS 233, at \*22 (Bankr. S.D.N.Y. Feb. 3, 2010). "The burden of proof on reasonableness under

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<sup>41</sup> Transcript of Hearing on Emergency Motion to Abrogate or Modify 11 U.S.C Section 303(f), Prohibit Transfer of Assets, and Impose, Inter Alia, 11 U.S.C Section 363 Filed by Petitioning Creditor Joshua Terry (3); Emergency Motion to Set Hearing (related to Document (8) Motion to Dismiss Case Filed by Alleged Debtor Acis Capital Management, LP (9) (Case Nos. 18-30264-SGJ7 & 18-30264-SGJ7) (the "2-7-18 Transcript"), at 246: 8-9 ("[T]here are no insiders other than Highland on the list of eighteen[.]").

§ 502(b)(4) ultimately lies with the insider." *Id.* at 24. Thus, Highland Capital has the burden to establish the reasonableness of its claims. Further, when the validity of an insider's contract with a corporation is at issue, the burden is on the insider "not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein." *In re Marquam Inv. Corp.*, 942 F.2d 1462, 1465 (9th Cir. 1991) (quoting *Pepper v. Litton*, 308 U.S. 295, 306 (1939)).

317. Together, the Sub Agreements (as amended) charge Acis LP fees far exceeding the market value of the services provided under such agreements. First, the Trustee's professionals engaged in a marketing process in connection with the Brigade Motion. After conducting a diligent search of the market, the Trustee located a replacement for Highland Capital that provided the services Highland Capital previously provided the Debtor for roughly half the cost Highland Capital charged Acis LP. The Sub Agreements also significantly contributed to rendering Acis insolvent. In fact, the General Counsel of Highland Capital, Scott Ellington, admitted that as of February 7, 2018—one week after the Petition Date—Acis was insolvent or close to insolvent.<sup>42</sup>

318. Highland Capital cannot show that the exorbitant fees charged under the Sub Agreements are reasonable or that entry into such agreements was in good faith and demonstrates inherent fairness. Therefore, pursuant to section 502(b)(4), the Highland Capital Claims should be disallowed in their entirety.

**C. Highland Capital Received Voidable Transfers and Holds Property of the Estate, and the Trustee is Entitled to Setoff under Section 502(d) of the Bankruptcy Code.**

319. As set out more fully in the causes of action above, the Plaintiffs seek: (i) avoidance of actual and constructively fraudulent transfers and obligations pursuant to sections

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<sup>42</sup> 2-7-18 Transcript at 219: 22-25 (THE COURT: Do you think Acis is in the zone of insolvency? THE WITNESS: I don't know the answer to that, but I would -- I would assume that it was -- that it's close.)

544 and 548 of the Bankruptcy Code, (ii) avoidance of preferential transfers pursuant to section 547 of the Bankruptcy Code; (iii) turnover of property the estate pursuant to section 542 of the Bankruptcy Code; and (iv) liability for the foregoing under section 550 of the Bankruptcy Code.

320. "Under section 502(d), 'the court shall **disallow** any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 544 [or 548] of this title, unless such . . . transferee has paid the amount, or turned over any such property.'" *In re Consol. Capital Equities Corp.*, 143 B.R. 80, 84 (Bankr. N.D. Tex. 1992) (quoting 11 U.S.C. § 502(d)) (emphasis in original).<sup>43</sup> Application of section 502(d) is not restricted to cases where a fraudulent transfer has already been avoided, but rather applies to pending fraudulent transfer claims as well. In other words, the statute does not require that the transfer actually be avoided, only that it be "avoidable." *Id.* As a result, once a fraudulent transfer claim has been asserted, the mandatory language of section 502(d) requires bankruptcy courts to consider the fraudulent transfer issue as a component of the claims allowance process. *U.S. Bank N.A. v. Verizon Communs., Inc.*, 761 F.3d 409, 419 (5th Cir. 2014) (finding mandatory language of section 502(d) precluded the court from resolving claims where the trustee alleged the claimant was the transferee of a fraudulent transfer). Moreover, the Court may disallow the Highland Capital Claims before adjudicating the causes of action set forth herein. *See In re Heritage Org., L.L.C.*, 375 B.R. 230, 288-289 (Bankr. N.D. Tex. 2007) (finding a court order avoiding a transfer is not a prerequisite to disallowance of a claim).

321. Thus, pursuant to section 502(d) of the Bankruptcy Code, the Court should disallow the Highland Capital Claims.

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<sup>43</sup> "Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title [11 USCS § 542, 543, 550, or 553] or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title." 11 U.S.C. § 502(d)

**D. The Highland Capital Claims Should be Equitably Subordinated.**

322. Section 510(c) of the Bankruptcy Code expressly authorizes subordination of the allowed claim of one creditor to the allowed claims of other creditors "under principles of equitable subordination."

323. In *In re Mobile Steel Co.*, 563 F.2d 692 (5th Cir. 1977), the Fifth Circuit articulated what has become the most commonly accepted standard for equitable subordination of a claim. Under the *Mobile Steel* standard, a claim can be subordinated if the claimant engaged in some type of inequitable conduct that resulted in injury to creditors (or conferred an unfair advantage on the claimant) and if equitable subordination of the claim is consistent with the provisions of the Bankruptcy Code.

324. During the time it completely dominated control of Acis, Highland Capital clearly engaged in abundant inequitable conduct related to Acis, as well as conferring numerous unfair advantages to itself, which resulted in injury to Acis's creditors. As outlined in detail above, Highland Capital increased the amount due to Highland Capital under the Sub-Advisory Agreement, including charging amounts far in excess of appropriate market rates. This has resulted in a grossly inflated claim for Highland Capital as well as significant overpayments to Highland Capital for whatever services and value it did provide to Acis under these agreements.

325. Highland Capital was also the ringleader, and ultimate beneficiary, for the series of fraudulent schemes executed in the fall of 2017 that terminated or transferred away Acis LP's valuable rights in the ALF PMA, the ALF Shares, the Note, the 2017-7 Equity and the 2017-7 Agreements. This was done with the very specific intent to make Acis "judgment proof," as

Acis's own counsel later boasted,<sup>44</sup> and in order to ensure that Terry and other creditors would never receive payment on his judgment, as Dondero has threatened.<sup>45</sup> These transfers, while very damaging to Acis LP and its creditors, also furthered Highland Capital's plan to take over Acis LP's very lucrative portfolio management business and keep it under the control of Highland Capital and Dondero. Finally, even during the Bankruptcy Cases, Highland Capital has attempted to transfer and take over Acis LP's very lucrative Universal/BVK Agreement.

326. To the extent the Highland Capital Claims are allowed in any amount, they are subject to equitable subordination and should be subordinated below all other allowed unsecured claims in the bankruptcy case.

## **X. OBJECTIONS TO HIGHLAND CAPITAL'S ADMINISTRATIVE CLAIM**

### **A. Highland Capital's Administrative Claim is Subject to Disallowance for the Same Reasons the Highland Capital Claims Should be Disallowed.**

#### **1. Prevailing on the Causes of Action Set Forth Herein Mandates the Disallowance of Highland Capital's Administrative Claim.**

327. In its Application, without specifically citing the causes of actions or making any reference whatsoever to the objections to the Highland Capital Claims contained herein (as they were previously asserted in the Amended Counterclaims), Highland Capital asserts that the Trustee "apparently has furthered a theory that Highland overcharged the Debtors," but must "provide evidence, not simply allegations, to rebut the prima facie case that Highland is entitled to an administrative claim." Application ¶ 33. Highland Capital then rashly contends that the Trustee "has provided no such evidence" and that "the Contracts speak for themselves and are the best evidence of the validity of the claim asserted by Highland." *Id.* A simple review of the

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<sup>44</sup> See Plaintiff's Motion for Expedited Discovery, Ex. 1 (Declaration of Rogge Dunn) ¶ 4, *Terry v. Acis Capital Mgmt., L.P.*, Cause No. DC-17-15244, 44th District Court of Dallas County, Texas ("On October 31, 2017, counsel for Acis, Jamie Welton, called me on the telephone. In that call, Mr. Welton stated that Acis is 'judgment proof.'").

<sup>45</sup> See June 28, 2017 Dondero Dep. Tr. 262:2-8 (Ex. 101 from the involuntary trial) ("Nobody's going to let a dime go out of the firm that we don't have to pay ever to – to Josh, period. I mean, it's . . . I think it's personal[.]").

causes of action herein (as well as evidence presented in connection with the involuntary hearings, confirmation hearings, and other hearings during these Bankruptcy Cases) belies its position and demonstrates otherwise.

328. As is discussed below, Highland Capital must demonstrate that the services provided conferred a direct and substantial benefit on the Debtors' estates. And before Highland Capital can ask the Court to assess whether its services provided the required direct and substantial benefit, it must first demonstrate that it had the right to even charge the Debtors the amount set forth in the agreements. The causes of action asserted against Highland Capital herein, which dispute the amounts charged by Highland Capital, directly implicate the validity of, and support the disallowance of, the Administrative Claim (just as they refute Highland Capital's purported prepetition claims). The Plaintiffs therefore expressly incorporate Counts 1, 5 – 8, and 27 – 30 herein and specifically raises such Counts as objections to the Administrative Claim asserted by Highland Capital in its Application.

329. If the Plaintiffs prevail on the causes of action against Highland Capital as set forth herein, the basis for allowance of the Administrative Claim would also be invalidated. Moreover, as discussed below, based on such causes of action, the Plaintiffs are entitled to recover millions of dollars in damages, all of which may be offset against the Administrative Claim.

**2. Highland Capital's Administrative Claim is Also Subject to Disallowance under Section 502(d).**

330. Because Highland Capital is alleged to have received fraudulent transfers, its Administrative Claim is also subject to disallowance under section 502(d) until the property or its value has been returned to the Debtors.

331. Although Highland Capital's Application involves an administrative claim, nothing in section 502(d) limits its application to prepetition claims. *MicroAge, Inc. v. Viewsonic Corp. (In re MicroAge, Inc.)*, 291 B.R. 503, 508 (B.A.P. 9th Cir. 2002). Section 502(d) by its terms applies to "any claim" and the definition of a "claim" in section 101(5) is sufficiently broad to include requests for payment of expenses of administration. *Id.* Because the objective of section 502(d) is to encourage transferees to return avoidable transfers to the estate, a number of courts have held that section 502(d) applies to administrative claims. *See, e.g., id.* at 508-12; *In re Georgia Steel*, 38 B.R. 829, 839-40 (Bankr. M.D. Ga. 1984) (applying section 502(d) and stating, "[t]he fact that [the] claim is for an administrative expense has no bearing").

332. The Plaintiffs acknowledge that courts are split on the issue of whether section 502(d) applies to administrative expenses. *Compare MicroAge, Inc.*, 291 B.R. at 508-512 (considering split of authority and finding that "the better analysis is that § 502(d) may be raised in response to the allowance of an administrative claim"), *and Georgia Steel*, 38 B.R. at 839-40 (finding the fact that the claim "is for an administrative expense has no bearing" for purposes of section 502(d)), *with In re Plastech Engineered Prods.*, 394 B.R. 147, 164 (Bankr. E.D. Mich. 2008) (concluding that "§ 502(d) does not apply to the allowance and payment of administrative expenses under § 503(b)"). Although not binding on this Court, the Plaintiffs also note that one bankruptcy court in this district has found that section 502(d) does not apply to administrative claims. *Rand Energy Co. v. Del Mar Drilling Co. (In re Rand Energy Co.)*, 256 B.R. 712, 719 (Bankr. N.D. Tex. 2000) (Felsenthal, J.).

333. As described above, Highland Capital is the recipient of certain preferential payments and/or fraudulent transfers. Thus, while acknowledging the split of authority on the issue, the Plaintiffs assert that the plain language of section 502(d), as well as the policy

underlying section 502(d), requires that Highland Capital's Administrative Claim be disallowed in its entirety.

**3. The Indemnity Provisions Relied on by Highland Capital Are Invalid and, in Any Event, Do Not Apply to Highland Capital's Intentional Torts.**

334. In the Application, Highland Capital also asserts defenses against the causes of action brought herein pursuant to its purported indemnity rights against the Debtors under section 6.03 of the Shared Services Agreement and section 4(c) of the Sub-Advisory Agreement. Application ¶ 34. Any contention by Highland Capital that it is immune from liability arising from the causes of action brought against it herein due to the indemnity provisions of the Sub Agreements lacks merit. First, the indemnity provisions cited by Highland Capital were included only in the last iteration of the Sub Agreements, in March 2017. Thus, even if valid and applicable (which they are not), such provisions do not cover actions of Highland Capital prior to March 2017. Second, to the extent that the indemnity provisions in the Sub Agreements were included in an attempt to shield Highland Capital from liability in connection with its fraudulent scheme to denude Acis (and were added for no consideration), such provisions were themselves fraudulently incurred and should be avoided pursuant to section 548 of the Bankruptcy Code and sections 24.005 and 24.006 of TUFTA.<sup>46</sup> Further, the protection Highland Capital seeks is outside the scope of the indemnity provisions, which indemnify Highland Capital in connection with its actions taken as sub-advisor under the Sub Agreements—not in connection with torts and other wrongful conduct intentionally committed against Acis as part of Highland Capital's calculated scheme to denude the estate. Finally, it is against public policy for indemnity provisions in contract to shield a party from intentional tortious conduct. *See, e.g., Hamblin v.*

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<sup>46</sup> Notably, all versions prior to the last iteration of the Sub-Advisory Agreement (before March 2017) contained no indemnity provision; also, it is telling that the indemnity provisions were added to the Sub-Advisory Agreement and significantly amended in the Shared Services Agreement only after arbitration had been ordered in state court.

*Lamont*, 433 S.W.3d 51, 55 (Tex. App.—San Antonio 2013, pet. denied); *In re Oil Spill by the Oil Rig*, 841 F. Supp. 2d 988, 1001-02 (E.D. La. 2012). Accordingly, such provisions are inapplicable as a defense to the causes of action asserted herein against Highland Capital.

**B. Highland Capital Cannot Satisfy Its Burden of Proving Its Services Directly and Substantially Benefitted the Debtors' Estates.**

**1. Administrative Priority Status is Narrowly Construed and Only Awarded Upon a Showing of a Direct and Substantial Benefit to the Estate.**

335. Under section 503(b)(1) of the Bankruptcy Code, an administrative expense claim shall be allowed for "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). The ultimate burden of proof is on Highland Capital to establish it is entitled to an administrative priority claim pursuant to 11 U.S.C. § 503(b). *See In re Transamerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). Further, because section 503 administrative claims are priority claims, which are entitled to special treatment, section 503 must be narrowly construed. *See In re Templeton*, 154 B.R. 930, 934 (Bankr. W.D. Tex. 2009); *see also In re Federated Dep't Stores, Inc.*, 270 F.3d 994, 1000 (6th Cir. 2001) ("Claims for administrative expenses under § 503(b) are strictly construed because priority claims reduce the funds available for creditors and other claimants.").

336. At a minimum, Highland Capital must establish that "(1) the claim arises from a transaction with the [debtor]; and (2) the goods or services supplied enhanced the ability of the [debtor's] business to function." *See Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Transamerican*, 978 F.2d at 1416); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Claim under this section 'generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate.'" (quoting *Jack/Wade Drilling*, 258 F.3d at 387)).

337. Moreover, the benefit is measured from the point of view of the bankruptcy estate, not that of the applicant. *In re Premium Well Drilling, Inc.*, 2012 Bankr. LEXIS 1554, at \*9 (Bankr. W.D. Tex. Apr. 10, 2012). "The focus on allowance of administrative claims which enjoy priority over other creditors is to prevent unjust enrichment of the estate. It is *not* to compensate the creditor . . . for his or her loss." *In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 462 (Bankr. W.D. Tex. 2005) (emphasis in original).

**2. Highland Capital Cannot Demonstrate It Conferred a Direct and Substantial Benefit on the Debtors' Estates.**

338. As set forth herein, as it had done prior to these Bankruptcy Cases, following entry of the Orders for Relief, Highland Capital continued perpetrating its scheme to steal, and otherwise attempted to damage, Acis's business—in order to *minimize* value for creditors and ensure that Acis could not successfully reorganize—and to line its own pockets. Aside from Highland Capital's actions in sending notices of optional redemption to liquidate the CLOs (without Court approval and in violation of the automatic stay), following entry of the Orders for Relief, Highland Capital also actively mismanaged the Acis CLOs to undermine the business of the Debtors, as evidenced by, *inter alia*, the vast disparity between the trades made in CLOs 3, 4 5, and 6, as opposed to CLO 7, in 2018, as testified to by Terry at the second confirmation hearing. *See* Dec. 12, 2018 Hr'g Tr. (AM) at pp. 19-35.

339. Additionally, while mismanaging CLOs 3, 4 5, and 6, Highland Capital sought to carry out its plan "to transfer the BVK investment management agreement from Acis LP to another Highland-affiliated manager."<sup>47</sup> As explained herein, Highland Capital's attempt to steal BVK's business from Acis began from nearly day one of these Bankruptcy Cases and continued

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<sup>47</sup> *See Exhibit K* (email chain from early February 2018 between Mike Warner (Acis's counsel), Isaac Leventon (Highland Capital's in-house counsel), Timothy Cournoyer (Highland Capital's in-house counsel) and Thomas Surgent (Highland Capital's Chief Compliance Officer)).

even after Highland Capital was terminated as sub-advisor on August 1, 2018—when Highland Capital no longer had any legitimate reason to communicate with Universal or BVK.

340. Highland Capital's actions during the pendency of these Bankruptcy Cases demonstrate that Highland Capital did not service the Acis CLOs in a way that "enhanced the ability of the [debtor's] business to function." *Transamerican*, 978 F.2d at 1416. Indeed, Highland Capital acted to destroy the Debtors' business—therefore, Highland Capital's request for allowance of its Administrative Claim must be denied.

341. In its Application, Highland Capital essentially asserts that it provided services to the Debtors on a postpetition basis pursuant to various prepetition agreements and, therefore, the expenses are entitled to administrative priority. In order to qualify as an administrative expense, however, Highland Capital must show that its claim arose postpetition "as a result of actions by the trustee that benefitted the estate." *Id.* Further, although the terms of the Debtors' prepetition contracts may be probative of the reasonable value of postpetition services, they are not dispositive. *In re Am. Plumbing & Mech., Inc.*, 323 B.R. at 462. Indeed, "all that the estate is required to pay is the *reasonable value* of those services which were rendered." *Id.* (emphasis in original) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531, 104 S. Ct. 1188, 79 L. Ed. 2d 482 (1984)). Consequently, the provisions of the prepetition contracts do not automatically and dispositively translate into an allowed administrative claim. Highland Capital must still demonstrate a quantifiable benefit to the estate.

342. Highland Capital's assertion that its costs were incurred postpetition fails to satisfy its burden of proving entitlement to administrative priority. Specifically, aside from merely referencing the Sub-Agreements and the Universal/BVK Agreement, and contending that monies owed to it under such agreements are an administrative expense, Highland Capital fails to show that (i) such costs were necessary for the preservation of the Debtors' estate, and (ii) the

Debtors received any benefit, let alone a direct and substantial benefit, as a result of such services and expenses.

**3. The Amount Charged by Highland Capital Was Inflated and Unnecessary.**

343. Further, even if Highland Capital could show that, rather than undermining Acis's business, it provided postpetition services that enhanced the ability of Acis to function, to the extent the rates Highland Capital charged Acis were inflated or above market, the amounts charged to Acis under the Sub Agreements did not benefit the estates or its creditors, and such inflated amounts were therefore not necessary. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) ("Courts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit the estate and its creditors."). Indeed, at the July 6, 2018 hearing, regarding approval of the break-up fee and replacement of Highland Capital as sub-servicer with Oaktree, J.P. Sevilla, assistant general counsel for Highland Capital, testified that Highland Capital would reduce its rates charged to Acis LP for sub-servicing from 35 basis points to 17.5 basis points, in order to match competing offers:

Q Okay. Would Highland be willing to reduce its fee during the pendency of the bankruptcy, maybe without its rights to assert the validity of the contract, but would Highland otherwise be willing to assert -- to reduce its fees during the pendency of the bankruptcy?

A I think at the very least Highland would match Saratoga or whatever the 17.5 bps offer is. Again, reserving all rights, but in order to stay in the deal and to establish Highland's commitment to this deal, we would do it for 17-1/2 basis points, no question.

July 6, 2018 Hr'g Tr. at pp. 243-44. Moreover, the effective rate for such services charged by Brigade and Cortland also approached 17.5 basis points.<sup>48</sup> Accordingly, notwithstanding the objections otherwise raised herein, and assuming the services provided to Acis LP enhanced,

<sup>48</sup> Pursuant to the Third Amended Joint Plan, Brigade agreed to provide sub-advisory and shared services to the Acis CLOs for 15 basis points (and decreasing after one year). *See* Docket No. 661 at pp. 28, 136; *see also* Dec. 11, 2018 (PM) Hr'g Tr. at 89 & Dec. 12, 2018 (AM) Hr'g Tr. at 62.

rather than undermined, the ability of Acis's business to function, such amounts should be reduced to reflect a rate of at most 17.5 basis points.

**4. The Plaintiffs Dispute Highland Capital's Calculation of its Administrative Claim.**

344. The Plaintiffs further object to Highland Capital's calculation of the amount of the Administrative Claim. Subject to the objections raised herein, in the *Amended Disclosure Statement Pursuant to Section 1125 of the United States Bankruptcy Code with Respect to the Second Amended Joint Plan for Acis Capital Management, L.P. and Acis Capital Management GP, LLC* [Case No. 18-30264, Docket No. 621] (the "Disclosure Statement"), the Trustee estimated that under the terms of the Sub Agreements, Highland Capital's alleged Administrative Claim would be approximately \$2,612,574.00, rather than \$3,007,678.41. Highland Capital fails to explain or substantiate this discrepancy. The Administrative Claim also includes \$543,545.88 for expenses. Highland Capital fails to show that these alleged expenses were incurred or payable under the Sub Agreements. *See In re Packard Props., Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990) ("Since this claim is a request for payment of administrative expenses, the [creditor] carries the burden of proof throughout the entire proceeding."). Therefore, in addition to the objections herein, the Plaintiffs also object to Highland Capital's calculation of its purported Administrative Claim.

**C. Highland Capital Is Not Entitled to Payment of Any Allowed Administrative Claim Because Acis's Right of Offset and Recoupment May Reduce or Eliminate Its Administrative Claim.**

345. Even if the Court were to determine that Highland Capital is entitled to an allowed Administrative Claim, it should not be entitled to payment because Acis has rights of offset and recoupment that may be applied under section 558 of the Bankruptcy Code to reduce

or eliminate any allowed Administrative Claim.<sup>49</sup> As set forth above, Highland Capital charged Acis excessive and unreasonable fees for its services, and Acis has asserted a number of causes of action against Highland Capital for such overcharges, including for recovery of overcharges resulting from *ultra vires* actions, turnover of unauthorized payments, money had and received, conversion, fraudulent transfer, civil conspiracy, breach of contract, and breach of fiduciary duty. As a result of these overcharges, the Debtors' estates suffered many millions of dollars in damages which should be offset against any valid administrative claim awarded to Highland Capital. Indeed, the causes of action against Highland Capital may offset, or eliminate altogether, any right of recovery Highland Capital may have against the Debtors' estates on account of any Administrative Claim.

**D. To the Extent Allowed, Highland Capital's Administrative Claim Should Also Be Equitably Subordinated.**

346. In addition to applying equitable subordination to prepetition claims, courts have equitably subordinated administrative claims when the claimant acted in ways to harm the estate. *See, e.g., Principal Mut. Life Ins. Co. v. Langhorne (In re 848 Brickell Ltd.)*, 243 B.R.142, 149 (S.D. Fla. 1998) (holding that while "pursuit of one's legal rights may not be grounds for equitable subordination, the lower court's findings that [the claimant's] protracted and abusive litigation tactics harmed the estate by causing it to incur about \$400,000 in fees" justified equitable subordination of its administrative claim).

347. For the same reasons described above with respect to Highland Capital's prepetition claims, Highland Capital's Administrative Claim should also be equitably subordinated to the extent allowed. Further, during these Bankruptcy Cases, the Debtors' estates

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<sup>49</sup> The Plan provided for the payment of allowed administrative claims on (i) the later of the effective date or the tenth business day after the administrative expense is allowed, or (ii) as otherwise agreed in writing between the Reorganized Debtor, or as otherwise ordered by the Bankruptcy Court. *See* Case No. 18-30264, Docket No. 660 at 11, § 3.01(b).

and the Reorganized Debtors have incurred substantial administrative fees in responding to the protracted and abusive litigation tactics of Highland Capital, including arguing for (and against) injunctive relief to prevent the liquidation of the CLOs and litigating the numerous appeals initiated by Highland Capital against the Trustee. Such litigation tactics by Highland Capital were attempts to thwart the reorganization of the Debtors, damage the estate, and harm its creditors. Accordingly, the Court should equitably subordinate Highland Capital's Administrative Claim. *See Principal Mut. Life Ins. Co.*, 243 B.R. at 149.

348. Thus, to the extent the Highland Capital's Administrative Claim is allowed in any amount, it should be subordinated below all other allowed claims in these Bankruptcy Cases.

## VI. PRAYER

Plaintiffs respectfully request that the Court:

(i) enter judgment declaring that Expense Overpayments made to Highland Capital in excess of 20% of Revenue and any agreements supporting such overpayments were *ultra vires* and, thus, void or voidable;

(ii) enter judgment against Highland Capital for the recovery of any *ultra vires* payments made to Highland Capital;

(iii) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Holdings, and Highland Management for the avoidance and recovery of transfers fraudulently made and obligations fraudulently incurred and for civil conspiracy in connection with such fraudulent transfers and schemes;

(iv) enter judgment against Highland Capital, Highland Holdings, and Highland Management for avoidance and recovery of preferential transfers received;

(v) enter judgment against Highland Capital for tortious interference with contract;

(vi) enter judgment against Highland Capital for breach of contract;

(vii) enter judgment against Highland Capital for breach of its fiduciary duties and order disgorgement of all funds received by Highland Capital as a result of such breach;

(viii) enter judgment against Highland Capital and Highland Funding for willful violation of the automatic stay, pursuant to section 362(k) of the Bankruptcy Code;

(ix) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for punitive damages;

(x) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for pre- and post-judgment interest at the greatest amount permitted by law;

(xi) enter judgment against Highland Capital, Highland Funding, Highland Advisor, Highland Management, and Highland Holdings for all attorneys' fees and costs incurred in connection with the prosecution of this Adversary Proceeding and for all allowed professionals' fees and expenses incurred by the estates in the Bankruptcy Cases;

(xii) establish a constructive trust for all benefits unjustly received by that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings;

(xiii) declare that Highland Capital, Highland Funding, Highland Advisor, Highland Management and Highland Holdings are alter egos of each other, or that the corporate for should otherwise be disregarded, and each is fully liable for any judgment entered for the Plaintiffs in this Adversary Proceeding;

(xiv) disallow, expunge and/or subordinate the Highland Capital Claims;

(xv) deny, disallow, and/or subordinate Highland Capital's Administrative Claim; and

(xvi) grant any other such relief that the Plaintiffs may show themselves to be justly entitled in law or in equity.

Dated: June 20, 2019.

Respectfully submitted,

By: /s/Rakhee V. Patel

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-and-

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2019, notice of this document will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this adversary proceeding pursuant to the Electronic Filing Procedures in this District. Service will also be made as required and allowed by Federal Rule of Bankruptcy Procedure 7004.

/s/ Annmarie Chiarello  
One of Counsel

**EXHIBIT U**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: )
) Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,1 )
) Case No. 19-12239 (CSS)
Debtor. )
) Ref. Docket No.: 86

ORDER TRANSFERRING VENUE OF THIS CASE TO THE UNITED STATES
BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS

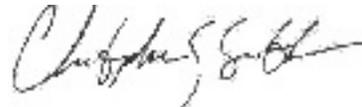
Upon the motion (the "Motion")2 of the Committee requesting entry of an order (this
"Order") transferring the venue of the above-captioned chapter 11 case to the United States
Bankruptcy Court for the Northern District of Texas; and this Court having jurisdiction over this
matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the
United States District Court for the District of Delaware, dated February 29, 2012; and this
matter being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this Motion
being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of, and the

1 The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service
address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.
2 Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.



opportunity for a hearing on, the Motion having been given; and for the reasons stated on the record, it is HEREBY ORDERED THAT:

1. Effective as of the date of this Order, the above-captioned chapter 11 case shall be transferred to the Dallas Bankruptcy Court pursuant to 28 U.S.C. § 1412.



**EXHIBIT V**

**HEATHER BESTWICK**

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

IN RE:

ACIS CAPITAL MANAGEMENT, L.P., ) (Case No. 18-30264-sgj11  
ACIS CAPITAL MANAGEMENT GP, ) (Case No. 18-30265-sgj11  
LLC, ) (  
 ) ((Jointly Administered  
DEBTORS, ) (Under Case No.  
 ) (18-30264-sgj11)  
 ) (  
 ) (Chapter 11

\*\*\*\*\*

ORAL DEPOSITION OF  
HEATHER BESTWICK  
NOVEMBER 26, 2018

\*\*\*\*\*

ORAL DEPOSITION OF HEATHER BESTWICK, produced as a witness at the instance of the Robin Phelan, Chapter 11 Trustee, and duly sworn, was taken in the above-styled and numbered cause on the 26th day of November 2018, from 8:18 a.m. to 2:13 p.m. before Tonya Perkins, Certified Shorthand Reporter in and for the State of Texas, reported at the offices Winstead, PC, 300 Throckmorton, Suite 1700, Fort Worth, Texas 76102, pursuant to the Federal Rules of Civil Procedure and/or provisions stated on the record.

**HEATHER BESTWICK**

12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 A. Yes.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) Now you describe</b></p> <p>3 <b>yourself as an independent director, correct?</b></p> <p>4 A. Uh-huh. Yes.</p> <p>5 <b>Q. Is there another type of director, a</b></p> <p>6 <b>non-independent director?</b></p> <p>7 A. That's the nomenclature that's used for the</p> <p>8 role.</p> <p>9 <b>Q. Fair enough. And how are you selected?</b></p> <p>10 A. I believe that Highland -- you're talking</p> <p>11 about Highland, or you're talking about generally? I</p> <p>12 mean, generally speaking, our CVs are pretty much</p> <p>13 available on sites like LinkedIn. Promoters also speak</p> <p>14 to the lawyers that they've instructed in the relevant</p> <p>15 jurisdiction to know if they have any particular</p> <p>16 recommendations or contacts or know about people.</p> <p>17 <b>Q. But in terms of the actual selection, it was</b></p> <p>18 <b>Highland that selected you, correct?</b></p> <p>19 A. Yes, of course.</p> <p>20 <b>Q. Of course? Help me understand why you</b></p> <p>21 <b>answer --</b></p> <p>22 A. Because they're -- they're the promoter of</p> <p>23 the fund and so they are the ones who will look to</p> <p>24 structure it, and part of that process will be the</p> <p>25 selection of the non-ex directors.</p>		<p style="text-align: right;">Page 44</p> <p>1 requires, so it changes from year to year. Clearly this</p> <p>2 year we've had more meetings because we've had this case</p> <p>3 to discuss, but it varies.</p> <p>4 <b>Q. Are notes of the minutes of the meeting</b></p> <p>5 <b>regularly maintained?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Who does that?</b></p> <p>8 A. That's State Street. They are the</p> <p>9 administrator and company's secretary.</p> <p>10 <b>Q. So do they participate in every board</b></p> <p>11 <b>meeting?</b></p> <p>12 A. Pretty much. To the extent that they don't,</p> <p>13 we will let them know what we -- what we've agreed and</p> <p>14 ask them to --</p> <p>15 COURT REPORTER: Wait. I didn't get the</p> <p>16 last part. We agreed what?</p> <p>17 THE WITNESS: How to document it.</p> <p>18 <b>Q. (BY MR. WIELEBINSKI) How do you typically</b></p> <p>19 <b>communicate with Mr. Scott?</b></p> <p>20 A. Telephone, generally. I don't see him other</p> <p>21 than when I'm in Guernsey for meetings.</p> <p>22 <b>Q. Do you send emails regularly?</b></p> <p>23 A. Yes. Yes.</p> <p>24 <b>Q. And what about with PWC, how do you</b></p> <p>25 <b>communicate with them?</b></p>
<p style="text-align: right;">Page 43</p> <p>1 <b>Q. And how many members are there of the board?</b></p> <p>2 A. Two.</p> <p>3 <b>Q. Who's the chairman?</b></p> <p>4 A. Bill.</p> <p>5 <b>Q. And Bill is Bill Scott?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And your relationship to Bill Scott?</b></p> <p>8 A. I serve on a board with him.</p> <p>9 <b>Q. Just one board?</b></p> <p>10 A. Uh-huh.</p> <p>11 <b>Q. This board?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. No other relationship?</b></p> <p>14 A. No.</p> <p>15 <b>Q. And how long have you been affiliated with</b></p> <p>16 <b>HCLOF?</b></p> <p>17 A. Since I was appointed in May 2015.</p> <p>18 <b>Q. What's your compensation?</b></p> <p>19 A. I'm paid 35,000 pounds a year.</p> <p>20 <b>Q. And on average how often do you meet with --</b></p> <p>21 <b>does HCLOF's board meet?</b></p> <p>22 A. We have a corporate calendar which revolves</p> <p>23 around four quarterly board meetings. We meet to</p> <p>24 discuss the financial accounts every year also. We have</p> <p>25 various ad hoc meetings as and when the business</p>		<p style="text-align: right;">Page 45</p> <p>1 A. Again, telephone, and meetings, emails.</p> <p>2 <b>Q. Emails as well?</b></p> <p>3 A. Uh-huh.</p> <p>4 <b>Q. Same with State Street?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And Highland?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Does anyone from Highland sit in on your</b></p> <p>9 <b>board meetings?</b></p> <p>10 A. Not in person, but by telephone, yes.</p> <p>11 <b>Q. Do they sit in on every meeting?</b></p> <p>12 A. Yes. Yes. We take the Portfolio Management</p> <p>13 Agreement as an agenda item.</p> <p>14 <b>Q. But you don't just discuss portfolio</b></p> <p>15 <b>management issues during those board meetings, correct?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Do they sit through the entire meeting?</b></p> <p>18 A. Generally, yes.</p> <p>19 <b>Q. Have you ever asked to exclude them from any</b></p> <p>20 <b>portion of your board meetings?</b></p> <p>21 A. I don't recall that we ever have done that.</p> <p>22 Sometimes they have to drop off because they've got</p> <p>23 other commitments, and as long as we've had the agenda</p> <p>24 item specifically involving them, that's okay.</p> <p>25 <b>Q. Is that because they own a controlling</b></p>

HEATHER BESTWICK

13 (Pages 46 to 49)

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1 interest in the fund?  
2 MR. MALONEY: Objection, foundation.  
3 A. It's because they're the portfolio manager,  
4 and they have their duties to the fund.  
5 **Q. (BY MR. WIELEBINSKI) But you previously**  
6 **testified that their portfolio management role is solely**  
7 **with respect to managing the portfolio, right? Isn't**  
8 **that correct?**  
9 MR. MALONEY: Objection, foundation.  
10 **Q. (BY MR. WIELEBINSKI) Well, let me ask you.**  
11 **Isn't what Highland does is serve only as a portfolio**  
12 **manager? Do they play any other role in the operation**  
13 **or management of HCLOF?**  
14 A. Well, HCLOF, as you know, is a Guernsey  
15 entity, and we have lots of service providers apart from  
16 the portfolio manager.  
17 **Q. And which one of those sit in on your board**  
18 **meetings?**  
19 A. Well, we have State Street there, obviously,  
20 because they're the administrator. We have the  
21 custodian.  
22 **Q. They sit in on every board meeting?**  
23 A. Of course.  
24 **Q. Okay.**  
25 A. The custodian dials in, generally, from

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1 Ireland to give their report.  
2 **Q. And they sit through the entire meeting?**  
3 A. Not always. Sometimes they do. Actually,  
4 no, they tend to come just for their report. And, of  
5 course, when we're dealing with auditors, they will come  
6 and report to us as well. So --  
7 **Q. Does PWC sit through the meetings?**  
8 A. No, not all of them, but they'll be there for  
9 the meeting where we're discussing the accounts.  
10 **Q. So both of -- PWC and State Street only sit**  
11 **through a portion of the meetings, but Highland always**  
12 **sits through the entire meeting --**  
13 MR. MALONEY: Objection, foundation.  
14 **Q. (BY MR. WIELEBINSKI) -- is that correct?**  
15 A. Not always.  
16 **Q. So now you're saying they don't sit through**  
17 **the entire meeting?**  
18 A. No. What I said was that they don't if they  
19 have other things to do or if they have commitments or  
20 they have to go on other calls or they're traveling,  
21 that sort of thing.  
22 **Q. But other than they're not being able to**  
23 **attend for some reason, they otherwise will sit through**  
24 **the entire board meetings; is that correct?**  
25 A. Pretty much, yes.

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1 **Q. And who is it from Highland that sits in**  
2 **those meetings?**  
3 A. It's generally Hunter Covitz. Tim Cournoyer  
4 will sometimes join. They're the main contacts we have.  
5 **Q. Okay. You mentioned there's only two members**  
6 **of the board, correct?**  
7 A. Yes.  
8 **Q. And do you vote on all issues?**  
9 MR. MALONEY: Objection, form.  
10 A. We don't have a formal voting procedure  
11 because it's just the two of us and we're sitting around  
12 a table. It's in the nature of our relationship that we  
13 discuss things. We don't have a formal vote. We come  
14 to agreement by discussion.  
15 **Q. (BY MR. WIELEBINSKI) On everything?**  
16 A. Well, that's generally the way that we  
17 operate. You know, our role is not to be  
18 confrontational with each other. Our role is to look  
19 after the fund in the best way that we can. So we don't  
20 row or argue; we discuss issues and come to a consensual  
21 decision.  
22 **Q. Is there anything you've ever disagreed with**  
23 **Mr. Scott on any issue?**  
24 A. I can't think of an out-and-out disagreement.  
25 **Q. Did you ever have a disagreement with**

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1 **Highland or its advice?**  
2 A. Again, I don't think that I can recall a  
3 particular disagreement. That's not to say that we  
4 don't have robust discussions and challenge because, of  
5 course, we do, and that's the purpose of the quarterly  
6 board meetings and all the various reports. We do  
7 interrogate them.  
8 **Q. But you've never had a disagreement with him?**  
9 A. I can't recall that we've disagreed.  
10 **Q. And you've always accepted their advice?**  
11 A. Yes. On the basis that they are the experts,  
12 and it's their role to do what they do.  
13 **Q. Now, what type of decisions do you make for**  
14 **the -- as a member of the board that are not based on**  
15 **the portfolio manager's advice?**  
16 A. You mean outside of portfolio management all  
17 together? So just day-to-day running?  
18 **Q. I'm asking you.**  
19 A. -- of the fund?  
20 **Q. I don't know what things you might decide on**  
21 **that doesn't involve the portfolio manager.**  
22 A. Well, obviously, we have the relationship  
23 with the administrator. We had what -- for instance,  
24 when we were set up, we were going to be a listed fund  
25 on the stock exchange, so we had a registrar company

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14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 called Computer Share. We didn't get listed, we didn't 2 go down that route, so there was no point in paying 3 another service provider money for doing something we 4 didn't need so we decided that the best thing would be 5 to terminate Computer Share. 6 So we discussed that with Highland. I think, 7 you know, we -- the decisions that we make, obviously, 8 we will make as a board, but we do it in discussion with 9 Highland, the portfolio manager. 10 <b>Q. Is it pretty much fair to say that most</b> 11 <b>decisions that you do make as board member are in or</b> 12 <b>through discussions with Highland as portfolio manager?</b> 13 MR. MALONEY: Objection to form. 14 A. I think there's some pretty basic sort of 15 admin-type things that we get on with without 16 necessarily discussing with Highland, but that's just 17 the nature of the fund. 18 <b>Q. (BY MR. WIELEBINSKI) But anything substantive</b> 19 <b>Highland is involved and you discuss it with them; is</b> 20 <b>that what I understand?</b> 21 MR. MALONEY: Objection to form. 22 A. I think we would always want to involve 23 Highland and the portfolio manager in discussions about 24 anything substantive. 25 <b>Q. (BY MR. WIELEBINSKI) When was HCLOF formed?</b></p>		<p style="text-align: right;">Page 52</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) Ms. Bestwick, we're back</b> 2 <b>on the record.</b> 3 A. Okay. 4 <b>Q. You mentioned -- you mentioned earlier that</b> 5 <b>Highland, as the promoter, selected you and Mr. Scott.</b> 6 <b>Do you remember that?</b> 7 A. Yes. 8 <b>Q. Who makes the decision to fire you or</b> 9 <b>Mr. Scott?</b> 10 A. Well, that will be the shareholders who have 11 that authority. 12 <b>Q. Okay. And those are the shareholders you</b> 13 <b>mentioned before, Harbour Vest and the DAF, as well as</b> 14 <b>the 2 percent interest held by --</b> 15 A. Yes. 16 <b>Q. -- the Highland entities?</b> 17 A. Yes. 18 <b>Q. So essentially Highland controls that</b> 19 <b>decision on firing because they control the majority of</b> 20 <b>the investments; is that correct?</b> 21 MR. MALONEY: Objection, foundation. 22 A. Well, no. If it is put to a resolution of 23 the shareholders, my understanding is that it would have 24 to be a 75 percent decision. 25 <b>Q. (BY MR. WIELEBINSKI) And what's that based</b></p>
<p style="text-align: right;">Page 51</p> <p>1 A. 2015. I can't tell you the exact date. 2 <b>Q. And under what circumstances?</b> 3 A. With a view to being part of the structure 4 that we've described. 5 <b>Q. And this is your -- this is your first</b> 6 <b>involvement with Highland, correct?</b> 7 A. Yes. 8 <b>Q. Is it Bill's first involvement with Highland?</b> 9 <b>Do you know?</b> 10 A. I believe so, but you'd have to ask him for 11 sure. 12 <b>Q. And do you or Bill have any other connections</b> 13 <b>with Highland or any of the Highland affiliates?</b> 14 A. No. 15 MR. WIELEBINSKI: You know what, can we 16 take a short break? We've gone now for almost an 17 hour -- or a little over an hour. 18 MR. MALONEY: How long do you want to 19 take? 20 MR. WIELEBINSKI: Five minutes. 21 THE VIDEOGRAPHER: Off the record at 22 9:18. This is Disk 1, Volume 1. 23 (Break taken.) 24 THE VIDEOGRAPHER: On the record at 25 9:35. This is Disk 2, Volume 1.</p>		<p style="text-align: right;">Page 53</p> <p>1 <b>on, that understanding?</b> 2 A. Because it's a special resolution rather than 3 an ordinary resolution. 4 <b>Q. And that's contained where, that that</b> 5 <b>requirement --</b> 6 A. In the Articles of Association. 7 <b>Q. Remember you had mentioned that HCLOF had</b> 8 <b>initially hired the Gardere Foley law firm --</b> 9 A. Yes. 10 <b>Q. -- and they that were involved representing</b> 11 <b>you for some period of time in this bankruptcy?</b> 12 A. Yes. 13 <b>Q. Who made the decision to hire Gardere Foley?</b> 14 A. I think that was Highland. 15 <b>Q. It was a recommendation made by Highland, and</b> 16 <b>you, as the board member, and Mr. Scott decided to</b> 17 <b>accept that recommendation?</b> 18 A. Yes. Because when we were initially told 19 about the proceedings, then clearly we weren't aware 20 that the fund was involved. 21 <b>Q. You weren't even aware when the bankruptcies</b> 22 <b>were filed that you had some involvement in that? When</b> 23 <b>the bankruptcy was filed, it was Highland that had to</b> 24 <b>tell you that, hey, you guys need to get involved.</b> 25 <b>You're involved in this?</b></p>

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15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 A. Highland did tell the fund that that was the 2 case, yes. 3 <b>Q. And then they told you to hire Gardere?</b> 4 A. Well, no. I think that the firm was already 5 instructed to represent Highland. 6 <b>Q. And then they told you that you needed to 7 retain Gardere as well for your interests in the -- as 8 it related to the bankruptcy?</b> 9 MR. MALONEY: Objection, form. 10 A. We had common interests in that we needed to 11 have the fund out of the mess, so to that extent, yes. 12 <b>Q. (BY MR. WIELEBINSKI) And who, then, told you 13 that you needed to get King &amp; Spalding?</b> 14 MS. O'NEIL: Objection. Caution the 15 witness not to divulge attorney-client privileged 16 communications. 17 A. I think as any discussion of the board, it 18 would have involved a discussion between Bill and 19 myself. 20 <b>Q. (BY MR. WIELEBINSKI) With any Highland 21 involvement?</b> 22 A. I think there probably was a discussion had 23 at some point with Highland, but that's not to say that 24 we didn't have a discussion just between the two of us. 25 <b>Q. And do you recall specifically when you and</b></p>		<p style="text-align: right;">Page 56</p> <p>1 objection to the extent it calls for speculation. 2 A. I -- 3 <b>Q. (BY MR. WIELEBINSKI) Excuse me. Harbour Vest 4 is disclosed in information that's publicly available in 5 Guernsey, is it not, as an investor in the fund?</b> 6 A. Well, it's on the shareholder registry, but 7 that's not a public document. 8 <b>Q. But it is disclosed in that information, 9 correct?</b> 10 A. Yes. It has to be, as a matter of Guernsey 11 law. 12 <b>Q. And it's been disclosed through this 13 proceeding as well, correct?</b> 14 A. Yes. 15 <b>Q. So can you speculate as to a reason why they 16 wouldn't want their name mentioned and why you actually 17 didn't mention it when your counsel asked you questions?</b> 18 MR. MALONEY: Objection, calls for 19 speculation. 20 A. I can give you my view on it. 21 <b>Q. (BY MR. WIELEBINSKI) Do you mind?</b> 22 A. I think that they have been what you would 23 call a passive investor throughout. They haven't wanted 24 particular involvement, so it could be argued, I 25 suppose, that they want to continue in that sort of role</p>
<p style="text-align: right;">Page 55</p> <p>1 <b>Bill made the decision to essentially remove -- or end 2 the relationship with Gardere Foley?</b> 3 MR. MALONEY: Objection to form. You 4 can answer. 5 A. I don't have that information in my head, I'm 6 afraid. 7 <b>Q. (BY MR. WIELEBINSKI) Do you remember when 8 your counsel mentioned something about Harbour Vest 9 being -- asking that its name not be raised and that it 10 be referred to in a more ambiguous way?</b> 11 A. Yes. 12 <b>Q. Do you know why? Why is Harbour Vest 13 concerned about its name being mentioned?</b> 14 A. I don't know the reason from Harbour Vest, 15 but -- 16 <b>Q. Did they talk to you about it at all?</b> 17 A. No. 18 <b>Q. Did they talk to Bill about it, to your 19 knowledge?</b> 20 A. Not to my knowledge. 21 <b>Q. Can you think of a reason why they wouldn't 22 want to have their name mentioned considering that it's 23 public information in a number of -- from a number of 24 sources, including in Guernsey?</b> 25 MR. MALONEY: Objection to form, and</p>		<p style="text-align: right;">Page 57</p> <p>1 as a passive investor. 2 <b>Q. As a board member for HCLOF, who do you serve 3 for the benefit of?</b> 4 A. We serve for the benefit of the company, and 5 that is generally taken to mean the best economic 6 interests of the shareholders as a whole. 7 <b>Q. Is it fair to say that your role is to 8 attempt to maximize the recovery for your shareholders?</b> 9 A. Well, our role is to make sure that the 10 company is run properly; and, obviously, if you're 11 running an investment fund, then the idea is to maximize 12 returns for investors. 13 <b>Q. What exactly does HCLOF own?</b> 14 A. It owns investments, equity strips, and CLOs. 15 <b>Q. And does it have -- do you know how many CLOs 16 are involved in this matter that we're talking about?</b> 17 A. Yes. Five. Five or six. 18 <b>Q. And does HCLOF own equity strips in all five 19 CLOs?</b> 20 A. Yes. 21 <b>Q. Are you certain of that?</b> 22 A. I think there's one that is being liquidated, 23 so to the extent that that has happened. 24 <b>Q. I'm not trying to trick you on that. But 25 your understanding is that HCLOF owns equity strips in</b></p>

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16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 all five CLOs? 2 A. Yes. Yes. 3 <b>Q. What involvement, if any, does HCLOF have</b> 4 <b>with ACIS Capital Management?</b> 5 A. Now? 6 <b>Q. Yes.</b> 7 A. Well, it's the -- it was the portfolio 8 manager, but now it isn't. And ACIS is working with 9 Brigade on the underlying CLOs. 10 <b>Q. Including your equity strips?</b> 11 A. Yes. 12 <b>Q. Are you familiar with the series of transfers</b> 13 <b>and transactions in the fall of 2017 that involved ACIS</b> 14 <b>and HCLOF?</b> 15 A. Yes. 16 <b>Q. And were you involved in those transactions</b> 17 <b>and transfers?</b> 18 MR. MALONEY: Objection to form; vague. 19 You can answer if you know the transactions specifically 20 that he's talking about. 21 A. Well, as a director, we were involved in the 22 incoming new investor, and I think I mentioned earlier 23 that involved, as a condition precedent to the closing 24 of that deal, that ACIS be replaced as portfolio 25 manager.</p>		<p style="text-align: right;">Page 60</p> <p>1 A. The fact that it was going to help in the 2 marketing of the business going forward and that it was 3 a condition precedent to the new investor coming in. 4 <b>Q. Now, if I told you in discussions with</b> 5 <b>Harbour Vest they disclaimed any condition precedent to</b> 6 <b>their investment and said they didn't care one way or</b> 7 <b>the other, would that surprise you?</b> 8 A. That would certainly be news to me, because 9 we were advised that that was the case. 10 <b>Q. By Highland?</b> 11 A. By Highland. 12 <b>Q. And subsequent to your first being advised by</b> 13 <b>Highland about this condition precedent, have you ever</b> 14 <b>spoken to Harbour Vest about its investment and the</b> 15 <b>condition precedent?</b> 16 A. No, we've never discussed or spoken to 17 Harbour Vest about that. 18 <b>Q. When were you first made aware of the Terry</b> 19 <b>litigation in the United States involving Mr. Terry and</b> 20 <b>the Highland entities?</b> 21 A. It was the middle of April this year. 22 <b>Q. You never knew about it before that time</b> 23 <b>period?</b> 24 A. No. 25 <b>Q. Do you know if Mr. Scott did?</b></p>
<p style="text-align: right;">Page 59</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) And your testimony is</b> 2 <b>that Harbour Vest made that a condition precedent?</b> 3 A. That's what the board revised, yes. 4 <b>Q. And they were advised that by whom?</b> 5 A. By the portfolio manager, by Highland. 6 <b>Q. And what did you do as a board member to</b> 7 <b>verify that?</b> 8 <b>(At this time Mr. Shaw enters the room.)</b> 9 A. We listened to the rationale and were happy 10 to accept the advice on the basis that the portfolio 11 manager was acting in the best interest of the investors 12 as they were supposed to do. So we were happy to accept 13 that to be the case. 14 <b>Q. (BY MR. WIELEBINSKI) Did you do any</b> 15 <b>independent verification of that information conveyed to</b> 16 <b>you by Highland regarding Harbour Vest?</b> 17 A. No. And it wouldn't be something that would 18 be in the normal course of business that you would seek 19 independent verification of what your portfolio manager 20 was advising. 21 <b>Q. Do you know why the Portfolio Management</b> 22 <b>Agreement of HCLOF was transferred from ACIS to a</b> 23 <b>Highland affiliate or a Highland-related entity?</b> 24 A. For the reason that I've just explained. 25 <b>Q. That was the only reason, as far as you know?</b></p>		<p style="text-align: right;">Page 61</p> <p>1 A. I don't believe he did, but you'd have to ask 2 him. 3 <b>Q. And who made you aware of the Terry</b> 4 <b>litigation?</b> 5 A. Highland. 6 <b>Q. And what did they tell you?</b> 7 A. That there had been a proceeding in a Dallas 8 court the previous week to the call which meant that we 9 couldn't do the resets which had been anticipated and 10 that it was causing damage to the fund. 11 <b>Q. And who told you that?</b> 12 A. I believe it was Isaac Leventon. I think he 13 was on the call. It was a conference call, but I think 14 it was probably Mr. Leventon who explained it. 15 <b>Q. And this was in April of this year?</b> 16 A. Yes. 17 <b>Q. It was the first time you heard anything</b> 18 <b>about the Terry litigation?</b> 19 A. Yes. 20 <b>Q. And was it a special board meeting when he</b> 21 <b>told you this?</b> 22 A. No. It was a conference call, an update 23 call. We'd been asked to join a call for an update. 24 <b>Q. I'm sorry, I didn't hear you. You'd been</b> 25 <b>asked to join a call?</b></p>

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17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 A. A conference call by way of update. 2 <b>Q. Would that not be a special board meeting?</b> 3 A. Well, no, not if it involved others. There 4 are certain formalities around board meetings, and it 5 was an update call. 6 <b>Q. Okay. Who all was on that call? Do you</b> 7 <b>recall?</b> 8 A. Obviously, a few people from Highland. I 9 think probably Hunter might have been on the call, Tim 10 Cournoyer was probably on the call, and then Bill and 11 myself. 12 <b>Q. And what you've testified to was that they</b> 13 <b>told you two things. One, there was a proceeding in a</b> 14 <b>Dallas court involving Mr. Terry and that they --</b> 15 A. Involving ACIS. 16 <b>Q. Involving ACIS?</b> 17 A. Yes. Yes. 18 <b>Q. Did they say it also involved Mr. Terry?</b> 19 A. I don't think so. I think it was specific to 20 ACIS. 21 <b>Q. And it wouldn't allow you to do the resets</b> 22 <b>anticipated?</b> 23 A. Yes. 24 <b>Q. Are those the ones with Mizuho?</b> 25 A. Yes. We've been talking about resets</p>		<p style="text-align: right;">Page 64</p> <p>1 A. I think we were told that things were influx, 2 and so we asked to be kept updated. 3 <b>Q. But you didn't ask for any of the pleadings</b> 4 <b>and you didn't receive any of the pleadings at that</b> 5 <b>time?</b> 6 A. No. Because we weren't aware that it 7 particularly involved the fund in a way that it has 8 transpired. 9 <b>Q. It really wasn't that important. You just</b> 10 <b>know there was a proceeding going on, correct?</b> 11 A. Well, no. 12 MR. MALONEY: Objection, form. You can 13 answer. 14 A. The fact that our investments were not able 15 to be reset as anticipated obviously was an impact on 16 the fund. 17 <b>Q. (BY MR. WIELEBINSKI) For some reason I</b> 18 <b>thought that those Mizuho resets were to occur in</b> 19 <b>January or February. Wasn't that the case?</b> 20 A. We had been talking about resets throughout 21 2017, so I'm -- 22 <b>Q. Understood.</b> 23 A. -- not quite sure. 24 <b>Q. Now I'm talking about January or February of</b> 25 <b>2018. Weren't they to have occurred by that point?</b></p>
<p style="text-align: right;">Page 63</p> <p>1 throughout 2017 as part of the general board meetings, 2 updates, etcetera, and I think there was a contract with 3 Mizuho being talked about. 4 <b>Q. And did they tell you anything else about the</b> 5 <b>litigation?</b> 6 MS. O'NEIL: Object to the extent it may 7 call for attorney-client communications. 8 MR. MALONEY: I would join in that. 9 A. I think it was an update. There were 10 proceedings in a court in Dallas. 11 <b>Q. (BY MR. WIELEBINSKI) There were no attorneys</b> 12 <b>involved other -- well, strike. Strike.</b> 13 <b>Was Mr. Maloney involved on the call?</b> 14 A. No. 15 <b>Q. Was Ms. O'Neil or anybody from her firm</b> 16 <b>involved in the call?</b> 17 A. No. 18 <b>Q. So it was just those two pieces of</b> 19 <b>information that were shared with you at that point?</b> 20 A. (Nods head affirmatively.) 21 <b>Q. Did you ask for any -- you have to</b> 22 <b>acknowledge yes.</b> 23 A. Sorry. Yes. 24 <b>Q. Did you ask for any additional information at</b> 25 <b>that time?</b></p>		<p style="text-align: right;">Page 65</p> <p>1 A. I'd need to refresh my memory with board 2 minutes, etcetera, but I think the timing was probably 3 year end, beginning of 2018. 4 <b>Q. Why was it important for Highland to share</b> 5 <b>this information with you in April?</b> 6 MS. O'NEIL: Objection to the extent it 7 calls for disclosure of privileged attorney-client 8 communication. 9 MR. MALONEY: I also to the extent -- 10 I'd also object to the extent it calls for speculation. 11 To the extent the witness knows why Highland said, you 12 can answer. 13 A. We have update calls with Highland. This was 14 an update call about -- 15 COURT REPORTER: About what? 16 THE WITNESS: An event. 17 <b>Q. (BY MR. WIELEBINSKI) Did they ever tell you</b> 18 <b>how they proposed to address this situation?</b> 19 MS. O'NEIL: Objection to the extent it 20 calls for disclosure of attorney-client privileged 21 communications. 22 MR. MALONEY: I join in that, and the 23 instruction to avoid disclosing communications and 24 advice you received from counsel. 25 A. I think it would be difficult for me to</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 respond because, of course, we do, then, take advice 2 from counsel about precisely what you're talking about, 3 the options. 4 <b>Q. (BY MR. WIELEBINSKI) Did you ask the</b> 5 <b>question, What are we going to do to clean up this</b> 6 <b>situation?</b> 7 A. I think we asked the question, How are we 8 involved and what is the impact in all of this? 9 <b>Q. And other than the reset, how did they answer</b> 10 <b>that question?</b> 11 A. Well, it was -- it was around the reset and 12 the fact that that was costing the fund money. 13 <b>Q. How did you understand the -- you couldn't do</b> 14 <b>the resets at this point. That was going to be a</b> 15 <b>problem for the fund, correct?</b> 16 A. Yes. 17 <b>Q. How did you understand at that point you were</b> 18 <b>going to move forward in connection with this -- the</b> 19 <b>current situation? What were you, as a board member,</b> 20 <b>going to do for the company as a result?</b> 21 A. Well, given that this was something we needed 22 more information about, we had asked Highland to keep us 23 advised and informed. So we were waiting for more 24 information as to what the options were. 25 <b>Q. At that point, when you were advised of this,</b></p>		<p style="text-align: right;">Page 68</p> <p>1 <b>the problems that were encountered that was causing the</b> 2 <b>funds not to be able to do resets?</b> 3 A. I can't remember the exact timing, but the 4 question was asked, Are our shareholders advised? And 5 the question [sic] was yes. So that confirmed the way 6 that the portfolio manager is in charge of investor 7 relations. 8 <b>Q. Why was Harbour Vest brought into the fund?</b> 9 A. I can't speak to any of the discussions prior 10 to them coming in, because that was very much led by 11 Highland. If you look at -- the original intention with 12 the fund was that we were going to be a listed entity 13 listed on the London Stock Exchange and that was how we 14 were going to increase the investor base. 15 The market changed on NAV, went down quite 16 substantially, and there came a point when it was clear 17 that achieving a listing wasn't going to happen. So you 18 then have to decide how you're going to increase your 19 investor base. So having an investor like Harbour Vest 20 come on board is a sensible way to grow your investor 21 base. A very well-known house. 22 <b>Q. The losses were actually pretty severe for</b> 23 <b>the fund, weren't they?</b> 24 A. Uh-huh. Yes. 25 <b>Q. And overall this fund has not performed very</b></p>
<p style="text-align: right;">Page 67</p> <p>1 <b>did you immediately call Harbour Vest and advise them of</b> 2 <b>the situation?</b> 3 A. No. 4 <b>Q. Why not?</b> 5 A. It wasn't even considered as an appropriate 6 thing to do. 7 <b>Q. Well, wouldn't it have been material to them</b> 8 <b>to know that there was a problem in the United States</b> 9 <b>that was causing an inability to proceed with resets</b> 10 <b>that would impact them?</b> 11 MR. MALONEY: Objection, foundation 12 witnesses knowledge. 13 <b>Q. (BY MR. WIELEBINSKI) Let me ask it this way:</b> 14 <b>Would the inability to do the resets impact the Harbour</b> 15 <b>Vest investment in your fund?</b> 16 A. I think to go back to the question that you 17 asked, Highland is the portfolio manager. They have 18 investor relations as part of their role. That's how we 19 understand it. That's part of what they do as portfolio 20 manager. So to the extent that there's any 21 communication with shareholders, then we would expect 22 and assume that that is something that Highland does 23 rather than the directors. 24 <b>Q. Did you ask Highland to make sure they did</b> 25 <b>that, that they reached out and advised Harbour Vest of</b></p>		<p style="text-align: right;">Page 69</p> <p>1 <b>well, has it?</b> 2 A. It's certainly improved after the losses and 3 was doing far better. And if you were an external 4 investor, you wouldn't come in unless you had a belief 5 that the fund was going to carry on performing well. 6 <b>Q. You know, my broker answers my questions much</b> 7 <b>like you did: That my performance is a lot better after</b> 8 <b>I've suffered a large loss. The losses were in the 25</b> 9 <b>percent range, weren't they, within the first six weeks</b> 10 <b>of the funding?</b> 11 A. Yes, they were. 12 <b>Q. So thank goodness there was a better</b> 13 <b>performance after that.</b> 14 A. Yes. 15 MR. MALONEY: Objection, form. 16 <b>Q. (BY MR. WIELEBINSKI) And -- but overall,</b> 17 <b>since the formation of the fund, has the performance</b> 18 <b>been above average, average, mediocre? How would you</b> 19 <b>describe it?</b> 20 A. I would describe it as challenging in that 21 period when the NAV was going down fairly substantially. 22 And, obviously, you want to know from the portfolio 23 manager that they're doing all they can to improve the 24 performance of the fund, and that was the role of the 25 portfolio manager and the reports that we had from them</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 in our meetings. 2 <b>Q. Okay. Did you authorize the filing of a</b> 3 <b>lawsuit by the fund against Mr. Terry?</b> 4 A. You're talking about the Guernsey case? 5 <b>Q. Yes, ma'am.</b> 6 A. Yes. 7 <b>Q. And do you remember both you and Mr. Scott</b> 8 <b>both approved --</b> 9 A. Yes. 10 <b>Q. -- and authorized the filing of that lawsuit?</b> 11 A. Yes. 12 <b>Q. Was that done by what law firm? Do you</b> 13 <b>recall?</b> 14 A. That was done by Carey Olsen. 15 <b>Q. That's one of the firms you use?</b> 16 A. Yes. 17 <b>Q. And what was the nature of the lawsuit? Can</b> 18 <b>you describe that to me, your understanding?</b> 19 A. Yes. Well, our understanding -- my 20 understanding is that the losses that have been -- 21 COURT REPORTER: Wait. Hang on. Losses 22 what? 23 A. The losses that have been caused to the fund 24 as a result of the ACIS bankruptcy have been very 25 severe, as I'm sure you know. And as directors of the</p>		<p style="text-align: right;">Page 72</p> <p>1 <b>Q. Highland told you that. And did you do any</b> 2 <b>independent verification or calculations on your own to</b> 3 <b>see what the losses were?</b> 4 A. No, I don't think that we would have been 5 equipped to do that. And, again, we're perfectly 6 comfortable to rely on the advice and information 7 provided by the portfolio manager. 8 <b>Q. What do you believe the losses are today on a</b> 9 <b>weekly and daily basis? Is it still about the same</b> 10 <b>amount?</b> 11 A. I don't know the actual amount. I think it's 12 probably not as much as that, but I don't know. 13 <b>Q. And \$300,000 a week. Five, six, seven</b> 14 <b>million dollars by this point of the year; is that a</b> 15 <b>good estimate. Is my math --</b> 16 A. Uh-huh. Yes. 17 <b>Q. Okay.</b> 18 A. Yes. 19 <b>Q. Pretty -- pretty significant loss you're</b> 20 <b>claiming.</b> 21 A. Yes. 22 <b>Q. And it's because you can't do anything with</b> 23 <b>your investments; is that your testimony?</b> 24 A. Well -- 25 MR. MALONEY: Objection to form and</p>
<p style="text-align: right;">Page 71</p> <p>1 fund, we have a duty if we think that there is any 2 opportunity to recover those losses, then obviously we 3 have to investigate our options. 4 <b>Q. (BY MR. WIELEBINSKI) Now, you're not talking</b> 5 <b>about the losses caused in the beginning of the fund,</b> 6 <b>correct? The loss as much as 25 percent of the net</b> 7 <b>asset value in the first six weeks --</b> 8 A. No. 9 <b>Q. -- those aren't the losses you're referring</b> 10 <b>to?</b> 11 A. No. 12 <b>Q. What losses are you referring to?</b> 13 A. The losses as a result of being -- the fund 14 being dragged into all of this litigation, and the fact 15 that our investments are effectively tied up and we 16 can't do what we want with them. 17 <b>Q. And Mr. Scott previously testified that the</b> 18 <b>losses were accruing at \$59,000 a day, \$300,000 a week.</b> 19 <b>Are you familiar with that testimony?</b> 20 A. Yes. Yes. 21 <b>Q. Do you agree with that testimony?</b> 22 A. That's certainly the information we were 23 given, yes. 24 <b>Q. By whom?</b> 25 A. By Highland.</p>		<p style="text-align: right;">Page 73</p> <p>1 foundation. Go ahead. You can answer. 2 <b>Q. (BY MR. WIELEBINSKI) Well, help me again.</b> 3 <b>What's the basis of that loss?</b> 4 A. We cannot do what we would like to do and as 5 we're entitled to do under the indentures which govern 6 the CLOs. We're engaged in the litigation, and 7 obviously, therefore, have lots of costs around counsel, 8 etcetera. So it's all of the costs around the 9 litigation on top of not being able to do the things we 10 would like to with those investments. 11 <b>Q. And what is it you'd like to do with those</b> 12 <b>investments?</b> 13 A. Well, we were aiming for resets, which was 14 stalled, and, of course -- again, I'm not an expert in 15 CLOs, but I'm advised that being unable to do a reset 16 means that our investments aren't performing -- 17 <b>Q. Have you looked --</b> 18 A. -- as they should. 19 <b>Q. I'm sorry, I didn't mean to interrupt. Have</b> 20 <b>you looked at other options to mitigate your losses?</b> 21 A. We've certainly attended mediation with a 22 view to hopefully settling, but that wasn't successful. 23 <b>Q. And anything else you've looked at besides</b> 24 <b>mediation?</b> 25 A. I can't think.</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 Mr. Terry. So there is an expectation that that would 2 be due and payable. 3 <b>Q. Is there an expectation that it will be paid?</b> 4 MR. MALONEY: Objection, foundation 5 knowledge of the witness, as well as a legal conclusion. 6 <b>Q. (BY MR. WIELEBINSKI) You don't have any 7 independent knowledge to know whether a judgment that 8 might be rendered in your favor is collectible, do you?</b> 9 A. I think that might be a legal technicality, 10 and I don't know the answer to it. 11 <b>Q. Have -- you had told me earlier that you had 12 seen the trustee's current plan.</b> 13 A. Yes. 14 <b>Q. And did you discuss it with Mr. Scott?</b> 15 A. Yes. 16 <b>Q. And you're not a creditor in the case, are 17 you?</b> 18 A. No. 19 <b>Q. HCLOF is not a creditor?</b> 20 A. (Shakes head negatively.) 21 <b>Q. Does the plan affect you at all?</b> 22 A. Does the plan affect the fund? 23 <b>Q. Yes.</b> 24 A. Yes. 25 <b>Q. How does it affect the fund?</b></p>		<p style="text-align: right;">Page 96</p> <p>1 optional redemption, which is part of the package of 2 rights that he would have as a holder of the equity 3 strips and the CLOs pursuant to the indentures. 4 (Exhibit 4 marked.) 5 <b>Q. (BY MR. WIELEBINSKI) Well, let me give you 6 what is Exhibit No. -- is it 4?</b> 7 A. Yes. 8 <b>Q. And what is that?</b> 9 A. This is titled the Third Amended Joint Plan 10 for ACIS. 11 <b>Q. And this is the plan you've been discussing?</b> 12 A. Yes. 13 <b>Q. Now you said that you're allowed to do a 14 reset but not a redemption.</b> 15 A. Uh-huh. 16 <b>Q. What's the difference and why does that 17 matter to you?</b> 18 A. The rights that you have as the holder of the 19 equity strips is that you can call for an option or 20 redemption which can take the form of a reset, but it 21 could also take the form of a liquidation into a 22 warehouse or a liquidation at the market, so it's the 23 optionality. 24 <b>Q. And your preferred option is what?</b> 25 A. Our preferred option has always been a reset,</p>
<p style="text-align: right;">Page 95</p> <p>1 A. It affects the fund because we'll be locked 2 into arrangements with ACIS and Brigade for a period of 3 up to two years, and that is not something that would be 4 of our choosing. We would have a plan injunction, which 5 would mean that we couldn't exercise our rights under 6 the CLO indentures, which we're entitled to do as a 7 noteholder. 8 <b>Q. What are you entitled to do? I'm sorry, I 9 didn't understand that.</b> 10 A. We have the right to call for a redemption 11 under the indentures. And, of course, if Mr. Terry is 12 made 100 percent owner of the reorganized debtor, then 13 clearly will be in a relationship with ACIS on that 14 basis. 15 <b>Q. So you told me that there's a two-year time 16 period during which you have to be involved with ACIS.</b> 17 A. Uh-huh. 18 <b>Q. And you told me that there's an inability to 19 call a redemption.</b> 20 A. (Nods head affirmatively.) 21 <b>Q. Are there any other ways the plan impacts 22 you?</b> 23 MR. MALONEY: Objection, foundation; 24 calls for a legal conclusion. 25 A. We are allowed to call for reset but not an</p>		<p style="text-align: right;">Page 97</p> <p>1 which is the original intention that we've been 2 prevented from doing. 3 <b>Q. Mr. Scott said that it was a reset. He said 4 it numerous times that was his first option.</b> 5 A. Uh-huh. 6 <b>Q. Indeed, it was, I believe, a basis for his 7 objection -- HCLOF's objection to the prior plan. Do 8 you recall that?</b> 9 A. Yes. 10 <b>Q. This plan allows you to do a reset. Why is 11 that a problem?</b> 12 A. Because the reset that it allows us to do is 13 with ACIS and Brigade, and we were set up to do 14 transactions involving Highland products, 15 Highland-managed CLOs, not managed by Brigade but by 16 Highland. 17 <b>Q. And that's the only problem you have with 18 that reset provision?</b> 19 A. We don't feel that -- 20 <b>Q. Let's -- I think just a yes or no. Is 21 that --</b> 22 A. Sorry, say the question again. 23 <b>Q. Is that the only problem you have with that 24 reset provision?</b> 25 A. I have a problem with who would be doing the</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 reset.</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. I'm not sure --</p> <p>4 <b>Q. No, that's fair enough. Can you explain that</b></p> <p>5 <b>to me?</b></p> <p>6 A. Well, we don't really feel that it's</p> <p>7 appropriate that we are effectively abrogating our</p> <p>8 rights under all the documentation with which we</p> <p>9 launched the fund and told the world that we were going</p> <p>10 to be investing in Highland products and</p> <p>11 Highland-managed products. And pursuant to this plan,</p> <p>12 we're being offered a reset with ACIS and Brigade. And</p> <p>13 we're not happy with that because ACIS and the trustee</p> <p>14 have been quite hostile to the fund throughout the</p> <p>15 course of these proceedings, and Brigade is associated</p> <p>16 with the people who are most hostile to us.</p> <p>17 And quite honestly, it's difficult to foresee</p> <p>18 how we could get comfortable with working with Brigade</p> <p>19 on those terms. We are cautious of that, and I think</p> <p>20 rightly so, when you consider the advice we've received</p> <p>21 from Highland and from our experts that it doesn't</p> <p>22 appear that Brigade are actually doing a very good job</p> <p>23 of managing the CLOs.</p> <p>24 I think we've had recent reports that the</p> <p>25 CLOs have not paid anything. I think they were the</p>		<p style="text-align: right;">Page 100</p> <p>1 <b>Q. But lower is better, correct?</b></p> <p>2 MR. MALONEY: Objection to form and</p> <p>3 foundation that it's lower.</p> <p>4 A. I think -- again, I would have to refresh my</p> <p>5 memory on this, but my understanding is that ACIS is</p> <p>6 actually getting now the same amount of fee that</p> <p>7 Highland was getting, but ACIS isn't doing much of the</p> <p>8 work. It's Brigade that's doing the work. I'd need to</p> <p>9 check that, but that's my understanding.</p> <p>10 So, in fact, ACIS is getting the same level</p> <p>11 of fees as Highland was getting.</p> <p>12 <b>Q. Let me ask you this: Are you filing an</b></p> <p>13 <b>objection today to the plan?</b></p> <p>14 A. We are.</p> <p>15 <b>Q. You've instructed your counsel to file it?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. And what are the bases for the objection?</b></p> <p>18 MR. MALONEY: I'm going to object to the</p> <p>19 foundation in asking this witness to catalog everything</p> <p>20 that's going to be in the objection. But she can answer</p> <p>21 to the extent that she can factually, but I think her</p> <p>22 knowledge is the product of legal consultation.</p> <p>23 But I'll allow the witness to answer</p> <p>24 factually, categorically to the extent she can, but I'm</p> <p>25 going to reserve the right to interject and oppose the</p>
<p style="text-align: right;">Page 99</p> <p>1 October reports. And even the senior noteholders, I</p> <p>2 think --</p> <p>3 COURT REPORTER: The what?</p> <p>4 A. -- senior noteholders in one instance weren't</p> <p>5 paid. So it seems to us that the CLOs are being managed</p> <p>6 to generate fees for the manager, but they're not being</p> <p>7 managed for the benefit of the investors, which is what</p> <p>8 they should be.</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) Let me just explore that</b></p> <p>10 <b>a little bit. Brigade is charging a fee significantly</b></p> <p>11 <b>lower than Highland is charging; isn't that correct?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. How much lower? Do you know?</b></p> <p>14 A. I think it's 15 basis points.</p> <p>15 <b>Q. And Highland was actually removed as a</b></p> <p>16 <b>service provider to ACIS because of mismanagement.</b></p> <p>17 <b>That's what was alleged by the trustee.</b></p> <p>18 A. That's what was alleged, yes, but --</p> <p>19 <b>Q. The judge found that, did the judge not?</b></p> <p>20 A. The judge did, but our investors didn't</p> <p>21 express any disquiet with the way that Highland was</p> <p>22 managing the fund. They came into the fund on the basis</p> <p>23 of the fee structure that was in place, so they were</p> <p>24 perfectly accepting of it. As far as I knew, there was</p> <p>25 no concern raised by investors about the level of fees.</p>		<p style="text-align: right;">Page 101</p> <p>1 revelation of any attorney-client communications.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) I'm not asking you for</b></p> <p>3 <b>any attorney-client revelations. But you're going to</b></p> <p>4 <b>file a public document this afternoon, so I'd like to</b></p> <p>5 <b>know the bases are for the objection that I would expect</b></p> <p>6 <b>to see in the public filing.</b></p> <p>7 A. I think it's probably arguments that have</p> <p>8 been used before in relation to the objection to the</p> <p>9 previous plans: That it prevents the fund doing what</p> <p>10 it's legally entitled to do under the indentures for the</p> <p>11 CLOs; it puts us into a relationship with people that we</p> <p>12 don't want to have a relationship with for the reasons</p> <p>13 that I've briefly explained. I think that's the basis</p> <p>14 of it.</p> <p>15 <b>Q. You've never worked with Brigade before, have</b></p> <p>16 <b>you?</b></p> <p>17 A. No.</p> <p>18 <b>Q. And you have worked with Mr. Terry before,</b></p> <p>19 <b>though, correct?</b></p> <p>20 A. Mr. Terry was part of the fund when it was</p> <p>21 launched, yes.</p> <p>22 <b>Q. You worked with him quite well, didn't you?</b></p> <p>23 A. We had no disagreements.</p> <p>24 <b>Q. And you never challenged any of his advice or</b></p> <p>25 <b>any recommendations; isn't that correct?</b></p>

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27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 A. I think we probably challenged them, but we 2 didn't not agree with the conclusion that he reached. 3 <b>Q. You do that with everybody, though, right?</b> 4 A. Yes. 5 <b>Q. You have robust discussions, but eventually 6 you come to an agreement with Mr. Scott and accept what 7 the portfolio manager recommends?</b> 8 MR. MALONEY: I'm going to object to 9 form; foundation. You can answer. Go ahead. 10 <b>Q. (BY MR. WIELEBINSKI) And you did that with 11 Mr. Terry when he served in that role, correct?</b> 12 A. Yes. 13 <b>Q. And, again, he served in a very significant 14 role, covered -- based on your lawsuit, there were a 15 number of things he was doing that were very fundamental 16 to the performance of your fund.</b> 17 A. Yes. 18 <b>Q. But you have a problem with him now coming in 19 and doing that, correct?</b> 20 A. I have a problem with him coming in, because 21 throughout these proceedings it seems that he's been 22 very hostile to the fund. And I think having a manager 23 who is hostile to a fund is not a good idea. 24 <b>Q. And tell me how he's been hostile to the fund 25 during these proceedings.</b></p>		<p style="text-align: right;">Page 104</p> <p>1 <b>lawsuit is about?</b> 2 A. Yes. 3 MR. MALONEY: Objection, foundation. 4 But you can answer. 5 <b>Q. (BY MR. WIELEBINSKI) Well, you're a lawyer, 6 right, and that's your understanding of what the thrust 7 of the lawsuit is, correct, disclosure of confidential 8 information by Mr. Terry; is that correct?</b> 9 MR. MALONEY: Same objection. 10 A. That's certainly the thrust of it. 11 <b>Q. (BY MR. WIELEBINSKI) What confidential 12 information did he disclose?</b> 13 A. I think it's any information that he would 14 have had by virtue of his role with the portfolio 15 manager prior to his termination. 16 <b>Q. Any information that he had?</b> 17 A. Confidential information. 18 <b>Q. What confidential information did he have? 19 Do you have any specifics?</b> 20 MR. MALONEY: I'm going to object on 21 foundation. The lawsuit is a matter of record, it 22 speaks for itself, but the witness can answer to the 23 extent she can recall. 24 <b>Q. (BY MR. WIELEBINSKI) Well, tell me, does the 25 lawsuit anywhere describe what that confidential</b></p>
<p style="text-align: right;">Page 103</p> <p>1 A. Because of the way that the case has 2 progressed. 3 <b>Q. Well, what has Mr. Terry done that has 4 exhibited his hostility towards the fund during these 5 proceedings?</b> 6 <b>MS. O'NEIL: Object to form.</b> 7 A. Everything that has happened that has 8 involved the fund since we were aware of it in April has 9 been connected to what Mr. Terry did in terms of putting 10 ACIS into involuntary proceedings, so is that not 11 evidence that it's a pretty hostile environment that we 12 find ourselves in? 13 <b>Q. (BY MR. WIELEBINSKI) Other than him 14 exercising a right he has to file an involuntary 15 bankruptcy that was hotly contested and that the Court 16 approved, what else has he done in these proceedings 17 that has been hostile versus what the trustee may have 18 done?</b> 19 MR. MALONEY: Objection, foundation. 20 A. I don't think there's anything I can add. 21 <b>Q. (BY MR. WIELEBINSKI) By the way, in your 22 lawsuit the basis for the damages is a disclosure of 23 confidential information, is it not?</b> 24 A. Uh-huh. Yes. 25 <b>Q. Isn't that what really the thrust of the</b></p>		<p style="text-align: right;">Page 105</p> <p>1 <b>information is?</b> 2 A. I don't -- I cannot tell you off the top of 3 my head what that is, but it's information that would 4 have been around the CLOs that I think we talked about 5 in -- we listed the CLOs, for instance, didn't we? So 6 all of the information in 22, the structuring of the 7 sub-notes, etcetera, that's information that would have 8 been come by as a result of working for the portfolio 9 manager. 10 <b>Q. Who did Mr. Terry share that information 11 with?</b> 12 MR. MALONEY: Objection, foundation. 13 You can answer if you can. 14 A. Well, my understanding is with the trustee. 15 <b>Q. (BY MR. WIELEBINSKI) The trustee of the 16 company that served as the portfolio manager for your 17 fund?</b> 18 A. Yes. 19 <b>Q. He shared that information that ACIS 20 acquired, or had, serving in that capacity; is that 21 correct?</b> 22 A. He personally had. And, you know, it's the 23 confidentiality obligations he has as an employee of 24 ACIS. 25 <b>Q. Right. But assuming there are</b></p>

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33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 board were told that -- from Harbour Vest that the 2 portfolio manager be changed, then that clearly was 3 something already discussed, and the share buyback was 4 much more of an internal thing. 5 <b>Q. And what independent investigation did you do 6 in connection with this Offering Memorandum?</b> 7 A. You mean taking any sort of external advice 8 on it? 9 <b>Q. Or investigating anything that was in the 10 Offering Memorandum to verify its accuracy or that it 11 was disclosed?</b> 12 A. Well, as I said earlier, we do rely on the 13 portfolio manager to provide information about the 14 portfolio. And so a lot of this clearly relates to 15 that, and we're happy to rely on -- 16 <b>Q. But did you do any independent investigation 17 as part of the securities offering?</b> 18 A. Not outside of reviewing it and making 19 whatever comments were made on it. 20 <b>Q. And Mr. Scott, did he do any independent 21 investigation?</b> 22 A. Not to my knowledge. 23 <b>Q. So everything was what was provided by 24 Highland or a Highland affiliate --</b> 25 A. And with lawyers, obviously, because, you</p>		<p style="text-align: right;">Page 128</p> <p>1 sensible, and we have in this case, because it's a 2 Guernsey entity -- Guernsey counsel preparing documents 3 including, for instance, the share buyback agreement 4 sets of resolutions which memorialize what the decisions 5 are, then we're content. 6 <b>Q. Did you tell me -- is there any disclosure in 7 here about the dispute with Mr. Terry and Highland over 8 his employment that ultimately led to the final award?</b> 9 A. No. 10 <b>Q. Do you think it should have been disclosed in 11 there?</b> 12 A. I'm struggling to understand why it would be 13 in an offering document. To the extent that the 14 investor, the new investor, needed to know or raised 15 questions, then that would be dealt with between 16 themselves. 17 <b>Q. How would the new investor know to ask those 18 questions when you, at that time, didn't even know about 19 what was going on with that litigation?</b> 20 MR. MALONEY: Objection, foundation. 21 A. I don't know. I can't speak to discussions 22 between Harbour Vest and Highland which I wasn't a 23 party. 24 <b>Q. (BY MR. WIELEBINSKI) But your answer was that 25 Harbour Vest might ask some questions and, therefore,</b></p>
<p style="text-align: right;">Page 127</p> <p>1 know, the lawyers would be advising on what needed to go 2 into the offering document, etcetera. 3 <b>Q. Did anybody, whether you -- well, you said 4 neither you nor Mr. Scott conducted any investigation, 5 but did the lawyers look at and bless this series of 6 transactions you just described?</b> 7 A. Well, yes, because they prepared the 8 documentation for it. 9 <b>Q. Well, not the ones involved. Any independent 10 lawyers look at the transactions and determine whether 11 they were valid and wouldn't be subject to subsequent 12 litigation, anything along those lines?</b> 13 MR. MALONEY: Objection, form; 14 foundation. You can answer if you know. 15 MS. O'NEIL: Objection -- I'm sorry, did 16 you finish, Mark? 17 MR. MALONEY: Go ahead. 18 MS. O'NEIL: Objection to the extent 19 that answering that question would require you to 20 consider privileged communication with counsel. 21 A. It wouldn't be the norm to have an external 22 review of absolutely everything that is around the 23 transaction. So if we are advised that we're going to 24 be pursuing a course of action and we're given a 25 rationale for it which seems perfectly reasonable and</p>		<p style="text-align: right;">Page 129</p> <p>1 <b>you might make some additional disclosures.</b> 2 A. No, no. What I meant was if Harbour Vest had 3 any questions during the course of the discussions being 4 had around which they were thinking of coming into the 5 fund, then they would be held with Highland. 6 <b>Q. Do you know if Highland had any of those 7 discussions with Harbour Vest regarding the litigation 8 with Mr. Terry?</b> 9 A. I don't know. 10 <b>Q. Do you think they should have? I mean, in 11 light of what you know today that litigation has ended 12 up causing, do you think they should have disclosed 13 that?</b> 14 A. I would imagine that as a very sophisticated 15 investor, they'd know what questions to ask which should 16 have been the responses around it, but I don't know 17 because I wasn't a part of the -- 18 <b>Q. Do you think they --</b> 19 A. -- conversation. 20 <b>Q. I'm sorry. Do you think they would have 21 known to ask those questions if nobody told them about 22 the litigation? I don't see how you could ask questions 23 about it and its impact if you weren't made aware of it.</b> 24 MR. MALONEY: I'm going to object to 25 foundation to the extent you're asking the witness to</p>

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34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 wonder what somebody else could, should, or would have 2 known. Object. You can answer if you know. 3 A. I don't know. 4 <b>Q. (BY MR. WIELEBINSKI) Give me a second. I</b> 5 <b>need to get a document.</b> 6 MR. WIELEBINSKI: Can we go off the 7 record? 8 THE VIDEOGRAPHER: Yes, sir. Off the 9 record at 11:57. This is Disk 3, Volume 1. 10 (Break taken.) 11 (Exhibit 6 marked.) 12 THE VIDEOGRAPHER: On the record at 13 12:03. This is Disk 3, Volume 1. 14 <b>Q. (BY MR. WIELEBINSKI) Ms. Bestwick, I'm going</b> 15 <b>to hand you what's been marked as Exhibit No. 6. Can</b> 16 <b>you take a look at that, please? Can you tell the Court</b> 17 <b>what this is?</b> 18 A. This is the Final Award. 19 <b>Q. And this is in the Josh Terry litigation that</b> 20 <b>we've been talking about?</b> 21 A. Yes. 22 <b>Q. That's the litigation -- the arbitration in</b> 23 <b>Dallas?</b> 24 A. Yes. 25 <b>Q. Have you seen this before?</b></p>		<p style="text-align: right;">Page 132</p> <p>1 <b>Q. Do you remember reading that provision?</b> 2 A. I obviously read it, but I don't remember. 3 <b>Q. Do you think it's important or troubling at</b> 4 <b>all?</b> 5 MR. MALONEY: Objection to the form. 6 A. I think it's evidence of the breakdown in 7 relationship between Mr. Terry and his previous 8 employer. 9 <b>Q. (BY MR. WIELEBINSKI) Right. And Highland,</b> 10 <b>who you have a lot of relationships with through your</b> 11 <b>fund, obviously created a pretext to try to terminate</b> 12 <b>somebody that you were working very closely with through</b> 13 <b>ACIS; isn't that correct?</b> 14 MR. MALONEY: Objection to form. And 15 the document speaks for itself. 16 A. That's what the document says. 17 <b>Q. (BY MR. WIELEBINSKI) What about paragraph 6,</b> 18 <b>do you remember reading that provision, "ACIS and ACIS</b> 19 <b>GP knowingly and willingly invoked Highland's false</b> 20 <b>pretext for cause termination to deny Terry the value of</b> 21 <b>his 25 percent limited partnership in ACIS"?</b> 22 A. I don't remember, other than reading it as 23 part of the award document, but... 24 <b>Q. Didn't have any reaction to it that it was</b> 25 <b>something you needed to investigate further or find out</b></p>
<p style="text-align: right;">Page 131</p> <p>1 A. Yes. I believe I have read this. 2 <b>Q. And do you know when you first saw this?</b> 3 A. I cannot say when, but it would have been in 4 the period between April and now. 5 <b>Q. But never before April of 2018, correct?</b> 6 A. No. No. 7 <b>Q. And other than -- well, did you know anything</b> 8 <b>about this arbitration prior to April?</b> 9 A. No. 10 <b>Q. Did you know anything about the litigation</b> 11 <b>that led up to this arbitration before April?</b> 12 A. No. 13 <b>Q. Okay. And, again, you did review this</b> 14 <b>previously once it was given to you?</b> 15 A. I have received a copy and read it, yes. 16 <b>Q. And can you look at page 21, please?</b> 17 A. Yes. 18 <b>Q. Paragraph 5. Can you just read that to</b> 19 <b>yourself? Do you see that it says Highland's</b> 20 <b>termination of Terry's employment was not, in fact, for</b> 21 <b>cause?</b> 22 A. I see that. 23 <b>Q. And that it was, in fact, pretextual and for</b> 24 <b>the purpose of denying Terry benefits of employment?</b> 25 A. I see that.</p>		<p style="text-align: right;">Page 133</p> <p>1 <b>about -- find more out about?</b> 2 MR. MALONEY: Object to form. 3 A. This was one of many documents that we 4 received following the update call in mid-April when we 5 were told about the case. 6 <b>Q. (BY MR. WIELEBINSKI) So six months after this</b> 7 <b>award is entered you find out about this, and it doesn't</b> 8 <b>cause you to want more information or get additional</b> 9 <b>information from Highland and others?</b> 10 MR. MALONEY: Objection -- 11 <b>Q. (BY MR. WIELEBINSKI) Is that what you're</b> 12 <b>telling me?</b> 13 MR. MALONEY: Objection, foundation. 14 You can answer. 15 A. My view continues to be that if an employment 16 relationship has gone wrong, then it's not necessarily 17 appropriate that I, as a director of the fund, should 18 know the level of detail. And my relationship is with 19 the portfolio manager who gives us sufficient 20 information in my view, and I'm happy to rely on that 21 information. 22 <b>Q. (BY MR. WIELEBINSKI) And you feel -- well,</b> 23 <b>let's read the next paragraph, paragraph 7. "ACIS and</b> 24 <b>ACIS GP paid Highland expenses in excess of the</b> 25 <b>contractual limit imposed by section 3.10(a) of the ACIS</b></p>

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35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 <b>LPA." Did that cause you any concern?</b></p> <p>2 A. I don't know what that means.</p> <p>3 <b>Q. Okay. What about paragraph No. 10, "ACIS</b></p> <p>4 <b>GP's actions were willful and wanton -- wanton breaches</b></p> <p>5 <b>of their fiduciary duties to Terry and their limited</b></p> <p>6 <b>partner"?</b></p> <p>7 MR. MALONEY: Objection to form.</p> <p>8 Question?</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) Did that cause you any</b></p> <p>10 <b>concern as a director, an independent director of the</b></p> <p>11 <b>fund?</b></p> <p>12 A. It created the picture of a relationship</p> <p>13 between employer and employee that's clearly broken</p> <p>14 down.</p> <p>15 <b>Q. What about paragraph 11, "All claims stated</b></p> <p>16 <b>by Highland subject to and without waiver against Terry</b></p> <p>17 <b>are not proved and as such none are an affirmative</b></p> <p>18 <b>defense or avoidance of Terry's claim stated against</b></p> <p>19 <b>ACIS and ACIS GP"?</b></p> <p>20 MR. MALONEY: Objection to form.</p> <p>21 Question?</p> <p>22 <b>Q. (BY MR. WIELEBINSKI) Did it cause you any</b></p> <p>23 <b>concern causing you to think you needed any additional</b></p> <p>24 <b>information or needed to do any kind of independent</b></p> <p>25 <b>investigation?</b></p>		<p style="text-align: right;">Page 136</p> <p>1 A. We were happy to rely on the relationship we</p> <p>2 had with Highland to keep us updated.</p> <p>3 <b>Q. (BY MR. WIELEBINSKI) Do you know at the time</b></p> <p>4 <b>this award was entered -- there was a judgment, a</b></p> <p>5 <b>monetary judgment, in favor of Mr. Terry for almost \$8</b></p> <p>6 <b>million, correct?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you know if that caused an insolvency of</b></p> <p>9 <b>the portfolio manager at that time?</b></p> <p>10 MR. MALONEY: I'm going to object,</p> <p>11 foundation and legal conclusion and form of the</p> <p>12 question.</p> <p>13 A. I didn't know.</p> <p>14 <b>Q. (BY MR. WIELEBINSKI) Did it cause you to be</b></p> <p>15 <b>concerned about that?</b></p> <p>16 A. That I didn't know?</p> <p>17 <b>Q. Well, did it -- no. Did -- did the idea that</b></p> <p>18 <b>there was now a monetary judgment against ACIS cause any</b></p> <p>19 <b>concern that that may create some issue or some problem</b></p> <p>20 <b>that you needed to get more information on or do</b></p> <p>21 <b>additional due diligence on?</b></p> <p>22 A. No. As I said, any information that we were</p> <p>23 receiving by way of updates was adequate and sufficient,</p> <p>24 and I didn't feel the need to have any further</p> <p>25 information.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. I was satisfied with the information that I'd</p> <p>2 received from Highland and didn't feel the need for</p> <p>3 anything else.</p> <p>4 <b>Q. Which was what? What was the information</b></p> <p>5 <b>from Highland other than sending this to you six months</b></p> <p>6 <b>after it occurred?</b></p> <p>7 A. Well, I think this document actually came via</p> <p>8 counsel rather than --</p> <p>9 <b>Q. Meaning your counsel?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. So Highland didn't even send this to you; is</b></p> <p>12 <b>that what you're saying?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. You had to go on your own and get your</b></p> <p>15 <b>counsel to dig it up and give it to you?</b></p> <p>16 MR. MALONEY: Objection to form.</p> <p>17 A. I wouldn't characterize it like that. This</p> <p>18 was one of a multitude of documents that the directors</p> <p>19 were provided with after we were made known in April of</p> <p>20 the situation.</p> <p>21 <b>Q. (BY MR. WIELEBINSKI) And when you were made</b></p> <p>22 <b>known of this in April of 2018, six months after it was</b></p> <p>23 <b>entered, did it cause you to do any further independent</b></p> <p>24 <b>investigation?</b></p> <p>25 MR. MALONEY: Objection, foundation.</p>		<p style="text-align: right;">Page 137</p> <p>1 <b>Q. And you say that even today knowing</b></p> <p>2 <b>everything you know that you feel like Highland gave you</b></p> <p>3 <b>all the appropriate information and all the answers you</b></p> <p>4 <b>needed to ask?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And is that why they never told you about the</b></p> <p>7 <b>involuntary bankruptcy that was filed in February of</b></p> <p>8 <b>2018 at the time?</b></p> <p>9 MR. MALONEY: Objection to the form of</p> <p>10 the question.</p> <p>11 A. I can't speak for Highland as to --</p> <p>12 <b>Q. (BY MR. WIELEBINSKI) Well, I'm asking you --</b></p> <p>13 <b>A. -- their rationale.</b></p> <p>14 <b>Q. -- to speak for you as to when you first</b></p> <p>15 <b>learned about the bankruptcy. When was it?</b></p> <p>16 A. In mid-April.</p> <p>17 <b>Q. Okay. So why the three-month delay before</b></p> <p>18 <b>you found out something that significant had occurred?</b></p> <p>19 MR. MALONEY: Objection to form and</p> <p>20 foundation.</p> <p>21 A. You'd have to ask Highland the reason for</p> <p>22 that. I don't -- I don't know. Because it wasn't a</p> <p>23 question we asked.</p> <p>24 <b>Q. (BY MR. WIELEBINSKI) Did -- did you ask</b></p> <p>25 <b>Highland why it took them so long to do that?</b></p>

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36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 A. No. We didn't ask the question because we 2 were content that the information we were given was 3 adequate until we had the call in April. 4 <b>Q. Did you know that HCLOF actually hired 5 counsel that was involved in the involuntary proceeding 6 and it was hired by counsel on your behalf? Did they 7 tell you that at the time?</b> 8 A. I'm now aware of that, but I'm -- 9 <b>Q. When did you first learn that?</b> 10 A. I can't give you a date. 11 <b>Q. After April?</b> 12 A. But it was after April. 13 <b>Q. Okay. Didn't cause you to question your 14 relationship with Highland? Is that norm -- well, let 15 me ask the question that's there. Didn't cause you to 16 question your relationship with Highland?</b> 17 A. I think that we have a relationship with 18 Highland such that we are content to rely on their 19 advice and their judgment as to what is in the best 20 interest of the investors because they are the portfolio 21 manager. 22 <b>Q. But isn't that your role to make sure that 23 your reliance on this third party is really designed to 24 maximize value for the investors?</b> 25 A. We have overall oversight.</p>		<p style="text-align: right;">Page 140</p> <p>1 course, we rely on our service providers to act properly 2 and in accordance with the contractual obligations they 3 have with the fund. 4 <b>Q. The final award, I think you said, caused a 5 problem with doing the Mizuho reset, correct?</b> 6 MR. MALONEY: Objection to form and 7 foundation. 8 A. We were advised in mid-April about the case 9 in Dallas, as a result of which was the inability to 10 proceed with the resets. 11 <b>Q. (BY MR. WIELEBINSKI) Didn't the final award 12 also lead to the filing of the involuntary bankruptcy?</b> 13 MR. MALONEY: Objection, legal 14 conclusion; foundation of the witness's knowledge. You 15 can answer if you can. 16 A. I assume that to be the case. 17 <b>Q. (BY MR. WIELEBINSKI) And didn't that 18 bankruptcy prevent you from doing redemptions of the 19 portfolio at least twice where you tried to do a 20 redemption, a liquidation, and weren't able to?</b> 21 A. We are Guernsey directors of the Guernsey 22 entity. What's happening in a U.S. bankruptcy court is 23 not something that we would have a lot of knowledge 24 around and so even more reason that we would be reliant 25 on our manager to keep us informed and tell us updates</p>
<p style="text-align: right;">Page 139</p> <p>1 <b>Q. Well, you -- you have overall responsibility, 2 do you not?</b> 3 A. Yes. 4 <b>Q. And do you feel like you honored your 5 responsibility by just deferring to Highland --</b> 6 MR. MALONEY: Objection. 7 <b>Q. (BY MR. WIELEBINSKI) -- on virtually 8 everything?</b> 9 MR. MALONEY: Objection to form and 10 foundation. 11 A. I don't believe we have deferred to Highland 12 on virtually everything. 13 <b>Q. Well, what have you not relied on them for?</b> 14 MS. O'NEIL: Object to form. 15 <b>Q. (BY MR. WIELEBINSKI) Other than the 16 administrative tasks that you mentioned, what has 17 Highland done that you have ever called into question or 18 said no to?</b> 19 A. The relationship with Highland is such that 20 we challenge any proposals or reports made, and that's 21 as it should be, and that's what the market recognizes 22 happens in structures such as this. We don't have 23 carriage of the day-to-day executive functions. That's 24 why Highland is the portfolio manager. That's why State 25 Street is the administrator and custodian. So, of</p>		<p style="text-align: right;">Page 141</p> <p>1 as and when they did. 2 <b>Q. Ten months have gone by since the filing of 3 the involuntary. Are you satisfied today with 4 everything that Highland has done in its various 5 capacities for the fund?</b> 6 A. Yes, I am. 7 MS. O'NEIL: Object to form. 8 <b>Q. (BY MR. WIELEBINSKI) And you have no reason 9 to question any advice or recommendations they've given 10 you?</b> 11 MS. O'NEIL: Object to form. 12 A. I'm content with the advice and information 13 we've been given. 14 <b>Q. (BY MR. WIELEBINSKI) And just so I 15 understand, you're content with the idea that they 16 didn't share with you the filing of the bankruptcy until 17 several months later and hired counsel in the meantime 18 for you that you weren't aware of? And you're saying, 19 as an independent director, you're content with that?</b> 20 A. I think we have to rely on our portfolio 21 manager to understand the American bankruptcy system far 22 better than two Guernsey directors could possibly do, so 23 I think we have to rely on the advice that we receive. 24 We have a common interest to ensure the success of the 25 fund, so there was no suggestion that Highland was doing</p>

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<p style="text-align: right;">Page 142</p> <p>1 anything remotely other than what they should be doing. 2 <b>Q. Well, that common interest that you</b> 3 <b>mentioned, do you see any variance in that interest</b> 4 <b>where Highland's interest may be different than yours as</b> 5 <b>an independent director of the fund?</b> 6 A. Well, it could happen if -- if Highland came 7 to us with a decision which contravened the investment 8 policy or the Portfolio Management Agreement, of course 9 we wouldn't agree to it, but that has never happened. 10 <b>Q. Could it ever diverge when it relates to the</b> 11 <b>legal positions taken and the results obtained?</b> 12 <b>MS. O'NEIL: Object to form.</b> 13 MR. MALONEY: Objection to form, legal 14 conclusion and speculation. 15 A. I didn't understand the question, actually. 16 <b>Q. (BY MR. WIELEBINSKI) Are you -- could</b> 17 <b>Highland have different objectives and motives in</b> 18 <b>connection with these bankruptcy proceedings that are</b> 19 <b>different from the funds of maximizing recovery for the</b> 20 <b>investors?</b> 21 <b>MS. O'NEIL: Object to the form of the</b> 22 <b>question.</b> 23 MR. MALONEY: And same objections as the 24 previous question. 25 A. I can't speak to that.</p>		<p style="text-align: right;">Page 144</p> <p>1 <b>to ask you specifically what information -- what</b> 2 <b>specific confidential information Mr. Terry has utilized</b> 3 <b>and shared with third parties?</b> 4 MR. MALONEY: Objection, foundation and 5 legal conclusion. 6 A. I take that advice and -- 7 <b>Q. (BY MR. WIELEBINSKI) Well, the advice was an</b> 8 <b>objection.</b> 9 A. -- I'm unable to -- 10 <b>Q. You can answer the question.</b> 11 A. The carriage of the litigation is in the 12 hands of our lawyers. 13 <b>Q. I understand. But you authorized the filing</b> 14 <b>of the lawsuit. You consulted with Mr. Scott regarding</b> 15 <b>that lawsuit, correct?</b> 16 A. Uh-huh. 17 <b>Q. You obviously knew what the basis was of the</b> 18 <b>litigation, you told me about it, and I'm sure you read</b> 19 <b>the pleadings beforehand. So I'm asking a simple</b> 20 <b>question: What confidential information do you believe</b> 21 <b>was taken and utilized by Mr. Terry?</b> 22 <b>MS. O'NEIL: Objection.</b> 23 MR. MALONEY: I'm going to continue to 24 object to foundation. The witness is not the legal or 25 factual architect of the complaint, but she can answer</p>
<p style="text-align: right;">Page 143</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) Do you believe that your</b> 2 <b>interests are completely 100 percent aligned in terms of</b> 3 <b>the bankruptcy proceeding?</b> 4 <b>MS. O'NEIL: Object to the form.</b> 5 MR. MALONEY: Same objections. 6 A. I'm not sure that I have enough knowledge 7 about the bankruptcy proceedings to enable me to respond 8 to that. 9 MR. MALONEY: Is anybody getting any -- 10 I'm sorry, is anybody getting any emails? 11 MS. O'NEIL: We need to ask her. 12 MR. MALONEY: Hello? Are we still on 13 the teleconference? Can you hear me? 14 MR. SEVILLA: I'm still here. 15 MR. MALONEY: Okay. 16 MR. WIELEBINSKI: Are you hearing -- are 17 you hearing some beeping that's intermittent? It just 18 occurred -- 19 MR. ALVES: I'm here. 20 MR. SEVILLA: No. 21 MR. WIELEBINSKI: Okay. 22 <b>Q. (BY MR. WIELEBINSKI) I want to go back and</b> 23 <b>ask a question about your lawsuit before I forget. You</b> 24 <b>said the basis of it was confidential information that</b> 25 <b>Mr. Terry has utilized and shared with others. I want</b></p>		<p style="text-align: right;">Page 145</p> <p>1 to the extent she knows. 2 MS. O'NEIL: It also calls for a legal 3 conclusion. 4 A. As I said, I think this is something that 5 we're advised on by our lawyers, so... 6 <b>Q. (BY MR. WIELEBINSKI) And you never questioned</b> 7 <b>them to say, Well, what information is that that you're</b> 8 <b>saying he took that wasn't already public or previously</b> 9 <b>disclosed? No independent investigation of anything?</b> 10 MR. MALONEY: I'm going to -- I'm going 11 to object to the extent you're asking for communications 12 and conversations with counsel. 13 And I instruct the witness not to answer 14 to the extent he's asking you for conversations you had 15 with your counsel. 16 <b>Q. (BY MR. WIELEBINSKI) I'm not asking for any</b> 17 <b>of those conversations. Just asking whether you did</b> 18 <b>anything independent to verify what you said was the</b> 19 <b>main basis for your complaint against Mr. Terry?</b> 20 A. I think that that would have been the subject 21 of discussions with counsel. 22 <b>Q. Well, let me ask you this: Who told counsel</b> 23 <b>about the confidential information that they had to look</b> 24 <b>at to put together the architecture for the lawsuit?</b> 25 <b>MS. O'NEIL: Same objection.</b></p>

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38 (Pages 146 to 149)

<p style="text-align: right;">Page 146</p> <p>1 MR. MALONEY: Yeah --</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) I'm not asking for your</b></p> <p>3 <b>communications. I'm just saying who would have given</b></p> <p>4 <b>them that information?</b></p> <p>5 A. I think that --</p> <p>6 MS. O'NEIL: Same objection.</p> <p>7 A. -- relates to conversations that we would</p> <p>8 have had with counsel.</p> <p>9 <b>Q. (BY MR. WIELEBINSKI) But would it have been</b></p> <p>10 <b>you and Mr. Scott that would have said, This is the</b></p> <p>11 <b>confidential information that is the basis for this</b></p> <p>12 <b>lawsuit?</b></p> <p>13 A. I think this is all information that would</p> <p>14 have been part of the discussions we had with counsel.</p> <p>15 <b>Q. Well, would there have been anybody else that</b></p> <p>16 <b>could have given them that information?</b></p> <p>17 A. I think that to the extent that there is</p> <p>18 information that has been discussed with counsel, then</p> <p>19 I'm not sure I can respond to that.</p> <p>20 <b>Q. Going back to the trustee's plan. If it's</b></p> <p>21 <b>confirmed and a reset is done, that's not going to be a</b></p> <p>22 <b>bad result for your investors, correct?</b></p> <p>23 MR. MALONEY: I'm going to object to</p> <p>24 form, foundation, and speculation.</p> <p>25 A. I'm not sure we can do a reset. I'm not sure</p>		<p style="text-align: right;">Page 148</p> <p>1 <b>comfortable then to do a reset?</b></p> <p>2 MR. MALONEY: Objection, foundation and</p> <p>3 calls for a potential legal conclusion.</p> <p>4 <b>Q. (BY MR. WIELEBINSKI) You can answer if you</b></p> <p>5 <b>know.</b></p> <p>6 A. The Court doesn't -- if a Court were to do</p> <p>7 that, then the Court couldn't then tell me and tell Bill</p> <p>8 what our duties and authority were because that's a</p> <p>9 matter of Guernsey law.</p> <p>10 <b>Q. You told me you're going to object to the</b></p> <p>11 <b>plan. I assume -- well, you're not a creditor so you</b></p> <p>12 <b>don't get a vote. Would you agree that if the plan was</b></p> <p>13 <b>confirmed and a reset was authorized that that would be</b></p> <p>14 <b>a better result for your investors than the present</b></p> <p>15 <b>circumstances?</b></p> <p>16 MR. MALONEY: I'm going to object to</p> <p>17 form and foundation.</p> <p>18 A. As I said earlier, I don't believe that we,</p> <p>19 as a board, have the authority to do that and -- nor do</p> <p>20 I believe for reasons that I've explained earlier that</p> <p>21 it's in the best interest of our investors to have the</p> <p>22 relationship with Brigade that that would entail.</p> <p>23 <b>Q. (BY MR. WIELEBINSKI) But if the plan was</b></p> <p>24 <b>confirmed, you're going to have that relationship with</b></p> <p>25 <b>Brigade and ACIS. You -- you'll agree with me on that,</b></p>
<p style="text-align: right;">Page 147</p> <p>1 we have the authority as directors of this fund.</p> <p>2 <b>Q. (BY MR. WIELEBINSKI) Why is that? Why</b></p> <p>3 <b>wouldn't you have the authority to do a reset?</b></p> <p>4 A. Because in the offering documents we state</p> <p>5 quite clearly what the intention of the policy and</p> <p>6 strategy is, and it doesn't involve doing any</p> <p>7 transactions with Brigade.</p> <p>8 <b>Q. Right. But you also said there's no</b></p> <p>9 <b>requirement that you can't do what the plan proposes,</b></p> <p>10 <b>right? It doesn't have to be Highland managed. It's</b></p> <p>11 <b>not required that it be Highland managed; isn't that</b></p> <p>12 <b>correct?</b></p> <p>13 A. There's no text in the offering document to</p> <p>14 say that it is required. But as a director of this</p> <p>15 fund, I do not believe that we would have the authority</p> <p>16 to do a transaction with Brigade.</p> <p>17 <b>Q. Right. On your own, you couldn't do it</b></p> <p>18 <b>voluntarily. You would need the Court to order you to</b></p> <p>19 <b>do it; is that what you're saying?</b></p> <p>20 MR. MALONEY: I'm going to object to the</p> <p>21 form and foundation. I don't think the Court is</p> <p>22 ordering the fund to do anything. That misstates the</p> <p>23 plan.</p> <p>24 <b>Q. (BY MR. WIELEBINSKI) If the Court approves</b></p> <p>25 <b>the plan and says a reset is allowed, are you more</b></p>		<p style="text-align: right;">Page 149</p> <p>1 <b>correct? In other words, it will be ordered because</b></p> <p>2 <b>that's what the plan says.</b></p> <p>3 A. Yes, that's a term of the plan.</p> <p>4 <b>Q. And Highland's out. It's not a subservicer</b></p> <p>5 <b>or submanager at this point, correct?</b></p> <p>6 A. Correct.</p> <p>7 <b>Q. And at that point, at least you have the</b></p> <p>8 <b>option to do a reset if you felt you could approve that</b></p> <p>9 <b>or you're authorized to do that, correct?</b></p> <p>10 MR. MALONEY: I object to form.</p> <p>11 A. Under the plan, the fund would be allowed to</p> <p>12 proceed with a reset.</p> <p>13 <b>Q. (BY MR. WIELEBINSKI) And who would need to</b></p> <p>14 <b>give you authorization to do that, to proceed with a</b></p> <p>15 <b>reset that was proposed? Would it be the investors?</b></p> <p>16 A. It would be -- to do -- to take this out --</p> <p>17 well, the board have the authority, taking the advice of</p> <p>18 the investment manager, to do an action like a reset.</p> <p>19 But in this sort of circumstance where we are, if the</p> <p>20 plan is confirmed, forced into that relationship and we</p> <p>21 don't believe it's in the best interest of our</p> <p>22 investors, then perhaps we would need to seek approval</p> <p>23 or consent or an idea from the investors as to the views</p> <p>24 of that.</p> <p>25 <b>Q. So you might solicit their views and see if</b></p>

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39 (Pages 150 to 153)

<p style="text-align: right;">Page 150</p> <p>1 it's okay to proceed with a reset under the 2 circumstances with a confirmed plan? 3 A. It's a possibility. 4 Q. And they might say yes? 5 A. That's a possibility. 6 Q. And their alternative is they just keep 7 rocking along and losing \$300,000 a week, correct? 8 MR. MALONEY: I'm going to object. It 9 lacks foundation. It ignores legal remedies that I 10 believe counsel is aware of, such as an appeal, so I 11 object to the foundation. 12 Q. (BY MR. WIELEBINSKI) Is it better than losing 13 \$300,000 a week? 14 MR. MALONEY: Objection, foundation. 15 A. I think as counsel has indicated that, you 16 know, we would be evaluating our position at the time. 17 Q. (BY MR. WIELEBINSKI) Well, you're a lawyer. 18 You know that parties can appeal. Appeals can go on for 19 years. 20 MR. MALONEY: Objection, foundation. 21 Q. (BY MR. WIELEBINSKI) Isn't that correct? 22 A. I'll just make the point that I'm not a 23 practicing lawyer -- 24 Q. Okay. 25 A. -- and haven't been for some years. And I</p>		<p style="text-align: right;">Page 152</p> <p>1 was the subject of attorney-client communications. 2 Q. (BY MR. WIELEBINSKI) I'm not asking you for 3 those communications. I'm asking you simply, has 4 Highland offered any solution to this problem short of 5 objecting to the plan? 6 MR. MALONEY: Same objections. 7 MS. O'NEIL: I'm also going to object to 8 the extent it calls for a disclosure of common interest 9 privileged communications. 10 A. I think I have to listen to the objections 11 and -- 12 Q. (BY MR. WIELEBINSKI) As an independent 13 director, what steps have you taken to solve the 14 problems caused by this bankruptcy? 15 A. I think this goes to the point that I made 16 probably a few hours ago when I was talking about the 17 differing roles of entities within structures such as 18 this, and I think that we would be heavily reliant on 19 our service providers, and that means Highland in this 20 case. 21 Q. Well, it's actually a Cayman -- a newly 22 formed Cayman entity that's your service provider, 23 correct? 24 A. Yes. 25 Q. And what have they offered to try to solve</p>
<p style="text-align: right;">Page 151</p> <p>1 was never a litigation lawyer, so I know nothing about 2 the appeal process -- 3 Q. Fair enough. If I told you -- 4 A. -- and particularly not American appeal 5 processes. 6 Q. If I told you in the American appeal process 7 it could go on for years, it would mean that rather than 8 doing a reset you would continue to lose what you allege 9 was \$300,000 a week for your investors as well as the 10 attorneys' fees that you'd be incurring in the meantime, 11 correct? 12 MR. MALONEY: I'm going to object to the 13 preface, foundation, speculation, form. 14 Q. (BY MR. WIELEBINSKI) Do you have a fiduciary 15 duty to Highland or any Highland entities or affiliates? 16 A. Our duties are to the investors and the 17 company. 18 Q. And your duties, as you told me, was to 19 maximize the return for investors, correct? 20 A. That's the idea, yes. 21 Q. To your knowledge, has Highland offered any 22 solution to this bankruptcy problem that we all face? 23 MR. MALONEY: I'm going to object to 24 foundation, to form, and also to the extent that any 25 information you have that would be responsive to that</p>		<p style="text-align: right;">Page 153</p> <p>1 this problem? 2 A. Well, again, I think this goes back to the 3 whole -- 4 MR. MALONEY: I'm going -- I'm going to 5 renew the same objections that I made before. I'm 6 sorry. You can answer to the extent you can with those 7 guidance. 8 Q. (BY MR. WIELEBINSKI) Have you personally had 9 any discussions with that service provider -- 10 A. We -- 11 Q. -- about solving the problems of this 12 bankruptcy? 13 A. We, the board, have had lots of conversations 14 with Highland, with counsel for Highland, and with our 15 own counsel about the circumstances. 16 Q. So who at Highland is -- is -- who have you 17 spoken with at HCF Advisors? 18 A. We have spoken with Hunter, who appears at 19 our board meetings on behalf of the portfolio manager. 20 Q. What does he do for that portfolio manager? 21 How -- what relationship does he have to the portfolio 22 manager? I understand he works for Highland Capital, 23 but does he do anything for Highland HCF Advisors? 24 A. He is provided to the portfolio manager to 25 the fund.</p>

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40 (Pages 154 to 157)

<p style="text-align: right;">Page 154</p> <p>1 <b>Q. How do you know that?</b> 2 A. Because he was effectively a replacement for 3 Mr. Terry. When we were advised of Mr. Terry's 4 departure, we were told that Hunter would be working 5 with the fund going forward. 6 <b>Q. Well, working with the fund. Does he -- is</b> 7 <b>he an officer or a director of that fund? Do you know?</b> 8 A. I can't remember what he -- 9 <b>Q. So you're not even certain whether --</b> 10 MR. MALONEY: What fund are we talking 11 about? I'm sorry. 12 MR. WIELEBINSKI: I'm sorry. HCF 13 Advisors. 14 <b>Q. (BY MR. WIELEBINSKI) Does he have any</b> 15 <b>position with HCF Advisors, to your knowledge?</b> 16 A. I don't know. 17 <b>Q. Who else do you speak with?</b> 18 A. The whole Highland team. 19 <b>Q. But who else from HCF Advisors?</b> 20 MR. MALONEY: I'm going to object to the 21 foundation. I think it's -- I think it's an unfair 22 premise. But you can answer if you can, Ms. Bestwick. 23 A. I don't think that we've made the distinction 24 that we're speaking to someone wearing one particular 25 hat or another particular hat in that way.</p>		<p style="text-align: right;">Page 156</p> <p>1 <b>know about that or familiar with it?</b> 2 A. No. 3 <b>Q. Did you know that Highland could file its own</b> 4 <b>plan in the bankruptcy case?</b> 5 A. (Shakes head negatively.) 6 <b>Q. You didn't know that?</b> 7 A. I don't think I did know that. 8 <b>Q. And did you know that HCLOF may be able to</b> 9 <b>file its own plan in the bankruptcy case?</b> 10 A. I wasn't aware that that was a -- 11 <b>Q. So --</b> 12 A. -- procedural thing. 13 <b>Q. -- if that was a procedural thing that could</b> 14 <b>try to solve the problem, do you think that would be</b> 15 <b>something you'd want to explore?</b> 16 MR. MALONEY: I'm going to object to 17 speculation and foundation. It calls for a legal 18 conclusion and perhaps -- and perhaps calls for 19 discussions with counsel. 20 <b>Q. (BY MR. WIELEBINSKI) As far as you know,</b> 21 <b>though, Highland hasn't proposed a plan --</b> 22 MR. MALONEY: Objection to form. 23 <b>Q. (BY MR. WIELEBINSKI) -- in the bankruptcy?</b> 24 A. I think -- 25 MR. MALONEY: Same objection.</p>
<p style="text-align: right;">Page 155</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) It's just one of the</b> 2 <b>many Highland affiliates and entity?</b> 3 A. No, no. We're talking about have any 4 solutions been proposed. And I think in the 5 circumstances, the conversations that we have are with 6 lots of people on a conference call. We don't go around 7 the table identifying who is who and who -- which hat 8 they're wearing at any particular time. 9 <b>Q. You don't think that's appropriate to know</b> 10 <b>who is talking and what hat they're wearing?</b> 11 A. I know who's talking, but I don't think it's 12 necessarily appropriate to have the hat disclosed. 13 <b>Q. Do you -- do you think that Highland Capital,</b> 14 <b>for example, might have differing interests than HCF</b> 15 <b>Advisors?</b> 16 MR. MALONEY: I'm going to object to 17 foundation and to form. 18 MS. O'NEIL: I also object to the extent 19 it calls for speculation. 20 A. I don't know. 21 <b>Q. (BY MR. WIELEBINSKI) Are you familiar with</b> 22 <b>the concept of exclusivity in a U.S. bankruptcy?</b> 23 A. No. 24 <b>Q. It's a concept of who has a right to file a</b> 25 <b>plan of reorganization or plan of liquidation. Do you</b></p>		<p style="text-align: right;">Page 157</p> <p>1 A. -- it's probably, you know -- the sorts of 2 discussions that we have are such that, you know, there 3 are things that are talked about that must be part of 4 the privileged conversations. 5 <b>Q. (BY MR. WIELEBINSKI) But -- but if they filed</b> 6 <b>a plan, it would be a public filing. So do you know if</b> 7 <b>Highland has filed a plan?</b> 8 MR. MALONEY: You're speaking of 9 Highland Capital? Who are you asking about? 10 MR. WIELEBINSKI: I don't think it 11 matters. 12 MS. O'NEIL: I object, clarity of the 13 record. Designate -- and you're indicating both, but -- 14 MR. WIELEBINSKI: I'll stand on my 15 question. 16 MS. O'NEIL: -- for the clarity of the 17 record -- can you repeat the question? 18 <b>Q. (BY MR. WIELEBINSKI) Do you know if Highland</b> 19 <b>has filed a plan?</b> 20 A. I'm not aware that they have. 21 <b>Q. And you know HCLOF has not filed a plan?</b> 22 A. Correct. 23 <b>Q. Are you familiar with the solution that the</b> 24 <b>Court has offered on at least three or four occasions to</b> 25 <b>try to remedy the problems that we're facing in the</b></p>

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41 (Pages 158 to 161)

<p style="text-align: right;">Page 158</p> <p>1 bankruptcy? 2 MR. MALONEY: Objection, form; vague. 3 A. If you could give me a bit more detail around 4 that. 5 Q. (BY MR. WIELEBINSKI) Judge has suggested at 6 some point that an amount of money be put up, and with 7 that money set aside that the parties could go about 8 their business and get out of the bankruptcy, something 9 along those lines she's inquired of that. 10 A. Yes, I'm aware of that. 11 Q. She's -- okay. And she's done it, like I 12 said, three or four times. You're aware of that? 13 A. Yes. 14 Q. Neither Highland -- Highland has never 15 accepted that offer or tried to fashion a remedy to 16 solve these problems along those lines, has it? 17 MR. MALONEY: Objection to form. 18 MS. O'NEIL: Objection to the extent it 19 calls for disclosure of common interest privileged 20 communications. 21 Q. (BY MR. WIELEBINSKI) Has Highland done that? 22 A. I think that this is something that has been 23 part of the discussions that we've been having on an 24 ongoing basis that I probably have to say are privileged 25 and can't go into the question.</p>		<p style="text-align: right;">Page 160</p> <p>1 A. No. But by the same token, we haven't had 2 any approaches ourselves. 3 Q. By the trustee, you're saying? 4 A. Yes. 5 Q. What could the trustee do that would allow 6 you to be able to resolve -- would allow all the parties 7 to be able to resolve their issues? Anything you can 8 think of? 9 A. I don't know. I don't know. 10 Q. You're familiar with the litigation the 11 trustee has commenced against Highland and HCLOF, 12 correct? 13 A. Yes. 14 Q. And you've read it, you sort of understand 15 what the nature of the claims are? 16 A. I think so. 17 Q. A lot of them result -- a lot of them arise 18 because of those transactions that you described, a 19 series of transactions, in October of 2017, correct? 20 A. Yes. 21 Q. Do you feel like Highland has gotten you into 22 a pickle -- that's maybe a Texas term -- but has gotten 23 you into a difficult situation because of those 24 transfers? 25 MR. MALONEY: Objection --</p>
<p style="text-align: right;">Page 159</p> <p>1 MR. MALONEY: Let me -- Joe, are you 2 saying is she aware of whether Highland has filed 3 something or said something publicly? 4 MR. WIELEBINSKI: I think she's answered 5 the question, I think. 6 Q. (BY MR. WIELEBINSKI) You know that there was 7 a mediation -- 8 A. Yes. 9 Q. -- that occurred? You participated, correct? 10 A. Yes. 11 Q. That didn't go anywhere, did it? 12 A. No. 13 Q. Have you ever reached out to the trustee to 14 try to solve the problems that HCLOF is facing to try to 15 come up with some solution that would work? 16 MR. MALONEY: Objection to form. Do you 17 mean her personally? 18 MR. WIELEBINSKI: Yes. 19 A. I haven't, no. 20 Q. (BY MR. WIELEBINSKI) Has Mr. Scott? 21 A. Not to my knowledge. 22 Q. Have you had any sit-downs with the trustee 23 over this latest plan to try to negotiate any of the 24 terms or provisions that might make it more workable 25 for you?</p>		<p style="text-align: right;">Page 161</p> <p>1 Q. (BY MR. WIELEBINSKI) You're now being sued 2 for them. 3 MR. MALONEY: Objection to form. 4 MS. O'NEIL: Object to form. 5 A. I -- we are where we are. 6 Q. (BY MR. WIELEBINSKI) Still comfortable with 7 Highland, though, and everything that it's -- 8 A. Yes. 9 Q. -- doing and has done? 10 A. Yes. 11 (Exhibit 7 marked.) 12 Q. (BY MR. WIELEBINSKI) I'm going to hand you 13 what's been marked as Exhibit No. 7. Have you seen this 14 before? 15 A. Yes. 16 Q. What is it? 17 A. It's the letter from Mr. Leventon. 18 Q. And who's it addressed to? 19 A. To the Chapter 7 trustee. 20 Q. And what's the substance of the letter? 21 MR. MALONEY: Objection, document speaks 22 for itself. 23 Q. (BY MR. WIELEBINSKI) What do you understand 24 it to be saying? 25 MR. MALONEY: Same objection.</p>

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42 (Pages 162 to 165)

<p style="text-align: right;">Page 162</p> <p>1 A. I think it says what it says. 2 <b>Q. (BY MR. WIELEBINSKI) Well, does it say that</b> 3 <b>you -- the trustee is being asked to liquidate the</b> 4 <b>portfolio?</b> 5 MR. MALONEY: Objection to form. 6 A. I think it's interpreted as something which 7 it wasn't intended to be. I think -- 8 <b>Q. (BY MR. WIELEBINSKI) Well, let me ask you</b> 9 <b>this: It talks about effectuating the optional</b> 10 <b>redemptions, correct? Do you see that on page 3?</b> 11 A. Yeah. 12 <b>Q. And it says that there are three mechanisms</b> 13 <b>for effectuating the optional redemptions, right? And</b> 14 <b>the three are: Reset transactions. That's Option 1.</b> 15 A. Uh-huh. 16 <b>Q. And then there is Option 2, sell the</b> 17 <b>collateral into a warehouse; and the third one is sell</b> 18 <b>all collateral into the market. How do you understand</b> 19 <b>that third one -- is that a liquidation?</b> 20 MR. MALONEY: I'm going to object to the 21 foundation of the witness as to her involvement and 22 understanding of this document at the time it was sent. 23 Object to the form of the question. 24 A. I think it describes what Option 3 is. 25 <b>Q. (BY MR. WIELEBINSKI) Which is a liquidation,</b></p>		<p style="text-align: right;">Page 164</p> <p>1 A. I think it's clear on the face of it. 2 <b>Q. To liquidate? Option 3.</b> 3 A. The sentence you're referring to is, 4 "Highland will prepare to effectuate Option 3 -- 5 <b>Q. -- to sell the collateral into --</b> 6 A. -- as the default instruction -- 7 COURT REPORTER: Hang on. 8 MR. WIELEBINSKI: I'm sorry. 9 COURT REPORTER: -- I didn't get the 10 whole answer. 11 A. -- as the default instruction under the 12 optional redemption." 13 <b>Q. (BY MR. WIELEBINSKI) Okay. What do you</b> 14 <b>understand that to mean?</b> 15 A. My understanding at the time was that the 16 Chapter 7 trustee had a limited period, I think, of 60 17 days in which she could operate ACIS, and there wasn't 18 much in the way of progress during those 60 days. So as 19 a party that was being harmed by that, I think that the 20 intent of this letter was to promote some action from 21 the Chapter 7 trustee and -- 22 <b>Q. And you were prepared to accept that if the</b> 23 <b>trustee would have gone forward with it, correct?</b> 24 MR. MALONEY: Objection to form. 25 MS. O'NEIL: Objection, calls for</p>
<p style="text-align: right;">Page 163</p> <p>1 <b>correct?</b> 2 A. "The Chapter 7 trustee's final option in 3 compliance with the redemption notices is to liquidate 4 the collateral into the market." 5 <b>Q. And you understand that to be a liquidation?</b> 6 A. Yes. 7 <b>Q. You're liquidating the portfolio's position,</b> 8 <b>correct?</b> 9 A. Uh-huh. Yes. 10 <b>Q. And then it says in that same -- under</b> 11 <b>Option 3, "The investors in the CLOs would then be able</b> 12 <b>to take this cash and reinvest it in CLOs, or other</b> 13 <b>investments, with a better return profile." And then at</b> 14 <b>the end isn't what's being requested of the trustee is</b> 15 <b>to authorize the liquidation of the collateral under</b> 16 <b>Option 3?</b> 17 MR. MALONEY: Objection, foundation. 18 The document says what it says. It's been the subject 19 of extensive testimony. I object to the foundation of 20 this witness. 21 <b>Q. (BY MR. WIELEBINSKI) What do you understand,</b> 22 <b>Ms. Bestwick? What do you understand was being</b> 23 <b>recommended to the trustee to do? And I'll point out</b> 24 <b>the second to last sentence of the last paragraph on</b> 25 <b>page 4.</b></p>		<p style="text-align: right;">Page 165</p> <p>1 speculation. 2 <b>Q. (BY MR. WIELEBINSKI) I definitely don't want</b> 3 <b>you to speculate, Ms. Bestwick. You saw this letter,</b> 4 <b>correct, at the -- at or about the time it was sent?</b> 5 A. Yes. 6 <b>Q. You had no objection to it; is that correct?</b> 7 A. I didn't have an objection to it, no. 8 <b>Q. And so you were prepared if the trustee would</b> 9 <b>not do Option 1 or 2 to accept Option 3, a</b> 10 <b>liquidation --</b> 11 MR. MALONEY: I'm going to object -- 12 <b>Q. (BY MR. WIELEBINSKI) -- is that correct?</b> 13 MR. MALONEY: I'm going to object to 14 form and foundation. 15 <b>Q. (BY MR. WIELEBINSKI) Is that correct,</b> 16 <b>Ms. Bestwick?</b> 17 A. I think that consistently there has been the 18 intent to go -- to do what we were poised to do 19 originally, which is to do the reset transactions, and 20 that was always going to be the option, the preferred 21 option. 22 <b>Q. But only under certain circumstances. I</b> 23 <b>mean, your statement that you just made has to be</b> 24 <b>qualified, correct?</b> 25 A. We're talking about the time that this was --</p>

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43 (Pages 166 to 169)

<p style="text-align: right;">Page 166</p> <p>1 <b>Q. I understand.</b></p> <p>2 A. Yeah. Yeah.</p> <p>3 <b>Q. Okay. But I'm correct, am I not, that you're</b></p> <p>4 <b>not prepared to do a reset under any circumstances, only</b></p> <p>5 <b>under specific circumstances that work for you and for</b></p> <p>6 <b>your fund?</b></p> <p>7 A. The specific circumstances being in keeping</p> <p>8 with the disclosure that -- in our offering documents</p> <p>9 and in accordance with our investment policy.</p> <p>10 <b>Q. But just because I feel I have to: Not</b></p> <p>11 <b>because you're required to per those documents, correct?</b></p> <p>12 <b>MS. O'NEIL: Object to form.</b></p> <p>13 <b>MR. MALONEY: Object to form and</b></p> <p>14 <b>foundation.</b></p> <p>15 A. Well, as I mentioned earlier, if I may say, I</p> <p>16 am not convinced that we have the authority to do it in</p> <p>17 any way other than as presaged by the offering document</p> <p>18 in the investment policy.</p> <p>19 <b>Q. (BY MR. WIELEBINSKI) Okay. And if I</b></p> <p>20 <b>understand that -- I may have asked this before. If I</b></p> <p>21 <b>did, I apologize. But if the plan is confirmed, a reset</b></p> <p>22 <b>is offered and you're not certain you can do it, you're</b></p> <p>23 <b>prepared to maintain the status quo and not effectuate a</b></p> <p>24 <b>reset?</b></p> <p>25 <b>MR. MALONEY: Object to form and calls</b></p>		<p style="text-align: right;">Page 168</p> <p>1 <b>so well organized.</b></p> <p>2 A. That is the lawyer in me.</p> <p>3 <b>Q. That Exhibit No. 1 was a Portfolio Management</b></p> <p>4 <b>Agreement of December 22nd, correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Now, there were two other Portfolio</b></p> <p>7 <b>Management Agreements at or about that time, correct?</b></p> <p>8 A. Portfolio Management Agreements in 2016?</p> <p>9 <b>Q. Oh, actually, no. Thank you. There were two</b></p> <p>10 <b>Portfolio Management Agreements in 2017, October and</b></p> <p>11 <b>November, correct?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Why were there two done in such close</b></p> <p>14 <b>proximity? Can you -- can you explain that to me?</b></p> <p>15 A. My recall is that it was part of the step</p> <p>16 plan that I referred to earlier. The replacement of the</p> <p>17 portfolio manager had to take place as a condition</p> <p>18 precedent to the incoming new --</p> <p>19 <b>Q. That was to get rid of ACIS --</b></p> <p>20 <b>COURT REPORTER: Wait. Wait. Precedent</b></p> <p>21 <b>to the incoming new?</b></p> <p>22 <b>THE WITNESS: Investor.</b></p> <p>23 <b>Q. (BY MR. WIELEBINSKI) So the first one was to</b></p> <p>24 <b>get rid of ACIS, correct, as the portfolio manager?</b></p> <p>25 A. And then the subsequent one was for the</p>
<p style="text-align: right;">Page 167</p> <p>1 for speculation and ignores prior testimony of other</p> <p>2 options.</p> <p>3 A. I think we have to take a view at the</p> <p>4 appropriate time with the information we have to hand.</p> <p>5 <b>Q. (BY MR. WIELEBINSKI) Sure. You know, besides</b></p> <p>6 <b>this default Option 3 -- that never went forward,</b></p> <p>7 <b>correct?</b></p> <p>8 <b>MR. MALONEY: Objection to form.</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. (BY MR. WIELEBINSKI) And there was another</b></p> <p>11 <b>attempt. It was a notice of redemption issued. You're</b></p> <p>12 <b>aware of that, correct?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. That never went forward either. It was</b></p> <p>15 <b>actually voluntarily withdrawn by you.</b></p> <p>16 A. The June, yes.</p> <p>17 <b>Q. Yes. And you've issued no subsequent notice</b></p> <p>18 <b>of redemption since then, correct?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. Do you have Exhibit I there?</b></p> <p>21 <b>MR. MALONEY: Exhibit I?</b></p> <p>22 <b>MR. WIELEBINSKI: Yes.</b></p> <p>23 <b>Q. (BY MR. WIELEBINSKI) May I look at that?</b></p> <p>24 A. Yeah.</p> <p>25 <b>Q. Thank you. And I appreciate you keeping that</b></p>		<p style="text-align: right;">Page 169</p> <p>1 transaction -- part of the transaction documentation</p> <p>2 with the new investor.</p> <p>3 <b>Q. To bring in HCF Advisors?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. I'm going to just mark these just so we can</b></p> <p>6 <b>get them in.</b></p> <p>7 <b>(Exhibits 8 and 9 marked.)</b></p> <p>8 <b>Q. (BY MR. WIELEBINSKI) I'll hand you what's</b></p> <p>9 <b>been marked as Exhibit No. 8.</b></p> <p>10 <b>MR. WIELEBINSKI: And there's 9.</b></p> <p>11 <b>Q. (BY MR. WIELEBINSKI) Have you seen these</b></p> <p>12 <b>before?</b></p> <p>13 A. I just have the one.</p> <p>14 <b>Q. Sorry. There's Exhibit No. 9.</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Have you seen these both before?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And these are the --</b></p> <p>19 <b>MR. SHAW: Joe, do you have one more of</b></p> <p>20 <b>those by chance?</b></p> <p>21 <b>MR. WIELEBINSKI: Could you share one of</b></p> <p>22 <b>those?</b></p> <p>23 <b>MS. O'NEIL: These are different.</b></p> <p>24 <b>MR. WIELEBINSKI: Oh, they're not the</b></p> <p>25 <b>two that I handed you?</b></p>

HEATHER BESTWICK

44 (Pages 170 to 173)

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**Page 170**

1 MS. O'NEIL: You said 8 and 9, right?  
2 MR. WIELEBINSKI: Yes.  
3 MS. O'NEIL: These are two different  
4 documents.  
5 MR. WIELEBINSKI: Right. Do you mind  
6 showing those to Mr. Shaw?  
7 MR. SHAW: It's -- I mean, it's okay.  
8 I'm fine.  
9 MR. PHELAN: What are they, Joe?  
10 MR. MALONEY: Yeah. Exhibit 8 is  
11 November 15, 2017 and Exhibit 9 is 27 October 2017.  
12 MR. SHAW: Portfolio Management  
13 Agreement. All right.  
14 **Q. (BY MR. WIELEBINSKI) Sorry, Ms. Bestwick, so**  
15 **you have seen these before?**  
16 A. Yes.  
17 **Q. And obviously the October 27th occurred first**  
18 **and then the November 15th occurred second?**  
19 A. Yes.  
20 **Q. And I think you described that under the**  
21 **October 27th PMA that's where ACIS was removed,**  
22 **terminated?**  
23 A. Yes.  
24 **Q. Okay. And then the second one, November**  
25 **15th, is when Highland HCF Advisors took over?**

**Page 171**

1 A. Highland HCF Advisors were the incoming  
2 portfolio manager on the prior one as well, the 27th of  
3 October. But the difference was I think the governing  
4 law clause was changed in the later one.  
5 **Q. Why -- why is that? Do you know? Why was**  
6 **that change made?**  
7 A. I believe that it was a conforming exercise  
8 because it's governed by the law of Texas.  
9 **Q. Okay.**  
10 MR. WIELEBINSKI: Let's see if we can  
11 take a short break for 5 or 10 minutes, if that's okay.  
12 THE VIDEOGRAPHER: Off the record at  
13 1:01. This is Disk 3, Volume 1.  
14 (Break taken.)  
15 THE VIDEOGRAPHER: On the record at  
16 1:19, Disk 4, Volume 1.  
17 **Q. (BY MR. WIELEBINSKI) Ms. Bestwick, we're back**  
18 **on the record. I just wanted to ask some follow-up**  
19 **questions. So the first is, one option you have and**  
20 **have had to try to solve the problems we're all**  
21 **encountering is just to sell your debt, correct, sell it**  
22 **in the open market, sell the investors' debt, the notes?**  
23 MR. MALONEY: I'm going to object to  
24 foundation to whether that's actually an option.  
25 A. I think that would have been my question. It

**Page 172**

1 might be a possibility, it might be an option, but I  
2 don't know if that's possible as a matter of fact.  
3 **Q. (BY MR. WIELEBINSKI) Why not? Why would it**  
4 **not be an option? Do you know? Why would that not be**  
5 **an option?**  
6 A. I obviously have to defer to the greater  
7 knowledge of Highland and the experts, but I understand  
8 that it is unlikely to provide an optimal result for us.  
9 **Q. Okay. I understand that. Have you done an**  
10 **analysis of the pros and cons of selling the positions**  
11 **in your fund versus the current situation and the**  
12 **potential way things may play out?**  
13 A. I'm not aware. We have seen an awful lot of  
14 documentation and charts and things, so I'm not aware of  
15 what the current position is on that, so I couldn't say.  
16 **Q. Well, I don't know that I need to know**  
17 **specifics, but I need to ask, has that analysis been**  
18 **done?**  
19 A. I'm not sure. I'm not sure.  
20 **Q. Do you think it would be a helpful**  
21 **analysis --**  
22 A. I'd have to check.  
23 **Q. -- to look at to determine whether there's an**  
24 **option available for the investors short of accepting**  
25 **the plan?**

**Page 173**

1 A. I think it's always useful to have as much  
2 information as you possibly can.  
3 **Q. But you haven't ordered that kind of analysis**  
4 **from the PMA?**  
5 MR. MALONEY: Objection, foundation.  
6 A. I'm not aware that we have.  
7 **Q. (BY MR. WIELEBINSKI) Right. Is it the job of**  
8 **the portfolio manager to actually find investors like**  
9 **Harbour Vest and to negotiate the entire agreement with**  
10 **them?**  
11 A. I think that's the market norm that the  
12 portfolio manager has. I referred earlier to the whole  
13 investor relation's function. So to my knowledge, you  
14 have portfolio managers who have staff who, you know,  
15 are on the road most of the year trying to drum up  
16 business for the fund and speaking to investors and  
17 giving them information which might make them  
18 interested, so yes.  
19 **Q. All right. I want to go back to the lawsuit**  
20 **against Mr. Terry again with the confidential**  
21 **information. What information did you or Mr. Scott make**  
22 **available to the lawyers for them to do the analysis and**  
23 **develop the claims and causes of action against**  
24 **Mr. Terry?**  
25 A. I think that to answer that would probably be

HEATHER BESTWICK

45 (Pages 174 to 177)

<p style="text-align: right;">Page 174</p> <p>1 disclosing privileged information. 2 THE WITNESS: Can I defer to counsel on 3 that? 4 MR. MALONEY: I'll -- I will counsel you 5 and instruct you to the extent you're answering that 6 question would reveal conversations with counsel, yes. 7 But I can't -- if there's -- if it's not, then you can 8 certainly answer. 9 <b>Q. (BY MR. WIELEBINSKI) I'm not asking you for</b> 10 <b>any communications that you had with your counsel about</b> 11 <b>the confidential information, but I am trying to</b> 12 <b>understand, since you are the repository of that</b> 13 <b>confidential information, what you made available to</b> 14 <b>counsel.</b> 15 MR. MALONEY: I'm going to object to 16 foundation that she is the repository of that 17 confidential information. 18 <b>Q. (BY MR. WIELEBINSKI) Well, who else would</b> 19 <b>have confidential information of your fund that might</b> 20 <b>have made that information available to your lawyers?</b> 21 A. Well, clearly our delegated service 22 providers. 23 <b>Q. Did they sit down with your counsel to go</b> 24 <b>through that information? Do you know?</b> 25 A. I think information has obviously been</p>		<p style="text-align: right;">Page 176</p> <p>1 <b>Q. But in connection with this lawsuit, I want</b> 2 <b>to hone in on that group.</b> 3 MR. MALONEY: The Guernsey lawsuit? 4 MR. WIELEBINSKI: Yes. 5 MR. MALONEY: Okay. 6 A. I think that was Collas Crill. 7 COURT REPORTER: Who? 8 THE WITNESS: Collas Crill. 9 <b>Q. (BY MR. WIELEBINSKI) I'll take that at face</b> 10 <b>value. One of the allegations in that lawsuit had to do</b> 11 <b>with a payment that Mr. Terry is asking for. Do you</b> 12 <b>know anything about that \$750,000 payment?</b> 13 A. I'd have to look back and refresh my memory 14 on that. 15 <b>Q. Okay. Is it fair for me to assume that if</b> 16 <b>you were going to ask your investors about the reset,</b> 17 <b>for example, under the plan, that the main investor that</b> 18 <b>you need to discuss things with would be Harbour Vest</b> 19 <b>because the other Highland-related entities you'd</b> 20 <b>probably know what their position would be?</b> 21 MR. MALONEY: I'm going to object to 22 foundation and form. 23 A. Well, no. I think -- 24 THE WITNESS: If I may answer it. 25 MR. MALONEY: You can answer it.</p>
<p style="text-align: right;">Page 175</p> <p>1 requested of our service providers. To the extent that 2 they can provide it, they will have done it. 3 <b>Q. You're saying your lawyers would have</b> 4 <b>requested that information in connection with putting</b> 5 <b>the lawsuit together?</b> 6 A. To understand the case, yes. 7 <b>Q. And you know that for -- for a fact?</b> 8 A. I think that is correct. I think that our 9 lawyers would have made inquiry because they would have 10 needed to have known how to. 11 <b>Q. And they would have talked to, then, the HCF</b> 12 <b>Advisors?</b> 13 A. They would have talked to our service 14 providers, so our portfolio manager as well. 15 <b>Q. Okay. As well as HCF Advisors, State Street,</b> 16 <b>and others?</b> 17 A. Yes. 18 <b>Q. I don't want to put words into your mouth,</b> 19 <b>but is that what you -- you think is --</b> 20 A. That's my understanding of how it would work. 21 <b>Q. And what lawyers was that information being</b> 22 <b>made available to? When you say our lawyers, who would</b> 23 <b>that be?</b> 24 A. Well, we have, I think I said earlier, quite 25 a range of lawyers in Guernsey.</p>		<p style="text-align: right;">Page 177</p> <p>1 <b>Q. (BY MR. WIELEBINSKI) You may.</b> 2 A. Harbour Vest is a 49 percent investor, and 3 the donor-advised fund that sits behind the sale of 4 holdco is the other main investor, and then you've got 5 the 2 percent Highland employees. But that -- 6 <b>Q. But the only independent investor is Harbour</b> 7 <b>Vest; is that a fair statement?</b> 8 MR. MALONEY: I'm going to object to the 9 foundation and to the extent it calls for legal or other 10 knowledge that this witness may not have. 11 MS. O'NEIL: Object to form. 12 A. (BY MR. WIELEBINSKI) Harbour Vest has no 13 connection to Highland other than as an investor in this 14 fund. 15 <b>Q. (BY MR. WIELEBINSKI) That's what I wanted to</b> 16 <b>confirm. Thank you. What attorneys from Highland were</b> 17 <b>on the April special call that you had regarding, among</b> 18 <b>other things, the final award?</b> 19 A. On the mid-April call, I think we had Tim 20 Cournoyer and Isaac Leventon from Highland. 21 <b>Q. And when you say from Highland, are they</b> 22 <b>counsel for HCF Advisors?</b> 23 A. No. Sorry. I misunderstood your question. 24 They are the counsel for Highland. We didn't have our 25 counsel on that initial call. Subsequent calls we did.</p>

**HEATHER BESTWICK**

51 (Pages 198 to 201)

<p style="text-align: right;">Page 198</p> <p>1 Q. Welcome to my world on keeping time. You 2 thought you'd gotten away from the law, but now 3 you're -- 4 A. Indeed. 5 Q. -- having to keep time again. Do you know 6 the hourly rate? 7 A. I think we agreed an hourly rate of 350 8 pounds. 9 Q. And that has been approved? 10 A. Yes. 11 Q. And who approved that? 12 A. Well, that would be Highland. Sorry, that's 13 not Highland. Of course it's not. It's the fund 14 because it's the fund who employs us. Apologies. 15 Q. So did the directors have a vote on whether 16 or not to compensate the directors for the work that 17 they're doing in conjunction with the litigation? 18 A. It's a director decision because the fund is 19 managed by the director. 20 Q. Did you consult with Highland with regard to 21 whether or not they would object to you and Mr. Scott 22 receiving additional compensation in connection with 23 this litigation? 24 A. Yes, we did. 25 Q. And did they have any objection?</p>		<p style="text-align: right;">Page 200</p> <p>1 Q. All right. So October 27th, seven days after 2 the arbitration award, you approve this new portfolio 3 manager of the fund that you are the director of. It's 4 called Highland HCF Advisors Limited, right? 5 A. Yes. 6 MR. MALONEY: Objection to form. 7 Q. (BY MR. SHAW) Do you understand that that 8 entity was formed on the same day that the portfolio 9 management services were transferred to it? 10 A. I don't think I did know that. 11 Q. And that's a Cayman entity, that Highland HCF 12 Advisors Limited, right? 13 A. Yes. 14 Q. What due diligence did you do with regard to 15 Highland HCF Advisors Limited? 16 A. We had the conversations with Highland. So 17 having been given the rationale for the decision to have 18 the existing portfolio management group terminated and a 19 new one with a new advisor, that was the extent of the 20 due diligence. It was a Highland entity. 21 We were comfortable that it was going to be 22 pretty much business as usual, no change in personnel, 23 so we were content that the information presented to us 24 was adequate. 25 Q. So, I mean, was this, the way that you saw</p>
<p style="text-align: right;">Page 199</p> <p>1 A. No. There was a full and frank discussion 2 about the time and the additional effort over and above 3 what we're paid for, and we came to an agreement. 4 Q. And do you have minutes memorializing that 5 director's meeting? 6 A. Yes. 7 Q. And those were prepared by State Street? 8 A. I believe they were prepared by Carey Olsen. 9 Q. Have you ever seen Mr. Terry in person before 10 this litigation? 11 A. No. 12 Q. Have you ever spoken to Mr. Terry before this 13 litigation? 14 A. I believe that for the first few board 15 meetings Mr. Terry gave the portfolio manager's report; 16 so we would be sitting in Guernsey around a table at the 17 board meeting, and Mr. Terry would have been one dialing 18 from Highland to give the report of the portfolio 19 manager. 20 Q. So you're in Guernsey and Mr. Terry is 21 somewhere else? 22 A. Yes. 23 Q. You've never seen Mr. Guern -- 24 Mr. Guernsey -- Mr. Terry in Guernsey, right? 25 A. No.</p>		<p style="text-align: right;">Page 201</p> <p>1 it, just a paper transaction? 2 MR. MALONEY: Objection to form. 3 Q. (BY MR. SHAW) I mean, if I'm 4 mischaracterizing it, I want to know how you perceived 5 what was going on here. You know, you have ACIS, which 6 was the portfolio manager, which is obviously a 7 significant role with the fund, right? I mean, you're 8 relying on the portfolio management -- portfolio manager 9 for almost everything, and then all of a sudden you have 10 this new Cayman entity come in. And so I just -- how 11 did you perceive what was going on there with that? 12 MR. MALONEY: I'm going to object to the 13 form and foundation of the question. 14 THE WITNESS: But I can answer? 15 MR. MALONEY: Yes. If you can. 16 A. It was our understanding that it was -- it 17 was pretty much no difference. The personnel were the 18 same. The entity was different because that was a CP to 19 the transaction involving a new investor, but everything 20 else would remain the same. 21 Q. (BY MR. SHAW) Now let's look at Exhibit 22 No. 4, please. That's the Guernsey lawsuit. And if you 23 will turn to paragraph 37. There are no page numbers, 24 but if you'll look at paragraph 37. 25 A. No. 3, I think.</p>

HEATHER BESTWICK

52 (Pages 202 to 205)

<p style="text-align: right;">Page 202</p> <p>1 Q. Oh, I'm sorry, I wrote it down wrong. No. 3. 2 My apologies. 3 A. I'm sorry, which page? 4 Q. There are no page numbers, but it's 5 paragraph 37. 6 A. Okay. 7 Q. Are you with me? 8 A. Yes. 9 Q. Okay. It says, "By 1 February 2018 the only 10 remaining condition precedent to the reset transaction 11 for CLO 3 was for a Portfolio Management Agreement to be 12 transferred from ACIS." Do you see that? 13 A. Yes. 14 Q. And I want to concentrate on those last three 15 words: transferred from ACIS. Do you see that? 16 A. Yeah. 17 Q. So you understood that the reset transactions 18 were not simply a standalone reset, but it was a reset 19 in conjunction with the transfer of the Portfolio 20 Management Agreements away from ACIS, right? 21 MR. MALONEY: Objection, form. 22 A. I would need to refresh my memory around the 23 time that this was being drafted. I'd need to go back 24 and have a look at -- the reason I'm saying that is 25 because the condition precedent was for the Portfolio</p>		<p style="text-align: right;">Page 204</p> <p>1 we're talking about transferring the Portfolio 2 Management Agreements for the CLO transferred from ACIS. 3 Do you see that? 4 A. Yes. Yes. 5 Q. So going back to my question. You understood 6 that the reset transactions that were contemplated were 7 not simply standalone resets, but they were in 8 conjunction with the transfer of the Portfolio 9 Management Agreement for the CLOs to a new entity. 10 MR. MALONEY: Objection, form and 11 foundation. 12 A. I think, if I can refer back -- and, again, I 13 just need to double check on this, but my understanding 14 that -- obviously, it's something that is happening as 15 part of the Chapter 7 bankruptcy proceedings, but I 16 think I referred earlier to the 60-day period during 17 which the Chapter 7 trustee had been appointed and had 18 the limited authority, and we weren't sure that any 19 activity was going to take place. 20 But as I recall, I think one option was that 21 the Portfolio Management Agreements could be transferred 22 from ACIS because that would mean that we could continue 23 with the reset and just continue as we had been as a 24 fund and we wouldn't be involved in this. 25 Q. (BY MR. SHAW) Okay. Here we're talking about</p>
<p style="text-align: right;">Page 203</p> <p>1 Management Agreement existing to be terminated and the 2 new one executed. 3 But we're talking about the new transaction 4 in October '17, and you're saying here that by this 5 paragraph we're talking about February 2018. And the 6 only remaining condition precedent to the reset 7 transaction was the Portfolio Management Agreement to be 8 transferred from ACIS. But that should be done in 9 October. 10 Q. Maybe I can help because I think we're 11 talking about two different things. 12 A. Okay. 13 Q. In this context -- on this context in 14 paragraph 37, we're talking about the portfolio 15 management agreements that are for the CLOs themselves. 16 A. Sorry. 17 Q. All right. 18 A. Apologies. 19 Q. As opposed to -- as opposed to in October 20 we're talking about the Portfolio Management Agreements 21 for the fund. 22 A. For the fund. 23 Q. Do you understand that? 24 A. Yes. 25 Q. And so you see here in that paragraph 37</p>		<p style="text-align: right;">Page 205</p> <p>1 February of 2018, so that was February 1st of 2018. Do 2 you see that? 3 A. Yeah. 4 Q. So we're not talking about the Chapter 7 5 trustee or anything like that. Do you see that? 6 A. I mean, I will have to go back and just -- 7 Q. Let's move on. 8 A. -- reconsider what was happening at that 9 time. Apologies. 10 Q. All right. And I'm trying to expedite so all 11 the lawyers can get to the investiture. Go to 12 paragraph 41, if you will, please. 13 A. Yes. 14 Q. All right. At the bottom of that paragraph 15 it says, "ACIS's trustee in bankruptcy disclosed that 16 the bankruptcy estate should pay a fee of some \$750,000 17 to the defendant in connection with assistance he had 18 been providing in connection with certain reorganization 19 proposals affecting the four CLOs and the company's 20 investments therein." Did I read that correctly? 21 A. Yes. 22 Q. Do you agree with that statement? 23 MR. MALONEY: Objection, foundation and 24 form. 25 A. I think it is the case that that fee was</p>

**EXHIBIT W**

**WILLIAM SCOTT**

Page 1

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

IN RE: ) CASE NO. 18-30264-SGJ-11  
          ) CASE NO. 18-30265-SGJ-11  
ACIS CAPITAL MANAGEMENT )  
L.P., ACIS CAPITAL ) (Jointly Administered  
MANAGEMENT GP, L.L.C. ) Under Case No.  
                                  ) 18-30264-SGJ-11)  
Debtors. ) CHAPTER 11

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VIDEOTAPED ORAL DEPOSITION OF  
WILLIAM SCOTT  
DECEMBER 3, 2018  
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ORAL DEPOSITION OF WILLIAM SCOTT, produced as a witness at the instance of Robin Phelan, Chapter 11 Trustee, and duly sworn, was taken in the above-styled and numbered cause on December 3, 2018, from 9:43 a.m. to 6:36 p.m. before Brent Sturgess, CSR in and for the State of Texas, reported by machine shorthand at the law offices of Winstead, P.C., 500 Winstead Building, 2728 North Harwood Street, Dallas, Texas, 75201, pursuant to Notice, the Federal Rules of Civil Procedure, and the provisions stated on the record or attached hereto.

WILLIAM SCOTT

23 (Pages 86 to 89)

Page 86

1 discussed the Members Agreement and the offering  
2 memorandum. Indeed I think all -- all these things  
3 that counsel has shown to me are -- are documents that  
4 we have reviewed to some extent in the past week or at  
5 least touched upon.  
6 **Q. (By Mr. Wielebinski) Did you review the**  
7 **trustee's plan?**  
8 A. Not in the last week, no.  
9 **Q. Did you review the trustee's -- but you have**  
10 **reviewed it before; correct?**  
11 A. I've -- I've -- I've seen it in, I think,  
12 more than one iteration, but I haven't looked at it in  
13 the last couple of weeks. I'm not -- I'm not aware  
14 that it's changed.  
15 **Q. And when we're talking about the trustee's**  
16 **plan, we're talking about the latest plan that's up**  
17 **for confirmation next week; correct?**  
18 A. Yes, that's right. We're -- we're talking  
19 about what's colloquially referred to as Plan D.  
20 **Q. And the trustee's lawsuit recently filed,**  
21 **did you review that?**  
22 A. Which lawsuit do you refer to there?  
23 **Q. The one that was recently filed, and it**  
24 **named, among others, your company.**  
25 A. Okay. Yes. I have looked at it in very

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1 broad detail, but it wasn't -- well, it concerns  
2 principally Highland Capital. I mean, yes, there  
3 is -- we are a defendant, but it -- in respect of the  
4 fund, it hasn't really moved on very much since the  
5 early version of that, which I think I saw something  
6 around about the beginning of July or the end of June  
7 or something like that.  
8 **Q. Did you speak with anybody at Highland about**  
9 **your deposition?**  
10 A. No.  
11 **Q. Any Highland affiliates? Just to make sure**  
12 **that when I say "Highland," you're not thinking of one**  
13 **particular --**  
14 A. No.  
15 **Q. -- Highland entity.**  
16 **So no -- nobody at all?**  
17 A. You know, I -- I -- I'm -- I haven't talked  
18 to anybody affiliated with Highland or employed by  
19 Highland or whatever.  
20 **Q. And you represented through your counsel**  
21 **that you're not available next week to appear in**  
22 **person --**  
23 A. That's --  
24 **Q. -- is that correct?**  
25 A. That is correct.

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1 **Q. And why is that?**  
2 A. I'm -- I already have pre-existing board  
3 meetings for three other companies, and they are in  
4 Guernsey.  
5 **Q. All of the companies other than HCLOF that**  
6 **you serve as a director for, none of them are CLOs,**  
7 **are they?**  
8 A. No. I mean, HCLOF itself is not a CLO in  
9 the strict sense of it.  
10 **Q. Are any of the companies that you serve as a**  
11 **director for companies whose shareholders have**  
12 **invested in CLOs directly as a part of that company?**  
13 A. If I -- if I might sort of slightly expand  
14 the answer to make it a more helpful answer. Some of  
15 the funds companies on which I serve, upon the boards  
16 of which I serve, do invest both in CLOs and in  
17 portfolios of CLO equity strips, if -- if -- if that  
18 helps at all. So none of them is a CLO, but some of  
19 them do have within their portfolios investments in  
20 CLOs or in segregated accounts which invest in CLOs.  
21 Does -- does that help?  
22 **Q. It -- it does help. I appreciate that.**  
23 **But those investments in CLOs by those**  
24 **other companies are not what you are involved in as a**  
25 **director; is that correct?**

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1 MR. MALONEY: Object to form.  
2 A. How do you mean "involved in as a director"?  
3 **Q. (By Mr. Wielebinski) They --**  
4 A. As I say, I'm a director of these funds and  
5 they invest in these things, but --  
6 **Q. The actual funds that you are the director**  
7 **of invest in CLOs?**  
8 A. Yes. Some of them do.  
9 **Q. Okay. Which ones?**  
10 A. The particular one I'm referring to here is  
11 Absolute Alpha PCC, Ltd., which invests through FRM  
12 Diversified II Fund, Ltd., which then all invest in a  
13 wide range of funds and segregated accounts, which,  
14 amongst other things, includes CLOs and other forms of  
15 structured finance.  
16 **Q. And what's the name of the company that**  
17 **Absolute Alpha PCC invests in?**  
18 A. Oh, FRM Diversified II Fund SPC, Ltd., which  
19 is a part of -- which is another fund on which -- of  
20 which I used to be a director, but which is registered  
21 in the Cayman Islands. And I've recently come off  
22 that board in the last couple of years.  
23 **Q. You've never owned a CLO, have you?**  
24 A. Personally? No.  
25 **Q. Have you ever managed one?**

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24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 A. No.</p> <p>2 <b>Q. Have you ever sat on the board of a company</b></p> <p>3 <b>that managed a CLO?</b></p> <p>4 A. No.</p> <p>5 <b>Q. And would you say your experience with CLOs</b></p> <p>6 <b>and CLO investments is broad or limited?</b></p> <p>7 A. I have an adequate working knowledge. I</p> <p>8 would not hold myself out to be an expert in the way</p> <p>9 that, for example, Mr. Covitz at Highland is. But I</p> <p>10 understand the basics of it.</p> <p>11 <b>Q. Okay. I want to understand now your</b></p> <p>12 <b>connections with Highland and the Highland entities.</b></p> <p>13 <b>Do you, Mr. Scott, have any connections</b></p> <p>14 <b>with Highland or its affiliates or entity other than</b></p> <p>15 <b>through HCLOF?</b></p> <p>16 A. No.</p> <p>17 MR. MALONEY: Objection, foundation.</p> <p>18 A. Well, the answer's "No" anyway.</p> <p>19 <b>Q. (By Mr. Wielebinski) Do you have any</b></p> <p>20 <b>investments with Highland?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Do companies or entities you own have</b></p> <p>23 <b>investments with Highland?</b></p> <p>24 A. Companies' investments that I own do not</p> <p>25 have any investments with Highland.</p>		<p style="text-align: right;">Page 92</p> <p>1 <b>firm; is that correct?</b></p> <p>2 A. It was for a period, that's right.</p> <p>3 <b>Q. Who made that selection?</b></p> <p>4 A. Highland proposed it.</p> <p>5 <b>Q. And...</b></p> <p>6 A. And we then had a discussion with</p> <p>7 Ms. O'Neil.</p> <p>8 <b>Q. That discussion with Ms. O'Neil regarding --</b></p> <p>9 <b>I'm not trying to get into attorney-client privilege,</b></p> <p>10 <b>but I'm not sure how that -- where you're going with</b></p> <p>11 <b>that answer.</b></p> <p>12 A. Well, you asked me who selected them. And I</p> <p>13 said, you know, they were proposed by Highland, and</p> <p>14 then we had a discussion with Ms. O'Neil as a partner</p> <p>15 in that firm whereby Ms. Bestwick and I considered</p> <p>16 whether -- I can't remember whether they were then</p> <p>17 called Foley Gardere or whether they were Foley &amp;</p> <p>18 Lardner. It was an appropriate firm to represent us</p> <p>19 in the context of -- that we then find ourselves, and</p> <p>20 at the time her firm was also representing Highland</p> <p>21 Capital with its common interest.</p> <p>22 <b>Q. Did Highland already hire Gardere and just</b></p> <p>23 <b>tell you that they should serve as your counsel? Or</b></p> <p>24 <b>did they give you the option to go to somebody else?</b></p> <p>25 A. Well, we always have the -- the -- the --</p>
<p style="text-align: right;">Page 91</p> <p>1 <b>Q. To your knowledge, do relatives have</b></p> <p>2 <b>investments with Highland?</b></p> <p>3 A. Not as far as I'm aware.</p> <p>4 <b>Q. Okay. Do they have any position with</b></p> <p>5 <b>Highland?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Do you have any business relationships with</b></p> <p>8 <b>Mr. Dondero?</b></p> <p>9 A. None at all.</p> <p>10 <b>Q. Mr. Okada?</b></p> <p>11 A. No.</p> <p>12 <b>Q. Mr. Ellington?</b></p> <p>13 A. No.</p> <p>14 <b>Q. Mr. Sevilla?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Any employee or representative of Highland?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Do you know if the answers would be the same</b></p> <p>19 <b>for Ms. Bestwick?</b></p> <p>20 A. I can't speak to Ms. Bestwick, but I would</p> <p>21 be very, very surprised. As far as I'm aware, the</p> <p>22 answer would be exactly the same for her. But, you</p> <p>23 know, I -- I don't have a detailed knowledge of her</p> <p>24 affairs.</p> <p>25 <b>Q. HCLOF used to be represented by the Gardere</b></p>		<p style="text-align: right;">Page 93</p> <p>1 the option. But it struck us that it was the most</p> <p>2 efficient way to proceed in the circumstances that we</p> <p>3 then found ourselves, which were in April of this</p> <p>4 year.</p> <p>5 <b>Q. Okay. And at some point you decided to</b></p> <p>6 <b>retain new counsel; correct?</b></p> <p>7 A. That's correct.</p> <p>8 <b>Q. Who recommended new counsel?</b></p> <p>9 A. That was adjunct decision arrived at partly</p> <p>10 with -- I mean, I hope I'm not waiving privilege here,</p> <p>11 but partly with Ms. O'Neil's advice.</p> <p>12 <b>Q. And did you know that King &amp; Spalding</b></p> <p>13 <b>served -- served or serves as counsel for Highland in</b></p> <p>14 <b>other matters?</b></p> <p>15 A. I'm -- I'm aware that King &amp; Spalding is the</p> <p>16 large practice, and other part -- partners may have</p> <p>17 representation engagements with other entities, as it</p> <p>18 were, somehow affiliated with Highland. But the</p> <p>19 details I know nothing about at all. And, as far as</p> <p>20 I'm aware, Mr. Maloney is not involved in it.</p> <p>21 <b>Q. Did you look at other firms besides King &amp;</b></p> <p>22 <b>Spalding?</b></p> <p>23 A. Not in any great detail, no.</p> <p>24 <b>Q. And what about Bell Nunnally? Are you</b></p> <p>25 <b>familiar with that firm?</b></p>

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25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 A. I'm not familiar with that firm. I've heard 2 the name, but I'm not familiar with them. 3 <b>Q. If I told you that HCLOF hired them in 4 connection with the involuntary, would that surprise 5 you?</b> 6 A. Well, we've already had a discussion 7 regarding that. Highland thought that it would be, as 8 it were, appropriate in the circumstances of the time 9 in context of those proceedings. I have no particular 10 sort of anything further to say about that really. 11 <b>Q. Well, it's true they hired them without you 12 approving them; isn't that correct?</b> 13 A. We didn't preapprove that, that's correct. 14 <b>Q. And it was without your knowledge that they 15 hired them; correct?</b> 16 A. At the time, that's correct. 17 <b>Q. And -- and they were actually appearing in 18 proceedings on your behalf without your knowledge or 19 approval; isn't that correct?</b> 20 MR. MALONEY: Objection to form. You 21 can answer. 22 A. Yes. I think it logically follows from 23 that. We had not been involved in those discussions. 24 As you quite rightly said, you know, Highland engaged 25 them on our behalf and -- and instructed them.</p>		<p style="text-align: right;">Page 96</p> <p>1 <b>providers for the fund, what other service providers 2 do you use?</b> 3 A. The principal service provider is State 4 Street (Guernsey) Limited, who are our designated 5 administrator. There are other entities in the State 6 Street group, State Street Ireland who act as our 7 custodian and also, I think, provide certain 8 bookkeeping services as subcontractors, if you will, 9 to State Street (Guernsey) Limited. 10 We've in the past had a registrar. But 11 as an ambition to become a listed entity has gone 12 away, the need for that appointment diminished. So we 13 terminated the external registrar, and that's now 14 carried out by State Street, also. And in the usual 15 way, you know, we have external counsel, and we also 16 have, of course, our external auditors as well. 17 <b>Q. Who's your external counsel?</b> 18 A. Well, we have a number of external counsel. 19 The ones who have handled the documentation and so on 20 hitherto have been Mourant Ozannes, who are a well- 21 known -- 22 I'm sorry. Would you like me to spell 23 that? 24 THE REPORTER: Please. 25 THE WITNESS: Okay. M-o-u-r-a-n-t, new</p>
<p style="text-align: right;">Page 95</p> <p>1 <b>Q. (By Mr. Wielebinski) Did you ever comment 2 to Highland about the appropriateness or lack thereof 3 with doing such a thing?</b> 4 A. We have had discussions on the matter. 5 <b>Q. And who communicates with your counsel? Is 6 it you or Ms. Bestwick?</b> 7 A. We both communicate with King &amp; Spalding. I 8 mean, we -- as -- as a matter of general rule, trying 9 to ensure that both directors are equally involved in 10 everything as much as possible simultaneously. So 11 there's no, if you like, information gap between the 12 two of us. 13 <b>Q. And Highland and Highland representatives 14 also speak with your counsel on a regular basis about 15 this matter; isn't that correct?</b> 16 MR. MALONEY: Objection, foundation. 17 But you can answer to the extent you know. 18 A. Well, I -- I believe that there are 19 interchanges between Foley Gardere and King &amp; 20 Spalding. There may be additional conversations 21 between internal counsel at Highland and those two 22 firms. I mean, it's no secret that I think we have a 23 common interest in some of this. 24 <b>Q. (By Mr. Wielebinski) Besides Highland 25 Capital Management serving as one of your service</b></p>		<p style="text-align: right;">Page 97</p> <p>1 word, O-z-a-n-n-e-s. 2 THE REPORTER: Thank you. 3 THE WITNESS: You're welcome. 4 So, as I say, we have Mourant Ozannes. 5 We have also engaged Carey Olsen. They handled the -- 6 the amendment to the Members Agreement. We thought it 7 more appropriate to use them than Mourant Ozannes 8 because personally they're a much bigger and, in my, 9 well, opinion, more appropriate firm, and also they 10 are correcting a drafting error in a Mourant Ozannes 11 document. So I think better for them to do it than 12 Mourant. I'm just trying to think about whether we 13 have engaged any other law firms locally in Guernsey. 14 I don't think we have, no. 15 <b>Q. (By Mr. Wielebinski) Who are the 16 shareholders of HCLOF?</b> 17 A. Who are the shareholders of HCLOF? Well, I 18 think I answered that earlier. There's CLO Holdings 19 or Holdco, which has 49 percent. There is the -- the 20 group of funds which are managed by the party we've 21 agreed to refer to as the investor. They also have 49 22 percent. 23 <b>Q. That's HarbourVest; correct?</b> 24 A. If you say so, yes. 25 MR. MALONEY: You can confirm that.</p>

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26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 A. Okay. Yes, it is. And then there's the 2 balance, the 2 percent in the middle, so to speak, 3 which is held partly by Highland Capital Management 4 itself. I think they're about half of that. And then 5 the other bit is split amongst -- I forget exactly how 6 many. Well, actually it says on the front of the 7 Members -- set out in the front of the Members 8 Agreement. So it's one -- two -- three -- four -- 9 five -- five executives at Highland.</p> <p>10 <b>Q. (By Mr. Wielebinski) And you said part of</b> 11 <b>the split is the five executives, but also Highland</b> 12 <b>Capital Management itself?</b></p> <p>13 A. That's right.</p> <p>14 <b>Q. Is that through a director-advised fund?</b></p> <p>15 A. No. As far as I'm aware, that's directly 16 held by them.</p> <p>17 <b>Q. All right. Ms. Best -- Bestwick described</b> 18 <b>her position as a nonexecutive independent director.</b> 19 <b>Is that how you describe your position</b> 20 <b>for HCLOF?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And what does it mean, "independent</b> 23 <b>director"?</b></p> <p>24 A. Well, what it means is that we are not 25 beholden to any party. We act independently of</p>		<p style="text-align: right;">Page 100</p> <p>1 A. That's right.</p> <p>2 <b>Q. You're the chairman?</b></p> <p>3 A. That's right.</p> <p>4 <b>Q. Tell me about your relationship with</b> 5 <b>Ms. Bestwick other than your relationship as a fellow</b> 6 <b>board member on HCLOF.</b></p> <p>7 <b>Do you have any other connections with</b> 8 <b>her?</b></p> <p>9 A. No, I don't.</p> <p>10 <b>Q. Any other connections with her companies?</b></p> <p>11 A. No, I don't.</p> <p>12 <b>Q. Are there other companies you work for with</b> 13 <b>Ms. Bestwick?</b></p> <p>14 A. No, not at all.</p> <p>15 <b>Q. Did Highland select her as well?</b></p> <p>16 A. I believe so, but I didn't have visibility 17 into that process. But I -- I just assumed that it 18 was pretty similar to how they came to know me.</p> <p>19 <b>Q. And how often do you lead on HCLOF issues</b> 20 <b>normally?</b></p> <p>21 A. Normally. Normally we will have a quarterly 22 board meeting to review the progress of the company, 23 et cetera. And there will probably be perhaps two 24 board meetings which are concerned with the financial 25 statements of the company and the -- the audit</p>
<p style="text-align: right;">Page 99</p> <p>1 Highland or any shareholder or anybody on behalf of 2 the company.</p> <p>3 <b>Q. Well, isn't it true that you are beholden to</b> 4 <b>your shareholders? Highland being the largest one?</b></p> <p>5 A. No. I don't regard myself as being beholden 6 to them at all.</p> <p>7 <b>Q. Okay. How were you selected?</b></p> <p>8 A. Oh, that's a -- that's a long time ago. I 9 was approached, I think, by somebody who then worked 10 at Highland Capital. I think his name was Phillip 11 Braner if I remember correctly. And there were a 12 number of e-mails and discussions and telephone calls.</p> <p>13 Maybe you might even characterize some 14 in the nature of being an interview whereby we gained 15 a mutual understanding of the project as it then was 16 and the nature of the directors that they were looking 17 for and whether we could help them with that sort of 18 a -- you know, somebody else might be more 19 appropriate.</p> <p>20 <b>Q. Highland selected you?</b></p> <p>21 A. Yes. I mean, Highland were initially at 22 that time, you know, orchestrating the cre -- creation 23 of the fund.</p> <p>24 <b>Q. There's two members of your board of</b> 25 <b>directors; correct?</b></p>		<p style="text-align: right;">Page 101</p> <p>1 planning process with the auditors. And there will 2 occasionally be ad hoc board meetings if something 3 comes up that needs to be disposed of by the board of 4 directors. So it's sort of 4 plus 2 plus ad hoc.</p> <p>5 <b>Q. Ms. Bestwick told me that Highland sits in</b> 6 <b>on all of your board meetings; is that true?</b></p> <p>7 A. Well, Highland is normally there at all of 8 the quarterly board meetings certainly because the key 9 elements of that is for them to present their 10 investment report. And they are not always there 11 particularly where it comes to talking with the 12 auditors, and sometimes our discussions with the 13 auditors are just Ms. Bestwick and me and the auditors 14 not necessarily even including State Street.</p> <p>15 <b>Q. Otherwise, they're -- they've been at every</b> 16 <b>meeting; correct?</b></p> <p>17 A. Well, they've been at every sort of 18 business-as-usual meeting. Since the start of this 19 whole process, you know, we've had a number of 20 meetings which have not involved Highland because they 21 have related to legal matters.</p> <p>22 <b>Q. Do you vote on every issue that comes up</b> 23 <b>as -- as a board?</b></p> <p>24 A. Yes, we do. Well, where -- where -- where 25 we are required really either to pass a resolution</p>

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27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 or -- yes. I suppose we do, yes. Because sometimes 2 resolutions aren't necessarily required, but we review 3 and agree what we've been looking at. 4 <b>Q. And do you keep minutes of every board 5 meeting?</b> 6 A. Yes, we do. 7 <b>Q. And do you know if you've produced all of 8 the board minutes to the trustee through your counsel?</b> 9 A. So far as I'm aware, they've all been 10 produced. They may have been redacted for legal 11 reasons, but I'm not aware that there are any that are 12 being withheld. 13 <b>Q. Now, you said you vote on -- on most 14 matters that req -- on all matters that require a 15 vote.</b> 16 <b>Have you ever disagreed with 17 Ms. Bestwick on any substantive issue?</b> 18 A. No, no. No such issue has presented itself. 19 <b>Q. And have you ever disagreed with Highland's 20 advice?</b> 21 A. No. We haven't disagreed with Highland's 22 advice. I mean, we've had discussions. We've 23 explored what they mean. Sometimes when they say some 24 things, we have perhaps offered constructive 25 challenge. But, no. Highland has never sort of, if</p>		<p style="text-align: right;">Page 104</p> <p>1 sense, rubber-stamped them. 2 <b>Q. (By Mr. Wielebinski) What do you mean that 3 you've tested it?</b> 4 A. Well, I mean, we -- we'll discuss what 5 the -- so, for example, if we're talking about 6 acquiring some CLO holdings, you know, we will ask 7 them, you know, what anticipated rate of return is, 8 you know, how long the investment will last, what cash 9 flows we would expect from it, and whether it sits 10 with our overall investment objectives. So that's 11 what I mean by testing it. 12 And we might also actually sit back and 13 reflect, if I could use that metaphor, as to 14 whether what we're being told is consistent with what 15 we understand about the wider world. And that's, you 16 know, the context of those research notes and things 17 that we were talking about with Mr. Maloney a little 18 while ago. 19 <b>Q. You remember you answered the question that 20 CLO Holdco cannot remove you?</b> 21 A. That's correct. 22 <b>Q. Okay.</b> 23 A. Not on its own. 24 <b>Q. And HarbourVest cannot remove you; correct?</b> 25 A. That's also correct, yes.</p>
<p style="text-align: right;">Page 103</p> <p>1 you like, proposed something that we have thought was 2 inappropriate, and therefore we should vote down if 3 that is what you mean. 4 THE REPORTER: Therefore we should? 5 THE WITNESS: Vote down. 6 THE REPORTER: Thank you. 7 <b>Q. (By Mr. Wielebinski) So there's no point 8 where you ever disregarded their advice; is that 9 correct?</b> 10 A. No. I'm sorry. Yes, that is correct. I 11 think it would be wrong to disregard it. I -- I can 12 envisage circumstances where we might disagree with 13 it, not that that's arisen. But I -- I think it would 14 be quite wrong to simply disregard it if that's what 15 you mean. 16 <b>Q. So whenever they've made a recommendation, 17 you've always accepted it?</b> 18 <b>Even though you might consult with 19 Ms. Bestwick and -- and flesh it out, you've always 20 agreed with what they've recommended or advised you to 21 do?</b> 22 MR. MALONEY: Objection, form. 23 A. Well, ultimately, yes. We've tested the 24 propositions and we've been okay with them. But 25 that's certainly not to imply that we have, in any</p>		<p style="text-align: right;">Page 105</p> <p>1 <b>Q. So to the extent that the party that 2 appointed you, Highland, wants to keep you as a board 3 member, they can block HarbourVest from ever removing 4 you.</b> 5 <b>Do I understand that correctly?</b> 6 A. Yes. I suppose that that's the consequence 7 of the Members Agreement as negotiated between the 8 parties. I mean, it's a negative control agreement, 9 not a, if you like, a positive assertive control 10 agreement. 11 <b>Q. So Highland controls you sitting on the 12 board and Ms. Bestwick sitting on the board?</b> 13 A. No, it doesn't. I mean, you say it controls 14 us. So that -- I mean, Highland can't fire us, they 15 can't stop us from resigning, and -- and neither can, 16 if you like, the -- the fund's represented by the 17 investor. So to say that fund controls us is not a 18 completely fair representation of the picture. 19 <b>Q. Okay.</b> 20 A. In a way you can say we're actually -- as a 21 consequence our independence is entrenched. 22 <b>Q. Who makes investment decisions for HCLOF?</b> 23 A. Well, investment decisions are formulated by 24 Highland. That's what we have a Portfolio Management 25 Agreement with them for.</p>

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28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 <b>Q. So what is it that you and Ms. Bestwick make</b> 2 <b>decisions on?</b> 3 A. Well, the governance of an investment fund 4 essentially is not that the board re-performs or 5 second-guesses the roles of any of our service 6 providers. What we do is, we police them, if I could 7 use that shorthand. We ensure that -- 8 THE REPORTER: If I could use that 9 short? 10 THE WITNESS: Shorthand. 11 THE REPORTER: Thank you. 12 THE WITNESS: As in shorthand. 13 So with -- I mean, you know, with -- to 14 get it offhand per se, you know, with respect to the 15 administrator, again, we review in great detail a 16 report from the administrator at each quarterly board 17 meeting and -- and how things have been going and 18 whether there have been any mistakes or errors or 19 whatever, and we assess their performance in context. 20 And similarly with Highland or, as I say, indeed any 21 other service provider. We -- we review the 22 performance of the auditors as well. 23 <b>Q. And the custodians?</b> 24 A. And the custodian, yeah. I mean, the 25 custodian really comes effectively as a package with</p>		<p style="text-align: right;">Page 108</p> <p>1 A. We -- we were comfortable with their 2 performance. It was certainly much better than it is 3 now. 4 <b>Q. And you were comfortable with their</b> 5 <b>performance when they were converting positions to</b> 6 <b>cash; correct?</b> 7 A. Well, now I -- I -- we -- we -- we have to 8 be clear about where we're -- we're talking about. 9 Are you talking within the CLOs? Or are you talking 10 about within the fund? Because the mission of the 11 fund is to own equity positions in CLOs. We don't get 12 into the, if you like, the -- an overly detailed 13 involvement in, if you like, each individual loan 14 position within those CLOs. I mean, that's a -- 15 that's a level of detail that's different. 16 So whether it's appropriate to cash out 17 of one loan or another -- or in some cases I think 18 there are bankruptcy proceedings. So the nature of 19 the position changes. That -- that -- that's not a 20 level of detail, I think, that is necessary for our 21 mission on a fund level. 22 <b>Q. So, if I understand it, you police the</b> 23 <b>service providers, but not on any kind of in-depth</b> 24 <b>level?</b> 25 MR. MALONEY: Objection to form. It</p>
<p style="text-align: right;">Page 107</p> <p>1 the administrator by State Street. 2 <b>Q. So you serve in a policing function as a</b> 3 <b>board member.</b> 4 <b>Is that what I understand?</b> 5 A. Yeah, absolutely. 6 <b>Q. And in that policing function you've yet to</b> 7 <b>have any disagreement or second-guessing of what</b> 8 <b>Highland has ever advised you or recommended to you?</b> 9 A. Well, we -- we have had no disagreements at 10 all about, if -- if you're getting at this, the -- the 11 conduct of the portfolio management. Although, it's, 12 strictly speaking, a discretion of the arrangement, 13 the practice has been hitherto that they always 14 discuss with us beforehand material, indeed any 15 investment transactions that they intend to propose so 16 they know we're onboard with them. I think that's a 17 good practice. 18 <b>Q. And are you pleased with their performance</b> 19 <b>today?</b> 20 A. Well, their performance is fine. Things 21 have obviously gone a bit pear-shaped since, you know, 22 Brigade were inserted, but that's a -- that's a 23 different matter. 24 <b>Q. But not before Brigade got in. You were</b> 25 <b>comfortable with everything that --</b></p>		<p style="text-align: right;">Page 109</p> <p>1 misstates the record. 2 A. No. We police them to a level that's 3 appropriate in the context in which we have engaged 4 them. 5 <b>Q. (By Mr. Wielebinski) Appropriate based on</b> 6 <b>what you and Ms. Bestwick think is appropriate?</b> 7 A. Well, necessarily, of course. I mean, we 8 wouldn't be doing it to a level that we thought was 9 inappropriate. 10 <b>Q. And you were satisfied with them --</b> 11 <b>You're -- you're aware that their</b> 12 <b>converting positions to cash was the basis for their</b> 13 <b>removal by the trustee as approved by the court; isn't</b> 14 <b>that correct?</b> 15 A. I think that's a mischaracterization. I 16 regarded -- at the time I think the trustee said, "I 17 don't trust them," quote-unquote. I think he said 18 that several times. 19 <b>Q. And do you know why he didn't trust them?</b> 20 <b>What's your recollection there?</b> 21 A. I have even today no understanding of why he 22 could make such an assertion. I mean, to me it just 23 doesn't make any sense. I think it was -- how do you 24 put it -- his strategic stance that he took. 25 MR. WIELEBINSKI: Are we at 13?</p>

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29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 THE REPORTER: Yes. 2 (Exhibit Number 13 marked.) 3 <b>Q. (By Mr. Wielebinski) I'm going to hand you</b> 4 <b>what's been --</b> 5 A. Okay. 6 <b>Q. -- marked as Exhibit 13.</b> 7 <b>Have you seen that before?</b> 8 A. Yes, I've seen it. Not -- not recently, but 9 some time ago. 10 MR. MALONEY: This is Exhibit 13? 11 Okay, sir. 12 THE WITNESS: Yeah. 13 <b>Q. (By Mr. Wielebinski) And this was the</b> 14 <b>motion filed by the trustee to bring in Cortland and</b> 15 <b>Brigade; correct?</b> 16 A. Yes, that's what it says. 17 <b>Q. And it was a motion to replace Highland as</b> 18 <b>subadvisor and shared service provider; correct?</b> 19 A. I believe so, yes. 20 <b>Q. Can you look at Page 4, please?</b> 21 <b>Do you see the statement -- it's in</b> 22 <b>Section 4 -- Highland's mismanagement of the CLOs?</b> 23 A. I see that statement. 24 <b>Q. Do you remember reading this?</b> 25 A. Yes, I do.</p>		<p style="text-align: right;">Page 112</p> <p>1 questionable. 2 <b>Q. Do you know if that was true that there were</b> 3 <b>questionable -- there were only questionable loans on</b> 4 <b>the market that were available, and that's why</b> 5 <b>Highland didn't do that?</b> 6 MR. MALONEY: Objection, form. 7 A. Well, I -- I believe from previous testimony 8 in court Highland expressed an opinion there was a 9 shortage of eligible collateral? 10 <b>Q. (By Mr. Wielebinski) And can you read the</b> 11 <b>next sentence for me, please?</b> 12 A. This is the top of Page 5? 13 <b>Q. Yes, sir.</b> 14 A. "Indeed Highlands has not purchased a loan 15 since prior to the trustee's appointment as a Chapter 16 11 trustee." 17 <b>Q. And this -- do you remember when the trustee</b> 18 <b>was appointed?</b> 19 A. The Chapter 11 trustee? 20 <b>Q. Yes, sir.</b> 21 A. Sometime around about the middle of May. 22 <b>Q. Okay. And this was filed in July, at the</b> 23 <b>end of July; correct?</b> 24 A. I think the document's dated the 30th of 25 July.</p>
<p style="text-align: right;">Page 111</p> <p>1 <b>Q. And trustee had some concerns about gross</b> 2 <b>mismanagement, did he not?</b> 3 A. That's what he said, yes. 4 <b>Q. And he's raised these concerns with</b> 5 <b>Highland?</b> 6 A. I don't know the details of the 7 conversations that he has had with Highland. I was 8 not a party to those. 9 <b>Q. Okay. Can you read the -- the sentence?</b> 10 <b>The third sentence?</b> 11 A. On which page now? 12 <b>Q. Paragraph 10, third sentence?</b> 13 A. Paragraph 10, third sentence. Well, "The 14 trustee has repeatedly expressed concern over the 15 bal -- cash balances which have accumulated in the 16 Acis CLOs and Highland's failure to recommend 17 purchases of eligible collateral in the CLOs." Yes, I 18 see it. 19 <b>Q. Do you know if that's true?</b> 20 A. Well, the trustee has said that. Whether 21 it's true or not is actually sort of slightly beside 22 the point. Because I do not accept the underlying 23 premise of the question that the CLO manager should go 24 out and willy-nilly buy, if you like, additional 25 assets, the quest -- the quality of which may become</p>		<p style="text-align: right;">Page 113</p> <p>1 <b>Q. Right. So several months had gone by where</b> 2 <b>Highland had not purchased a single loan?</b> 3 MR. MALONEY: Objection, form. 4 <b>Q. (By Mr. Wielebinski) That's what the</b> 5 <b>trustee alleges?</b> 6 A. Yes. 7 <b>Q. And do you know if that was true?</b> 8 A. I have no more detailed knowledge of it than 9 is set out in this document and similar pleadings. So 10 I'm -- I'm taking, for the sake of argument, that it's 11 true. 12 <b>Q. Okay. Did you do checking with Highland</b> 13 <b>to -- to determine whether any of this was true?</b> 14 A. The premise is actually entirely wrong. I 15 mean, we were happy that in overall terms the seer of 16 the CLOs were performing adequately in circumstances. 17 Well, let me wind back on that. We were happy that 18 the portfolio was being managed correctly. Although, 19 they needed to be reset in terms of the capital 20 structure. 21 <b>Q. So you --</b> 22 A. I do not accept the proposition, if that is 23 what you're trying to lead me to, that there is some 24 virtue in buying excessive amounts of collateral which 25 may not be eligible. And I have to s -- I -- I will</p>

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34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 THE WITNESS: Leverage. 2 THE REPORTER: Thank you. 3 THE WITNESS: -- on what we thought 4 were attractive terms. 5 <b>Q. (By Mr. Wielebinski) And it was recommended</b> 6 <b>by Highland; correct?</b> 7 A. It was recommended by Highland. That's 8 right. 9 <b>Q. And you never looked at another bank; is</b> 10 <b>that true, too?</b> 11 A. That's not quite correct. No, we did not 12 approach another lender, but we did since check the 13 terms and interest rate against other transactions. 14 <b>Q. And this balance sheet is as of October</b> 15 <b>31st; cor -- or statement of financial position --</b> 16 A. Yes. 17 <b>Q. -- as of October 31st?</b> 18 <b>It could be changed today; correct?</b> 19 A. Oh, it's -- it's almost inevitably the case 20 that it will have changed, but the end of November one 21 will not yet be available. For example, pricing the 22 investments of fair value, which are predominantly the 23 CLO investments, that's quite a long process. 24 Because, you know, it goes from pricing every 25 individual loan position up to working out the</p>		<p style="text-align: right;">Page 132</p> <p>1 <b>Q. (By Mr. Wielebinski) You -- I'm sorry. I</b> 2 <b>didn't mean to talk over you.</b> 3 A. No. I mean, you know, we could. We're 4 considering whether we should continue to pay a 5 dividend of the pre-existing quarterly rate. And so 6 there's all sorts of considerations that will go into 7 this. 8 <b>Q. Okay. And much like what occurred in</b> 9 <b>October of 2017, you could transfer these assets to</b> 10 <b>another entity; is that not correct?</b> 11 MR. MALONEY: I'm going to object to 12 found -- foundation as to what was done in 27 -- 2017. 13 You can answer. 14 A. Well, I -- I -- I -- I -- I think the 15 premise is mischaracterization. We could not transfer 16 away from HCLO Funding, Ltd., its assets. Why would 17 we do that? That would be a fraud on our 18 shareholders. I'm not quite sure what you mean 19 therefore. 20 <b>Q. (By Mr. Wielebinski) Were you ever made</b> 21 <b>aware of the Terry litigation in the United States</b> 22 <b>involving Josh Terry and the Highland entities?</b> 23 MR. MALONEY: Objection to form. 24 A. If you mean -- do you mean the arbitration 25 proceedings, the employment dispute and all that sort</p>
<p style="text-align: right;">Page 131</p> <p>1 aggregate valuation of the CLOs themselves, and then 2 translating that in here. 3 So the whole process, if -- if you 4 like, from end to end, from getting the -- the 5 individual loan positions through to -- 6 THE REPORTER: The individual what 7 positions? 8 THE WITNESS: Loan. 9 THE REPORTER: Thank you. 10 THE WITNESS: L-o-a-n positions through 11 to constructing this balance sheet is a process that 12 takes three and a half weeks or something like that 13 every month. 14 <b>Q. (By Mr. Wielebinski) And to the extent a</b> 15 <b>judgment was entered against Highland CLO funding,</b> 16 <b>changes could be made to this structure, these</b> 17 <b>numbers, very quickly, can't it?</b> 18 MR. MALONEY: I'm going to object -- 19 excuse me -- object to form and foundation. 20 A. Well, I'm not quite sure what you mean 21 exactly by that. But, yes, the numbers will change. 22 The accrual of expenses will erode the cash balance. 23 But if and when we ever get any income out of the 24 CLOs, then the cash balances will go up because of 25 that, which would be --</p>		<p style="text-align: right;">Page 133</p> <p>1 of stuff? 2 <b>Q. (By Mr. Wielebinski) Yes, sir.</b> 3 A. Well, as I've already explained, we were not 4 aware of that until sometime in 2018, certainly long 5 after October or November 2017. In fact, the full 6 extent of it, to be quite frank, we only really became 7 aware of as these processes dragged HCLO Funding into 8 it. 9 THE REPORTER: Repeat the last part of 10 your answer, please. 11 THE WITNESS: We only became aware of 12 it as these proceedings dragged HCLO Funding into it. 13 Probably not the best grammar, but... 14 <b>Q. (By Mr. Wielebinski) Who told you about the</b> 15 <b>Terry litigation?</b> 16 A. We had a -- I'm not quite sure whether it's 17 appropriate for me to -- whether this gets into 18 questions of attorney-client privilege. But a meeting 19 was arranged, a telephonic meeting, at which were 20 present Ms. Bestwick and myself, certain internal 21 counsel at Highland, and I think Ms. O'Neil may have 22 attended it as well. 23 <b>Q. And what did they tell you?</b> 24 MR. MALONEY: I'm going to instruct the 25 witness not to reveal any attorney-client privileges.</p>

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35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 I think your prior question, Mr. Wielebinski, was, 2 "Who told you about the Terry litigation?" If you can 3 answer that, that factually, I don't have an objection 4 to you answering that if that's your question. 5 A. Okay. We were told that by the internal 6 counsel at Highland during that call. 7 <b>Q. (By Mr. Wielebinski) And that would be who?</b> 8 <b>Mr. Sevilla?</b> 9 A. No. Mr. Sevilla -- we didn't come across 10 him for -- until some later time. There was certainly 11 a Mr. Leventon, and I think -- I'm trying to think of 12 the other guy's name. David -- I'm sorry. Tim 13 Courmoyer, I think. 14 <b>Q. And what did they tell you?</b> 15 MR. MALONEY: I'm going to object to 16 the extent that they've told you anything of -- of -- 17 other than a factual nature. Do not -- do not testify 18 to legal advice conveyed in the presence of your 19 counsel. 20 A. They apprised us of the facts of the 21 involuntary proceedings. 22 <b>Q. (By Mr. Wielebinski) Did they tell you</b> 23 <b>anything about the Terry litigation?</b> 24 A. Again, other than the fact of it, no. I 25 mean, we've -- we never got into the -- the rights and</p>		<p style="text-align: right;">Page 136</p> <p>1 A. I'm not at all sure why it should. As I've 2 said before, this is effectively a two-party dispute 3 between Mr. Terry and his former employers and/or 4 business partners within the Highland group. 5 So from that point of view, it's not 6 really our concern unless something emerges which 7 gives us cause. And nothing has emerged that's been 8 brought to our attention that gives us cause to, in 9 any way, doubt the -- the voracity of the relationship 10 that we have with Highland. 11 <b>Q. Nothing's caused you to doubt that, the</b> 12 <b>voracity of --</b> 13 A. Nobody has -- I mean, lots of people have 14 made lurid allegations about all sorts of things. But 15 I wasn't there, neither was Ms. Bestwick. And as I've 16 said in other context, I'm not going to take the 17 position one way or another about the rights and the 18 wrongs of the Terry dispute. 19 As far as we are concerned, it's an 20 internal Highland group matter. And it's simply, if 21 you like, a matter of established fact that, as a 22 consequence thereof, Mr. Terry is a judgment creditor 23 of Acis Capital Management. And that -- that really 24 is as far as -- as I go. 25 <b>Q. Well, isn't it true that the Terry</b></p>
<p style="text-align: right;">Page 135</p> <p>1 the wrongs of who did what to whom and when and all -- 2 all the rest of that. That's -- it's -- obviously 3 it's the foundation of the dispute between Mr. Terry 4 and the various Highland parties, but it's an internal 5 matter be -- employment matter between them, and it's 6 not strictly of itself a matter that is our -- our 7 matter. We're -- we're not involved. 8 <b>Q. And when were you told this?</b> 9 A. Well, as I've said, there was a call which 10 was arranged in April this year. 11 <b>Q. And that's the first time you became aware</b> 12 <b>of the involuntary bankruptcy or anything having to do</b> 13 <b>with this Terry litigation; is that correct?</b> 14 MR. MALONEY: Objection to form. 15 A. Yes, that's correct. 16 <b>Q. (By Mr. Wielebinski) Did they tell you why</b> 17 <b>Mr. Terry left Highland's employment?</b> 18 A. No. 19 <b>Q. When you found out about the involuntary and</b> 20 <b>the litigation with Mr. Terry, did that trouble you?</b> 21 A. Yes, it did. 22 <b>Q. Did it cause you to second-guess your</b> 23 <b>relationship with Highland?</b> 24 A. No. 25 <b>Q. Why not?</b></p>		<p style="text-align: right;">Page 137</p> <p>1 <b>litigation and then the involuntary, which was</b> 2 <b>subsequently turned into Chapter 11 proceedings --</b> 3 <b>haven't they just caused you to -- a number of</b> 4 <b>problems for you and HCLOF?</b> 5 MR. MALONEY: Objection, foundation and 6 form. 7 A. Well, they -- they -- they -- they have 8 caused us a number of problems for all sorts of 9 reasons. And, you know, go back to my answer a few 10 minutes ago. When we found out about the proceedings, 11 of course, it caused us concern because, you know, we 12 have no desire to be dragged into law disputes over 13 here, which are predominantly really disputes between 14 other parties. 15 <b>Q. (By Mr. Wielebinski) But you have been</b> 16 <b>drawn into those --</b> 17 A. Yes, we have. 18 <b>Q. -- proceedings, have you not?</b> 19 <b>You've been sued in those proceedings,</b> 20 <b>have you not?</b> 21 A. Yes, we have. That doesn't mean to say that 22 the party who's suing us is -- is -- is right. In 23 fact, actually objectively they're quite wrong in some 24 of the assertions they made. 25 <b>Q. And it's also caused you to lose Highland as</b></p>

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<p style="text-align: right;">Page 138</p> <p>1 <b>the portfolio manager at this point?</b> 2 MR. MALONEY: Objection. 3 A. Well -- 4 MR. MALONEY: Objection, foundation. 5 A. -- strictly speaking, it's caused -- 6 MR. WIELEBINSKI: Can we go off the 7 record for just a second? I'm sorry about that. 8 THE VIDEOGRAPHER: Yes, sir. Off the 9 record at 2:05. This is Disk 3, Volume 1. 10 (Break.) 11 THE VIDEOGRAPHER: On the record at 12 2:07. This is Disc 3, Volume 1. 13 MR. WIELEBINSKI: Would you read the 14 last question for me, please? 15 (Record read.) 16 MR. MALONEY: Objection, foundation and 17 form. Go ahead. You can answer. 18 A. Okay. Well, first of all, strictly port -- 19 Highland remains the portfolio manager of the fund. I 20 think what you mean is, it's caused the CLOs in which 21 we hold the equity strips to be deprived of Highland 22 as a submanager or advisor. I think that has been 23 very much to the detriment of the fund's investor in 24 the equity strips of those CLOs. It didn't have to be 25 like that, but that's how it's worked out.</p>		<p style="text-align: right;">Page 140</p> <p>1 But, you know, unfortunately it's -- it's -- it's -- 2 it's pointless as we cannot accede to, you know, what 3 we're trying to be pressured into. 4 <b>Q. (By Mr. Wielebinski) And the pressure was</b> 5 <b>coming from who? Mr. Terry?</b> 6 A. Well, I suppose you would say Mr. Terry, who 7 was using the trustee as his instrument to do that, 8 yes. 9 <b>Q. Caused by the litigation and the bankruptcy?</b> 10 MR. MALONEY: Objection to form. 11 A. Well, I'm not sure that litigation and 12 bankruptcy as such is the cause. It's more the tool. 13 <b>Q. (By Mr. Wielebinski) Who commenced that</b> 14 <b>litigation against Mr. Terry? Do you recall?</b> 15 A. I'm sorry. What litigation against 16 Mr. Terry? 17 <b>Q. The litigation in Dallas that led to the</b> 18 <b>arbitration award.</b> 19 A. As I say, I don't have any knowledge of 20 those proceedings. I'm simply aware after the event 21 of the fact of them and of their outcome. 22 <b>Q. So you never asked the question, "Who</b> 23 <b>commenced the litigation that caused all these</b> 24 <b>problems"?</b> 25 A. I -- I, honestly, really don't see the point</p>
<p style="text-align: right;">Page 139</p> <p>1 <b>Q. (By Mr. Wielebinski) Litigation has also --</b> 2 <b>and the bankruptcy have caused you to incur</b> 3 <b>significant legal fees; isn't that correct?</b> 4 A. Oh, absolutely, yes. 5 <b>Q. It's also caused your investors to have to</b> 6 <b>absorb your additional costs that you're now charging</b> 7 <b>to them; isn't that correct?</b> 8 A. That's absolutely right. 9 <b>Q. And it's also caused you not to be able to</b> 10 <b>do a reset that was planned around January-February of</b> 11 <b>2018; is that --</b> 12 A. That's right. 13 MR. MALONEY: I'm going to object to 14 foundation and form. 15 <b>Q. (By Mr. Wielebinski) It also caused you not</b> 16 <b>to be able to do a liquidation or any reset or</b> 17 <b>redemption over the last seven months; isn't that</b> 18 <b>correct?</b> 19 MR. MALONEY: Objection, foundation and 20 form. 21 A. Well, what's certainly true is giving the 22 trustee the opportunity to interfere very 23 detrimentally with our investments. None of it needed 24 to be like that. I entirely -- well, I -- I infer 25 that the reason largely was to pile pressure on us.</p>		<p style="text-align: right;">Page 141</p> <p>1 of it. People in the alternative asset management 2 world and others leave their employers all the time. 3 Sometimes it's amicable, sometimes it's acrimonious. 4 It's a fact of life, it happens. 5 So, you know, I'm -- as I've said 6 before, I'm not going to take a position on the rights 7 and wrongs of the case or whether Highland should or 8 should not defend itself and/or -- or -- or go on the 9 offensive. It's -- it's really not a matter that is 10 strictly within the purview of the fund. It is an 11 internal Highland versus Mr. Terry employment dispute. 12 <b>Q. I wasn't asking whether you knew the details</b> 13 <b>of the litigation. I was asking if you knew who</b> 14 <b>commenced the litigation that now has caused all these</b> 15 <b>problems in -- that we just walked through for HCLOF.</b> 16 A. I -- I'm -- 17 MR. MALONEY: I'm going to object to 18 foundation and form. You can answer. 19 A. I don't know whether Mr. Terry sued Highland 20 or Highland sued Mr. Terry. 21 <b>Q. (By Mr. Wielebinski) Would it have mattered</b> 22 <b>to you?</b> 23 A. Not really. 24 <b>Q. So it doesn't matter who called -- who</b> 25 <b>generated the problems that you're now having to deal</b></p>

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<p style="text-align: right;">Page 142</p> <p>1 with? 2 MR. MALONEY: Objection to foundation 3 and form. 4 A. Well, if one goes further back -- I mean, 5 lawsuits inevitably result from disputes. And whether 6 it's having to do with money or to do with other 7 matters, there's a dispute between parties. They have 8 a different perception perhaps of a set of 9 circumstances. 10 I am aware that both Mr. Terry and 11 Highland have said things about each other that are 12 not exactly complimentary. But I -- I -- I -- I -- as 13 I've said before, I don't know the circumstances, I 14 wasn't there, I haven't heard the evidence, and I'm 15 not going to express an opinion on it because I'm -- 16 I'm not in a position to. 17 <b>Q. (By Mr. Wielebinski) Did you take any steps</b> 18 <b>to investigate the situation?</b> 19 MR. MALONEY: Objection to form. 20 A. What investigation do you think we should 21 have? I mean, we were simply aware that the 22 litigation -- well, actually we were aware that the 23 arbitration award had been converted into a judgment 24 and that it spilled over into a Chapter 11 bankruptcy 25 proceeding. That's all I really need to know. So I</p>		<p style="text-align: right;">Page 144</p> <p>1 MR. MALONEY: Objection to form and 2 foundation. You can answer if you understand. 3 A. Yes, I do. And I -- I stand by that, and 4 it's qualified only to the extent that we have 5 specifically agreed with our shareholders in the 6 Members Agreements and the amendment thereto to adhere 7 to certain procedures, consents and negative control 8 rights that we thereby run them. But other than that 9 they're completely standard. 10 <b>Q. (By Mr. Wielebinski) But other than that?</b> 11 A. They're completely standard. 12 <b>Q. What's not standard is the mess that's been</b> 13 <b>created in the bankruptcy because of the litigation...</b> 14 MR. MALONEY: Objection -- 15 <b>Q. (By Mr. Wielebinski) ...correct?</b> 16 MR. MALONEY: Objection to form and 17 foundation. 18 A. I don't have enough experience of U.S. 19 bankruptcy procedures to know whether or not a mess of 20 this cataclysmic proportion is normal or not. But 21 that, I think, I do not lay either at the door of 22 Highland or indeed any of the other service providers. 23 <b>Q. (By Mr. Wielebinski) But you've not taken</b> 24 <b>any additional steps to investigate any background</b> 25 <b>information regarding the Terry litigation. That's</b></p>
<p style="text-align: right;">Page 143</p> <p>1 don't need to get into whether Mr. Terry breached his 2 employment contract or not as the case might be. 3 <b>Q. (By Mr. Wielebinski) But didn't you tell</b> 4 <b>Mr. Maloney at the beginning that, as an independent</b> 5 <b>board member, you engaged in very -- a very great</b> 6 <b>level of interest, inquiry, scrutiny and challenge...</b> 7 A. Yeah. 8 <b>Q. ...in your role?</b> 9 A. Correct. 10 <b>Q. That -- that's what you -- you testified to;</b> 11 <b>correct?</b> 12 A. Yes, and -- and -- and in terms of the 13 discharge by various service providers of their duties 14 to the company. 15 <b>Q. Okay. And you told me you were -- you were</b> 16 <b>ultimately responsible for the company?</b> 17 A. We, the board, are, yes. 18 <b>Q. Okay. And that you had ultimate control of</b> 19 <b>running the company, including governance, oversight,</b> 20 <b>including the portfolio management administration --</b> 21 <b>administrator and custodian?</b> 22 MR. MALONEY: Objection to form and 23 foundation. 24 <b>Q. (By Mr. Wielebinski) Do you remember that</b> 25 <b>testimony?</b></p>		<p style="text-align: right;">Page 145</p> <p>1 <b>what you testified to.</b> 2 A. Yes, because I -- 3 MR. MALONEY: Objection to form and 4 foundation. You may answer. 5 A. I -- I don't think it's relevant. What is 6 relevant is the fact that Mr. Terry has his judgment 7 creditor status. And as a consequence the Chapter 11 8 trustee has been appointed, and these proceedings are 9 grinding on as they are. That's what matters. 10 <b>Q. (By Mr. Wielebinski) And are -- are you</b> 11 <b>aware that Mr. Terry was not terminated for cause?</b> 12 A. I am aware that there have been various 13 statements made by both sides, which are arguably 14 incompatible, which is correct. I don't know. 15 Highlands say that he was terminated for cause. He 16 says he wasn't. 17 <b>Q. Do you know how the arbitrators ruled?</b> 18 A. Well, obviously to an extent the arbitrators 19 ruled in his favor, but I haven't read their detailed 20 judgment... 21 <b>Q. And --</b> 22 A. ...or the detailed awards or whatever the 23 correct expression is. 24 <b>Q. "In his favor" meaning Mr. Terry's favor;</b> 25 <b>correct?</b></p>

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38 (Pages 146 to 149)

<p style="text-align: right;">Page 146</p> <p>1 A. Well, yes, because he obviously has his near                  2 \$8 million award as a consequence.                  3 (Exhibit Number 14 marked.)                  4 <b>Q. (By Mr. Wielebinski) I'm going to hand you                  5 what's been marked as Exhibit 14.</b>                  6 A. Thank you.                  7 <b>Q. Can you take a look at that, please?                  8 Have you seen that before, Mr. Scott?</b>                  9 A. I do not recall having read it. No, I don't                  10 think I have...                  11 <b>Q. Well, let's take a minute --</b>                  12 A. ...seen it before...                  13 <b>Q. -- to go through it.</b>                  14 A. ...no.                  15 <b>Q. Can you look on Page 9, please, at the top?</b>                  16 A. This is 9 of 9?                  17 <b>Q. Correct.</b>                  18 A. Okay.                  19 <b>Q. No. It is 10 of 28, but it's actually at                  20 the bottom, 9 -- Page 9.</b>                  21 A. Okay. Is this the one headed Analysis of                  22 Facts and Claims?                  23 <b>Q. Yes, sir.</b>                  24 A. Okay.                  25 <b>Q. Can you read the first sentence?</b></p>	<p style="text-align: right;">Page 148</p> <p>1 pretextually characterized Ter -- Terry's termination                  2 from Highland as a, quotes, for cause, end quotes,                  3 termination to deny Terry the value of his limited                  4 partnership interest, all in contractual breach of the                  5 Acis LPA and in breach of fiduciary duty to Terry as                  6 its limited partner."                  7 <b>Q. Thank you. Will you also read the first                  8 sentence of the next paragraph?</b>                  9 A. "The evidence establishes that Highland's                  10 termination of Terry was, in fact, pretextual without                  11 basis of cause and only because Dondero wanted him                  12 gone."                  13 <b>Q. And can you read the last sentence in that                  14 paragraph?</b>                  15 A. "Dondero was simply angry and realized Terry                  16 was not a, quotes, yes man, end quotes, willing to let                  17 Dondero have his wrongheaded way. So Dondero fired                  18 Terry on the spot and later sought to characterize                  19 Terry's termination of employment as a, quote, for                  20 cause, end quote."                  21 <b>Q. What's your reaction to those -- those                  22 findings?</b>                  23 A. Well, as I said before, factually they                  24 exist. They are what they are. I haven't read the                  25 evidence or heard it. I'm simply taking this and the</p>
<p style="text-align: right;">Page 147</p> <p>1 A. "The panel first addresses Terry's claims                  2 for breach of contract stated against Acis and Acis GP                  3 and breach of fiduciary duties stated against Acis                  4 GP."                  5 <b>Q. Can you look at the bottom paragraph and                  6 read that to me, just the -- the first two sentences?                  7 I'm sorry.</b>                  8 MR. MALONEY: Which paragraph?                  9 MR. WIELEBINSKI: It's the bottom                  10 paragraph, "The evidence establishes..."                  11 THE WITNESS: Okay. So "The evidence                  12 establishes that Acis and Acis GP did not just simply                  13 rely on Highland's statement of terminating Terry for                  14 cause."                  15 Do you want me to go on to the next                  16 sentence?                  17 <b>Q. (By Mr. Wielebinski) Yes, please.</b>                  18 A. Okay. "Acis and Acis GP became part of                  19 Highland's and Dondero's efforts to cons -- to                  20 construct a pretext of, quotes, for cause, end quotes,                  21 termination so Terry could be deni -- could be denied                  22 the value of his limited partnership interest in                  23 Acis."                  24 <b>Q. Go on.</b>                  25 A. "Acis and Acis GP knowingly and willingly</p>	<p style="text-align: right;">Page 149</p> <p>1 award, the consequence of it, as a given fact.                  2 <b>Q. Doesn't paint Highland in a very good light,                  3 does it?</b>                  4 A. No, it doesn't.                  5 <b>Q. That doesn't im -- impact in any way,                  6 though, your view of -- of Highland and your                  7 interaction with Highland; correct?</b>                  8 A. It has no relation at all on Highland as a                  9 portfolio manager and the performance and capabilities                  10 of the portfolio and management team headed by Hunter                  11 Covitz. This relates to the breakdown in the                  12 relationship between Mr. Dondero and Mr. Terry.                  13 And I -- I have, as I say, no comment                  14 really to make on the arbitration award other than to                  15 note that it is what it is and it exists. And I --                  16 I -- I have no reason to sort of cast aspersions on                  17 the process. I mean, I understand Highland may think                  18 that they have grounds to appeal. I have no basis or                  19 standing on which to comment on that one way or                  20 another. It just is what it is.                  21 <b>Q. But this third-party dispute over an                  22 employment arrangement and whatever else --</b>                  23 A. Hmm.                  24 <b>Q. -- has caused and had a negative impact on                  25 HCLOF.</b></p>

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54 (Pages 210 to 213)

<p style="text-align: right;">Page 210</p> <p>1 Mr. Sevilla. 2 (Exhibit Number 17 marked.) 3 <b>Q. (By Mr. Wielebinski) Okay. Let me hand you</b> 4 <b>what's been marked as Exhibit Number 17.</b> 5 <b>Have you seen that before?</b> 6 A. Yes. I think I've seen this before. 7 <b>Q. And when did you see it?</b> 8 A. Well, it's dated the 13th of November. So 9 it would be sometime subsequent to that. Probably 10 very soon thereafter. I would think about a couple of 11 weeks ago. 12 <b>Q. All right. And you see that HCLOF is named</b> 13 <b>as a party, do you not?</b> 14 A. Yes. We're named there as a third-party 15 defendant. 16 <b>Q. Okay.</b> 17 A. And also as a counter-defendant. 18 <b>Q. All right. And will you look at Paragraph 1</b> 19 <b>on Page 2 of 80?</b> 20 A. Yes. 21 <b>Q. Now, do you understand that this lawsuit or</b> 22 <b>the claims that are asserted by the trustee are in</b> 23 <b>response to claims that were brought by you and</b> 24 <b>Highland Capital Management? "You" being HCLOF?</b> 25 MR. WIELEBINSKI: I'm going to object</p>		<p style="text-align: right;">Page 212</p> <p>1 <b>Q. Uh-huh.</b> 2 A. Yes, I see that. 3 <b>Q. And were you aware that claims that were</b> 4 <b>asserted by you and Highland Capital had been</b> 5 <b>dismissed without prejudice?</b> 6 A. I was aware that on one of the many, many 7 hearings in this whole process some claims had been 8 dismissed without prejudice for various technical 9 reasons. 10 <b>Q. Okay. And will you look at the heading</b> 11 <b>where it's titled Parties?</b> 12 MR. MALONEY: Where are you? What 13 page? 14 MR. WIELEBINSKI: Page 4 of 80. 15 <b>Q. (By Mr. Wielebinski) Do you see Paragraph</b> 16 <b>9?</b> 17 A. I do. 18 <b>Q. Highland Funding is listed as one of the</b> 19 <b>parties?</b> 20 A. Yes. 21 <b>Q. All right. Do you know what claims you're</b> 22 <b>being named as a party for?</b> 23 A. Well, as I say, I've not read this 24 particular document. I -- I'm going to speculate and 25 give you the opportunity to correct me, but I think</p>
<p style="text-align: right;">Page 211</p> <p>1 to foundation. It calls for a legal conclusion or to 2 the extent his answer reflects any information he 3 received from counsel. 4 A. Let me say a number of things. The first 5 one is, I've not read this document in detail. We 6 have had a lot to deal with. So our focus at the 7 moment has been on this Plan D confirmation process. 8 So this, if you like, is in the "In" 9 tray to be dealt with at a future date. Quite what, 10 if you like, the -- if you like, the stimulants to 11 which the trustee is -- is reacting. To the many 12 different things that there have been in this action, 13 I -- I couldn't really say at this juncture. 14 <b>Q. (By Mr. Wielebinski) Okay. Look again at</b> 15 <b>Paragraph 1, Page 1.</b> 16 A. Yes. 17 <b>Q. I'm sorry, Page 2. Do you see the first</b> 18 <b>sentence where it says "All claims asserted in the</b> 19 <b>original complaint by Highland Capital and Highland</b> 20 <b>CLO Funding --," which is referred to as Highland</b> 21 <b>Funding --," have been dismissed without prejudice"?</b> 22 A. This is on the -- the second line -- 23 <b>Q. Correct.</b> 24 A. -- of Paragraph 1 underneath Answer and 25 Affirmative Defenses?</p>		<p style="text-align: right;">Page 213</p> <p>1 these are in relation to the allegations of some form 2 of fraudulent transfer. 3 <b>Q. Would that be the transactions that you</b> 4 <b>described were a unitary transaction around October of</b> 5 <b>2017?</b> 6 MR. MALONEY: I'm going to object to 7 form, foundation, particularly with respect to the 8 specific transactions you may be referring to. 9 A. I -- I think there's an overlap there, but I 10 don't think everything that we did in October and 11 November of 2017 is, if you like, the subject of such 12 claims. I think there are some things which have been 13 picked out. 14 My recollection is, I think there are 15 probably three sets of -- broadly, of things that the 16 trustee alleges that we've done somehow wrongful acts, 17 and in his characterization designed to strip Acis of 18 value or words to that effect. So, I mean, that -- 19 that's my understanding. Now, as I say, I've not read 20 this document, which is 80 pages long. So if I'm 21 incorrect in what I've just said, please, do correct 22 me. 23 <b>Q. (By Mr. Wielebinski) Okay. If you would</b> 24 <b>look at -- well, just go to the headings. Look at</b> 25 <b>Count Number 10.</b></p>

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55 (Pages 214 to 217)

<p style="text-align: right;">Page 214</p> <p>1 A. Which page am I on now? 2 <b>Q. That's Page 38 of 80.</b> 3 A. 38. 4 MR. MALONEY: Page 38? 5 MR. WIELEBINSKI: Page 38 of 80 at the 6 bottom. 7 THE WITNESS: Where there's the heading 8 Count 10, and then we have Paragraphs 121 and 122. 9 <b>Q. (By Mr. Wielebinski) Right. One of the --</b> 10 <b>the transfers that's sought to be avoid -- avoided is</b> 11 <b>the ALF PMA transfer.</b> 12 <b>Do you see that?</b> 13 A. Yes, I understand that. 14 <b>Q. Okay. And then Count 13 as well as Count</b> 15 <b>14, Count 15...</b> 16 A. 13, right. And 14? 17 <b>Q. And 15 and 16.</b> 18 A. And 16. 19 <b>Q. Those all relate to alleged fraudulent</b> 20 <b>transfer for the ALF share transfer?</b> 21 A. Well, that's what the subheadings say. I 22 haven't had time to read the whole document, but -- 23 <b>Q. What -- what are the shares -- do you</b> 24 <b>know -- that were transferred at or about that time?</b> 25 A. The only shares that I'm aware of being</p>		<p style="text-align: right;">Page 216</p> <p>1 <b>the note transfer?</b> 2 MR. MALONEY: Objection to foundation 3 and form. 4 A. No. I think we discovered it in various 5 filings in and around that time. It was -- it was 6 sort of brought up, as it were, I think, by the 7 trustee, to be frank. 8 <b>Q. (By Mr. Wielebinski) And then if you would</b> 9 <b>look at the Count 21, 22, 23, 24, you notice those are</b> 10 <b>all counts to seek to avoid as fraudulent transfers</b> 11 <b>the 2017-7 equity and 2007 -- 2017-7 agreement</b> 12 <b>transfers.</b> 13 <b>Are you familiar with those at all?</b> 14 A. Not at all. I -- I'm -- I -- I wasn't aware 15 that there was any issue to do with alleged transfers 16 of agreements in respect of that entity. 17 <b>Q. Okay. Will you look at Paragraph 198? It's</b> 18 <b>on Page 58.</b> 19 A. 198, initial transfer -- transferee. 20 MR. MALONEY: Wait, one -- one second. 21 Let me make sure I get there. Are you talking about 22 Paragraph 198? 23 MR. WIELEBINSKI: Yes. 24 MR. MALONEY: Okay. 25 <b>Q. (By Mr. Wielebinski) And you'll see it's</b></p>
<p style="text-align: right;">Page 215</p> <p>1 dealt with at that time was the repurchase by the fund 2 for cancellation of the, roughly, \$1 million worth or 3 0.7 percent of the shared capital of HCLOF. 4 <b>Q. Okay. And if you'd look at Count 17, 18,</b> 5 <b>19, 20, you see that they're all attempts to avoid as</b> 6 <b>fraudulent transfers the note transfer?</b> 7 MR. MALONEY: Objection, foundation. 8 A. Well, that's what the document appears to 9 say. 10 <b>Q. (By Mr. Wielebinski) And what was the note</b> 11 <b>that was transferred at or about that time? Do you</b> 12 <b>know?</b> 13 A. Well, that's a very good question. We knew 14 nothing about this note. Those are an internal 15 arrangement within various parties loosely within, 16 what you might call, the Highland affiliation or 17 whatever. 18 <b>Q. Okay.</b> 19 A. So we didn't know anything about that until 20 about June this year. The fund was not a party to the 21 note, and it was not involved in any way in any 22 transfer or whatever in relation to the note. So 23 it's -- it's an -- it's an item that we know nothing 24 about and have no involvement in. 25 <b>Q. So Highland is the one that told you about</b></p>		<p style="text-align: right;">Page 217</p> <p>1 <b>under something described as Count 26, Liability for</b> 2 <b>Avoided Transfers under 11 U.S.C., Section 550.</b> 3 A. Uh-huh. 4 <b>Q. Do you see that Highland Funding is listed</b> 5 <b>there?</b> 6 A. Yes. 7 <b>Q. And can you read that out loud for me,</b> 8 <b>please?</b> 9 A. 198? 10 <b>Q. Yes.</b> 11 A. Yeah. Well, I'm not necessarily agreeing 12 with what it says. 13 <b>Q. Sure.</b> 14 A. But, as a matter of fact, what the -- the 15 words on the page say is that "Highland Funding is an 16 initial transferee of all transfers sought to be 17 avoided in Counts 13 to 16 above, and Highland Capital 18 is an entity for whose benefit such transfers were 19 made. The trustee may recover all avoided transfers 20 from Highland Funding and Highland Capital pursuant to 21 Section 550." 22 <b>Q. What do you understand that to say, if you</b> 23 <b>know?</b> 24 MR. MALONEY: I'm going to object to 25 the extent the witness has any understanding. I'm</p>

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56 (Pages 218 to 221)

<p style="text-align: right;">Page 218</p> <p>1 also going to object to the extent that these 2 proceedings are being used to get some sort of 3 preanswer. This document has not been answered or 4 responded to, and I'd also object to the extent it 5 calls for a legal conclusion. And I would caution the 6 witness not to speculate.</p> <p>7 A. Well, the answer is, I don't know. I'm not 8 an expert on U.S. bankruptcy law. I have no idea what 9 Section 550 means. It talks about transfers to be 10 avoided in Counts 13 to 16 above. We've discussed 11 some of those a moment -- a moment ago. And, as I 12 say, they are -- to the extent that they are 13 transactions at all, they are transactions in which 14 HCLOF had no involvement at all or any immoral or 15 illegal intent.</p> <p>16 MR. WIELEBINSKI: Hey, guys, can you 17 moot your phone, your lines, please, if you're 18 talking?</p> <p>19 Q. (By Mr. Wielebinski) So you're saying that 20 HCLOF knew nothing about the share transfers that's 21 Counts 13 to 16?</p> <p>22 A. Well --</p> <p>23 MR. MALONEY: Objection. Objection to 24 form and -- and foundation. And I'm also going to 25 again object to the extent that this deposition is</p>		<p style="text-align: right;">Page 220</p> <p>1 THE WITNESS: That's a net asset 2 value -- in a normal way, and we paid Acis Capital 3 Management in cash their proportionate share of the 4 fund on that basis. So there's no value transfer 5 there.</p> <p>6 With respect to the note, as I say, 7 it's a matter to which we were not a party. We've 8 never had any involvement in it, and we knew nothing 9 about it until it popped up in the proceedings 10 sometime in June or whatever this year. And -- and 11 the bit about the Acis CLO equity 2017-7 or whatever, 12 I simply don't know what you're talking about there. 13 That's a new one on me.</p> <p>14 Q. (By Mr. Wielebinski) Fair enough. Will you 15 look at Count 28, please, that's on Page 60 of 80?</p> <p>16 A. 60 of 80. 28, Civil Conspiracy to Breach 17 Fiduciary Duties.</p> <p>18 Q. And do you see down below in the left-hand 19 corner right at the bottom of the page Highland 20 Funding is named down there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. It's the sentence that reads 23 "Finally, Highland Capital, Highland Funding, Dondero 24 and Waterhouse conspired to make numerous transfers to 25 denude Acis," and then it goes on.</p>
<p style="text-align: right;">Page 219</p> <p>1 being used to get a preanswer on a document that has 2 not yet been formally responded to in the court in 3 which -- in the proceeding in which it's filed.</p> <p>4 A. Well, I -- I don't know whether this is 5 exactly answering your question on point, but in 6 substance it is. We have not participated in any 7 fraudulent transfers. And we can argue about this at 8 a later date, which I think Mr. Maloney is saying is 9 the appropriate time to do it. But there was no value 10 in the ALF PMA in the way that the Chapter 11 trustee 11 suggests. It could not be used in the way that he 12 suggests to generate value for the estate or for Acis 13 Loan Funding to the detriment of its investors. Now, 14 that's my position. I know that you disagree with it, 15 but that's what it is.</p> <p>16 With respect to the ALF shareholding in 17 HCLOF, they were bought back for full value on the 18 same terms as would be offered to any other investor, 19 and they were paid out in cash on the dollar. And 20 they were -- when we calculated our NAV in a normal 21 way and they were given the --</p> <p>22 THE REPORTER: When we calculated what 23 in a normal --</p> <p>24 THE WITNESS: Our NAV.</p> <p>25 THE REPORTER: Thank you.</p>		<p style="text-align: right;">Page 221</p> <p>1 A. Yeah. Well, just because somebody makes an 2 allegation doesn't mean to say it's true. I think 3 I've already dealt with the ALF PMA transfer, the 4 share transfer, the note transfer, and the 2017-7 5 transfer, and the rest of it.</p> <p>6 And this thwarting some Universal/BVK 7 agreement transfer, again, that's a subject that I 8 know nothing about in which the funds -- I had no 9 involvement. And, therefore, I don't see why we -- or 10 how we could possibly conspire with anybody in respect 11 to that. It just doesn't make sense.</p> <p>12 Q. You -- will you look at Paragraph 29 for me, 13 please? That's on -- I'm sorry.</p> <p>14 A. You mean Count 29?</p> <p>15 Q. Count 29 --</p> <p>16 A. Right.</p> <p>17 Q. -- right. It's on Page 62.</p> <p>18 A. Yes.</p> <p>19 Q. And you see that's Aiding and Abetting 20 Breach of Fiduciary Duties?</p> <p>21 A. I see that.</p> <p>22 MR. MALONEY: One second.</p> <p>23 Q. And you see in Paragraph --</p> <p>24 MR. MALONEY: I'm not on the same 25 place. Are we on Count 29? What --</p>

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57 (Pages 222 to 225)

<p style="text-align: right;">Page 222</p> <p>1 THE WITNESS: Yeah. This is Page 62 of 2 80. It's over the page, Paragraph 216. 3 MR. MALONEY: Oh. It appears there's 4 two Count 29s. Nevertheless. 5 MR. WIELEBINSKI: I don't see two 29s. 6 Maybe yours is different. Maybe the paging pagination 7 is different. Oh, there are. I've got it. 8 THE WITNESS: No. There's two 29s, but 9 it's a different page. 10 MR. WIELEBINSKI: Thank you. So the 11 first Count 229. 12 MR. MALONEY: Or 29. You said 229. 13 MR. WIELEBINSKI: Yes, sorry. 14 <b>Q. (By Mr. Wielebinski) The first Count 29,</b> 15 <b>Aiding and Abetting Breach of Fiduciary Duties.</b> 16 A. Uh-huh. 17 <b>Q. And if you'll look at Paragraph 220 and 221,</b> 18 <b>you'll see that Highland Funding is named there, too.</b> 19 A. I see that we're named. 20 <b>Q. Okay. And do you see the Count 33 entitled</b> 21 <b>Alter Ego/Collapsing Doctrine/Unjust Enrichment?</b> 22 A. Yes, I see that. 23 <b>Q. If you look at Paragraph 244, do you see</b> 24 <b>Highland Funding is named there as well?</b> 25 A. Yes. I see that we're named there.</p>		<p style="text-align: right;">Page 224</p> <p>1 A. Yes. 2 <b>Q. And then Paragraph xi Highland Funding is</b> 3 <b>named for -- as -- as one of the parties for</b> 4 <b>attorney's fees and costs?</b> 5 A. I see that. 6 <b>Q. And then also in xii Highland Funding's</b> 7 <b>named?</b> 8 A. Yes, I see that. 9 <b>Q. "Fully liable for any judgment entered for</b> 10 <b>the trustee in this adversary proceeding."</b> 11 <b>Do you see all that?</b> 12 A. I see all that. 13 <b>Q. Okay. So you haven't had a chance yet to</b> 14 <b>file an answer in this case; correct?</b> 15 A. Well, personally I haven't, as I say, read 16 this document. 17 <b>Q. Uh-huh.</b> 18 A. We have other more pressing things to deal 19 with. I'm sure that an answer will be put forward in 20 due course. I don't know what more you want me to 21 say. I mean, you know, I -- I could pass comment on 22 the facts. I've already said what I've -- I've -- I 23 know about the ALF PMA, the share transfer and/or 24 don't know about the note or any of those other 25 matters which were alleged by the trustee in his usual</p>
<p style="text-align: right;">Page 223</p> <p>1 <b>Q. Do you see that it's saying "Should be</b> 2 <b>liable for any damages awarded under any count in this</b> 3 <b>amended -- amended answer as each is the alter ego of</b> 4 <b>the others"?</b> 5 <b>Do you see that?</b> 6 A. I see that it says that. 7 <b>Q. All right. And if you -- finally you'd look</b> 8 <b>on Page 77 under the Prayer, do you see in iii it asks</b> 9 <b>for a judgment against Highland Funding?</b> 10 A. Yes, I see that. 11 <b>Q. Okay. And then in vii it asks for a</b> 12 <b>judgment against Highland Capital and Highland</b> 13 <b>Funding?</b> 14 A. I see that, yes. 15 <b>Q. And then in iv it asks for a judgment</b> 16 <b>against Highland Funding among others?</b> 17 A. Yes. 18 <b>Q. And you see it says repunitive damages;</b> 19 <b>correct?</b> 20 A. I haven't seen -- yes, okay. Yes. 21 <b>Q. Okay. And also in x Highland Funding is</b> 22 <b>named?</b> 23 A. Yes. 24 <b>Q. For prejudgment and post-judgment and</b> 25 <b>interest?</b></p>		<p style="text-align: right;">Page 225</p> <p>1 highly inventive way to somehow conspire with the 2 various other Highland entities. 3 <b>Q. I know there's been no determination on</b> 4 <b>liability in this lawsuit, but part of the reason that</b> 5 <b>this lawsuit was filed was to undo those -- that</b> 6 <b>series of transfers and transactions in October of</b> 7 <b>2017.</b> 8 <b>Is that a fair statement?</b> 9 MR. MALONEY: Object to the form and 10 foundation and legal conclusion. 11 A. Well, I -- I think personally it was filed 12 at this time strategically to try to color these 13 present proceedings in respect of Plan D. But, I 14 mean, the -- if you like, the -- the -- the -- the 15 sort of apparent foundation of it is to undo these 16 supposed transfers or these transfers that were 17 supposedly somehow of fraudulent intent. 18 <b>Q. (By Mr. Wielebinski) And -- and those</b> 19 <b>transfers were all implemented by Highland.</b> 20 <b>Is that a fair statement?</b> 21 MR. MALONEY: I'm going to object to 22 the form and the foundation of the witness. 23 A. Well, I mean, to the extent that I've 24 already said, some of these matters are matters 25 outside our knowledge. So, for example, the note</p>

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65 (Pages 254 to 257)

<p style="text-align: right;">Page 254</p> <p>1 <b>Q. Is that your understanding of your duties</b> 2 <b>and obligations as a director of HCLOF?</b> 3 A. Well, it's -- yes. It's a general statement 4 of the duties of the directors of a fund. Therefore, 5 it applies to us. 6 <b>Q. Do you believe you've satisfied those</b> 7 <b>fiduciary -- or those duties in your role --</b> 8 A. Absolutely. 9 <b>Q. -- as a director of HCLOF?</b> 10 A. I certainly do. 11 MR. MALONEY: Is this 18? Exhibit 18? 12 THE WITNESS: Yes. 13 MR. WIELEBINSKI: Can we go off the 14 record for a minute? I've got to get a document. 15 THE VIDEOGRAPHER: We are off the 16 record at 5:11. This is Disc 4, Volume 1. 17 (Break.) 18 THE VIDEOGRAPHER: On the record at 19 5:23. This is Disc 5, Volume 1. 20 <b>Q. (By Mr. Wielebinski) Was it your</b> 21 <b>understanding that HarbourVest required the removal of</b> 22 <b>Acis as portfolio manager and some of the transactions</b> 23 <b>that were done in October of 2017?</b> 24 A. We were told that it was a condition of the 25 transaction that Acis Capital Management depart as the</p>		<p style="text-align: right;">Page 256</p> <p>1 <b>bankruptcy court?</b> 2 A. I don't know. I've -- I've not been in 3 court when Mr. Ellington testified. 4 (Exhibit Number 19 marked.) 5 <b>Q. (By Mr. Wielebinski) Will you take a look</b> 6 <b>at Exhibit Number 19 for me, please?</b> 7 MR. MALONEY: Thanks. 19? 8 MR. WIELEBINSKI: Yes. 9 THE WITNESS: Okay. 10 <b>Q. (By Mr. Wielebinski) Do you see that's a</b> 11 <b>deposition of a representative of HarbourVest?</b> 12 A. Yes, I do. 13 <b>Q. Can you look at Page 31 for me, please?</b> 14 A. 31. Okay. Yes, I'm on Page 31. 15 <b>Q. Actually, could you look at Page 30? Start</b> 16 <b>with Line 1.</b> 17 A. "Are you aware that during the involuntary 18 trial...?" That line? 19 <b>Q. Yes, sir. Can you read that?</b> 20 A. Okay. "Are you aware that during the 21 involuntary trial a number of representations were 22 made to the court by counsel for Acis at that time 23 that HarbourVest only invested in HCLOF on the 24 condition that Acis would not have anything to do with 25 Acis CLOs going forward, and that the investor would</p>
<p style="text-align: right;">Page 255</p> <p>1 portfolio manager to the fund. And at the time we 2 interpreted that as being a, if you like, a condition 3 precedent set by HarbourVest. 4 But I understand on subsequent 5 clarification that that may not have been the reason 6 why there was a condition to the transaction. It may 7 have been a matter to do with the then applicable risk 8 retention rules and Acis being noncompliant in that 9 regard. So that's a sort of, if you like, a further 10 clarification that's been provided to us more 11 recently. 12 <b>Q. And who provided that to you?</b> 13 A. I think that that has come from, well, from 14 Mr. Maloney actually, but I don't want to -- 15 MR. MALONEY: Just to be clear, I don't 16 want you to reveal anything that you heard from 17 counsel; all right? 18 THE WITNESS: Okay. 19 MR. MALONEY: Okay? Let's -- let's be 20 clear about that. 21 THE WITNESS: Yeah. I don't think 22 Mis -- Mr. Maloney was necessarily providing advice in 23 that regard. I think he was passing something on. 24 <b>Q. (By Mr. Wielebinski) Do you know if</b> 25 <b>Mr. Ellington represented something different to the</b></p>		<p style="text-align: right;">Page 257</p> <p>1 demand its money back if a reset transaction was not 2 done with Acis. Are you aware of that 3 representation?" 4 <b>Q. Okay. And then if you could skip down to</b> 5 <b>Line 15, do you see it says "Okay. Do you agree with</b> 6 <b>that statement"?</b> 7 A. I see that. 8 <b>Q. And then the answer is "No"?</b> 9 A. I see that answer. 10 <b>Q. And then the question "Why not"?</b> 11 A. Yes. 12 <b>Q. Can you read that answer?</b> 13 A. Starting with Line 18, "We made an 14 investment here into a Highland-managed fund. I would 15 say that we very much viewed Acis and Highland as 16 interchangeable from the perspective of the, you know, 17 the actual investment opportunity. It was merely a 18 sort of name or branding issue from our perspective. 19 And so ultimately our investment was with the existing 20 Highland platform and the team and the strategy on a 21 go-forward basis. And so the naming convention around 22 the vehicle we invested into or the underlying CLO 23 vehicles was really of no concern from our 24 perspective." 25 <b>Q. Okay. Are you surprised by that statement?</b></p>

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66 (Pages 258 to 261)

<p style="text-align: right;">Page 258</p> <p>1 <b>Those statements?</b></p> <p>2 MR. MALONEY: Stop. Let -- let me</p> <p>3 object. I'm going to object to the premise. I'm</p> <p>4 going to object to having the witness read this</p> <p>5 transcript into the record and having asked questions</p> <p>6 based upon the premise that this -- this is the</p> <p>7 transcript. I have no reason to believe that it's</p> <p>8 not. But I object on the basis that it's inserting</p> <p>9 hearsay into the proceedings, and I object on the</p> <p>10 basis that the witness has no foundation other than</p> <p>11 you're showing him a document and he's reading it.</p> <p>12 <b>Q. (By Mr. Wielebinski) Are you surprised by</b></p> <p>13 <b>those statements?</b></p> <p>14 A. Yes, I'm surprised by that.</p> <p>15 <b>Q. And if you look on Page 31, do you see the</b></p> <p>16 <b>Line 3 and 4, "And HarbourVest made no demand upon</b></p> <p>17 <b>Highland with respect to the name"?</b></p> <p>18 A. I see that.</p> <p>19 <b>Q. And the answer is "No"?</b></p> <p>20 A. Yep, I see that.</p> <p>21 <b>Q. Will you read the next line -- the next</b></p> <p>22 <b>questions up to Line 12?</b></p> <p>23 A. "Are you aware that Scott Ellington, general</p> <p>24 counsel for HCM, testified that HarbourVest said with</p> <p>25 absolute certainty that they had no interest in doing</p>		<p style="text-align: right;">Page 260</p> <p>1 What I'm sort of surprised about in a</p> <p>2 way is the apparent conflict between, you know, what's</p> <p>3 said here by -- and I think Mr. Pugatch, or -- or</p> <p>4 however one pronounces the name, is a representative</p> <p>5 of Highland. And what we were told and what our</p> <p>6 lawyer was told at the time -- and I'm treading</p> <p>7 slightly carefully here because I -- I don't want to</p> <p>8 go into a situation of supposedly waiving privilege.</p> <p>9 But we were told in writing that the change from Acis</p> <p>10 was a condition of the transaction, quote-unquote.</p> <p>11 <b>Q. Imposed by HarbourVest?</b></p> <p>12 A. I didn't say that actually.</p> <p>13 <b>Q. They did not?</b></p> <p>14 A. They said it was a condition of the</p> <p>15 transaction. We might have been left to infer that,</p> <p>16 but it didn't actually say that.</p> <p>17 <b>Q. Are you surprised that -- are you surprised</b></p> <p>18 <b>that at least the statement seems to be that what</b></p> <p>19 <b>Mr. Ellington told the court was inaccurate?</b></p> <p>20 MR. MALONEY: Objection, form,</p> <p>21 foundation.</p> <p>22 A. Well, I -- I -- I know no more about what</p> <p>23 Mr. Ellington told the court than what you've just</p> <p>24 told to me and what is put to the -- to Mr. Pugatch in</p> <p>25 this deposition.</p>
<p style="text-align: right;">Page 259</p> <p>1 business with Acis because the Acis brand was</p> <p>2 purportedly toxic, and consequently nothing associated</p> <p>3 with Acis could be managed or marketed as a CLO? Are</p> <p>4 you aware of that statement?"</p> <p>5 <b>Q. Okay. And then if you skip down to Line 17,</b></p> <p>6 <b>18, "Okay. Is that statement true?" That's from</b></p> <p>7 <b>Mr. Prostok. And the answer?</b></p> <p>8 MR. MALONEY: I'm going to object</p> <p>9 again, same basis as before. You're asking the</p> <p>10 witness to read another transcript into the record,</p> <p>11 and I -- I object to that. I object on hearsay. I</p> <p>12 object on foundation. I object to the form of the</p> <p>13 question.</p> <p>14 MR. WIELEBINSKI: Okay.</p> <p>15 <b>Q. (By Mr. Wielebinski) And are you surprised</b></p> <p>16 <b>by those answers?</b></p> <p>17 A. Well, the -- the -- the answer is "Yes" and</p> <p>18 "No." I'm surprised -- well, firstly, I'm not</p> <p>19 surprised actually that an investor regards Acis and</p> <p>20 Highland in some senses as interchangeable. Because,</p> <p>21 remember, Acis was nothing more really than a paper</p> <p>22 company. The investment engine was the team at</p> <p>23 Highland. So, as far as HarbourVest is concerned, I</p> <p>24 can see the point that they would perceive it's just a</p> <p>25 bit of Highland. So I -- I can totally get that.</p>		<p style="text-align: right;">Page 261</p> <p>1 <b>Q. (By Mr. Wielebinski) Okay. Will you look</b></p> <p>2 <b>at Page 58, please?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Let me ask you this: Did you make your</b></p> <p>5 <b>investor, HarbourVest, aware of the litigation you</b></p> <p>6 <b>commenced in Guernsey against Mr. Terry?</b></p> <p>7 A. We fund -- I don't think consulted with</p> <p>8 HarbourVest beforehand or reported it directly to them</p> <p>9 afterwards.</p> <p>10 <b>Q. So they're not aware of it today?</b></p> <p>11 A. They may or may not be aware of it. I don't</p> <p>12 know if Highland told them about it.</p> <p>13 <b>Q. Do you think it was appropriate --</b></p> <p>14 THE REPORTER: I don't know what?</p> <p>15 THE WITNESS: If Highland told them</p> <p>16 about it.</p> <p>17 <b>Q. (By Mr. Wielebinski) Do you think it's</b></p> <p>18 <b>important that they know?</b></p> <p>19 A. I think it would be interesting for them to</p> <p>20 know, but it's not a requirement necessarily they be</p> <p>21 informed. I mean, they will necessarily, I think, be</p> <p>22 informed in due course.</p> <p>23 <b>Q. Could you look at Page 64, please?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Take a look at -- at the question starting</b></p>

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67 (Pages 262 to 265)

<p style="text-align: right;">Page 262</p> <p>1 with Line 13, please. I'll read it to you. "But have 2 you expressed an opinion in this case different than 3 Highland's at any point?" And there's some 4 objections, "With respect to the bankruptcy matters?" 5 And there's an objection. And then Mr. Prostok says 6 "Yes, to Highland." Deponent, "I think the --," and 7 Ms. O'Neil objects, and the deponent then answers in 8 Line 23. 9 Can you read that to me, please? 10 A. "The primary opinion we've expressed to 11 Highland, I would say, is a desire to see this all go 12 away quickly, to be able to get back to the original 13 investment thesis or premises of the investment that 14 we had made, which would have included the ability to 15 refinance or reset the underlying CLOs, given that the 16 current situation, you know, in our view, is untenable 17 vis-a-vis the go-forward equity returns of holding 18 those positions in their current capital structure or 19 form today." 20 Q. You haven't talked to HarbourVest; correct? 21 MR. MALONEY: Objection. I'm going to 22 object to the premise of the question, the reading 23 into the record of the transcript, which may or may 24 not be hearsay, may or may not have a basis to be read 25 into the record, and the foundation of the quest --</p>		<p style="text-align: right;">Page 264</p> <p>1 have said in terms of the specific parts that you have 2 drawn to my attention because I've not seen this 3 transcript before today. So I've only got knowledge 4 of the bits that you've drawn my attention to. But 5 there's nothing in it in that sense that's a surprise 6 about HarbourVest's view of life. 7 Q. You're taking that view into consideration, 8 though, when you act as a director. 9 Is that a fair statement? 10 MR. MALONEY: Objection, foundation and 11 form. 12 A. What we're doing when we're acting as a 13 director is acting in the best interest of the company 14 as we see it on the basis of the information that's 15 available to us. And, you know, we're acting in good 16 faith in that regard. 17 Q. (By Mr. Wielebinski) Sometimes the 18 information hasn't been made available to you, though, 19 has it, by Highland? 20 You've -- you've given me a few 21 examples today. 22 A. It's -- it's -- it's al -- 23 MR. MALONEY: Object -- objection to 24 form and foundation. 25 A. It's always going to be the case in any sort</p>
<p style="text-align: right;">Page 263</p> <p>1 question and the form of the question. 2 Q. (By Mr. Wielebinski) You've had no 3 communications with HarbourVest directly; correct? 4 A. Well, I've had no direct communication with 5 HarbourVest. The view that's expressed there doesn't 6 surprise me. It's an entirely rational view of an 7 investor to express. 8 Q. Including they want an expedient result; 9 correct? 10 Isn't that what they're saying? 11 MR. MALONEY: Objection -- 12 A. Well -- well -- 13 MR. MALONEY: -- foundation. 14 A. We would all be delighted, the board 15 included, if the trustee would just fold up his tents 16 and go away, and that would be a very quick and 17 expedient resolution. Unfortunately I don't think 18 it's going to happen. But, yes, we would all love 19 this to go away. Of course, we would. 20 Q. (By Mr. Wielebinski) Did Highland 21 communicate this view from HarbourVest to you as a 22 director of HCLOF? 23 A. Yes. We've had -- well, we've had periodic 24 verbal reports about liaison with HarbourVest. And, I 25 mean, there's nothing, as I say, in what HarbourVest</p>		<p style="text-align: right;">Page 265</p> <p>1 of business situation that there are going to be 2 pieces of the information matrix that you don't have 3 either because people haven't told you or because 4 they're not discoverable or -- or whatever. So you 5 have to make judgments based on what you have. 6 Q. (By Mr. Wielebinski) In -- in this 7 circumstance, though, where it certainly, I think it's 8 fair to say, has been time-consuming and frustrating, 9 it's important that you have as much information as 10 possible, isn't it? 11 MR. MALONEY: Objection, form, 12 foundation. 13 A. I agree that as a matter of general 14 principle, that applies equally to this situation, the 15 more information and insight you have, the better. 16 Q. (By Mr. Wielebinski) Have you been 17 satisfied with the information flow that you've 18 received from Highland in -- in this matter? 19 A. Broadly, yes. I mean, there are bound to be 20 areas where I think the information flow has been less 21 good than it should have been. And I certainly would 22 have liked it to have been much better with hindsight, 23 yes. 24 Q. Can you look at Page 85 for me, please? And 25 if you would read Line 4 through 17.</p>

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<p style="text-align: right;">Page 266</p> <p>1 A. 85, Lines 4 through 17? 2 <b>Q. Yes, sir.</b> 3 MR. MALONEY: Object again to reading 4 into the record. 5 A. "I just want --." I don't believe this -- 6 oh, this is the man from HarbourVest. "I just wanted 7 to also sort of make the point that I think a 8 continuation of the status quo -- i.e., the situation 9 that we're in, without the ability to refind -- 10 refinance or reset in the immediate term -- is 11 probably the most detrimental as we think about the 12 returns -- the return potential for HCLOF and, in 13 turn, us vis-a-vis the equity investment in these 14 CLOs. So, you know, something happening -- whether 15 that's a refinancing or a reset in the near term -- or 16 absent all of that, even a redemption or call of those 17 vehicles is a better option for us, purely 18 economically speaking as an investor in HCLOF, versus 19 just a continuation of the current situation -- 20 management by Brigade, but without the ability to 21 reset or refinance the capital structure of those 22 CLOs." 23 <b>Q. (By Mr. Wielebinski) Management by Brigade.</b> 24 <b>What does that mean? Do you know? Do</b> 25 <b>you think -- do you have a -- any comment to that?</b></p>		<p style="text-align: right;">Page 268</p> <p>1 A. I didn't disagree with that. 2 MR. MALONEY: I'm going to object to 3 form, foundation. You can answer. 4 A. I mean, as -- as the -- the mess that 5 Brigade is currently making of it, yes, I'm -- I'm -- 6 agree -- agree with that. It's not the optimal 7 solution, but it might be better than what we have at 8 the moment. 9 <b>Q. (By Mr. Wielebinski) It may be better, a</b> 10 <b>redemption? A liquidation may be better than what we</b> 11 <b>have at the moment?</b> 12 <b>Is that what you were saying?</b> 13 A. It may be. 14 <b>Q. Does it -- does it concern you at all as a</b> 15 <b>director that the 49 percent investor in your company</b> 16 <b>is -- is giving these kinds of statements?</b> 17 A. No. 18 <b>Q. And -- and why is that?</b> 19 A. Well, there's nothing in the statements 20 there that he said with which I fundamentally 21 disagree. 22 <b>Q. Can you look back at Exhibit Number 10 for</b> 23 <b>me?</b> 24 A. Uh-huh. These are the board minutes. 25 <b>Q. Yes, sir. Two things. One, can you look at</b></p>
<p style="text-align: right;">Page 267</p> <p>1 MR. MALONEY: I'm going to object again 2 to the premise, to the potential hearsay premise of 3 the entire question, reading into the record of a 4 deposition transcript, object to the form of the 5 question, and foundation. 6 A. Well, you're -- you're sort of taking me 7 selectively to various paragraphs, perhaps out of 8 contextual, I know. But the section that you just got 9 me to read, I don't disagree with that at all. And 10 when it says "management by grade -- Brigade," I don't 11 know if this is what the person who is speaking meant. 12 But what I interpret by that is, he's talking about 13 the de facto management or submanagement -- call it 14 what you will -- of the CLOs by Brigade as is the 15 current situation. 16 <b>Q. (By Mr. Wielebinski) He actually says in</b> 17 <b>here that even a redemption, essentially a</b> 18 <b>liquidation, would be better than what the alternative</b> 19 <b>is.</b> 20 MR. MALONEY: Objection -- 21 <b>Q. (By Mr. Wielebinski) Do you see that there?</b> 22 <b>"Even a redemption or call of those vehicles is a</b> 23 <b>better option for us."</b> 24 A. Uh-huh. Yes, I've just read that. 25 <b>Q. And you said you didn't disagree with that?</b></p>		<p style="text-align: right;">Page 269</p> <p>1 <b>6.3, Section 6.3?</b> 2 A. Yes. 3 <b>Q. Do you see where it says "It was noted that</b> 4 <b>each director undertook to disclose to the company and</b> 5 <b>his fellow directors any manner or circumstance of</b> 6 <b>which he or she was or became aware or which would</b> 7 <b>make the offering mem -- memorandum or any statement</b> 8 <b>in it misleading," and then it goes on?</b> 9 A. I see that paragraph, yes. 10 <b>Q. But you didn't have all the information to</b> 11 <b>determine whether any statement would be misleading</b> 12 <b>because Highland didn't share all the information with</b> 13 <b>you.</b> 14 <b>Isn't that a fair statement?</b> 15 MR. MALONEY: Objection, foundation. 16 A. Well, what this paragraph is saying is that 17 if any of the directors knows about something, then 18 they should disclose it to the -- the boards. But, 19 you know, you're talking now about things that we 20 didn't know about. 21 <b>Q. (By Mr. Wielebinski) Could that have an</b> 22 <b>impact on your investors, not being able to share</b> 23 <b>information that you subsequently have learned like</b> 24 <b>you have in this case?</b> 25 MR. MALONEY: I'm going to object to</p>

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

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	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	: Hearing Date: November 10,
	: 2020
	: Objection Deadline: November
	: 8, 2020
-----	X

**DECLARATION OF MICHAEL PUGATCH IN SUPPORT OF MOTION OF  
HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF CLAIMS FOR  
PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

---

I, Michael J. Pugatch, declare as follows:

1. I am a managing director of HarbourVest Partners, LLC. I submit this Declaration in support of the *Motion Pursuant to Rule 3018(A) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* filed on behalf of HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “HarbourVest”) being filed concurrently with this Declaration. I submit this Declaration based on my personal knowledge.

2. HarbourVest is a passive minority investor in Highland CLO Funds (“HCLOF”), a vehicle managed by Highland Capital Management LP (“Highland”). HarbourVest initially invested \$73,522,928 for a roughly 49% interest in HCLOF, on November 15, 2017. On February 9, 2018, HarbourVest contributed an additional \$4,998,501 following a capital call. To date, HarbourVest has received three dividends from HCLOF, each totaling \$1,570,429.

3. The unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228. HarbourVest’s expected proceeds from the original HCLOF investment were projected to exceed \$135 million.

4. Highland has charged over \$15 million in attorneys’ fees for HCLOF, Highland, Acis, Highland HCF, and others, to HCLOF. We, as shareholders, were made to pay these entities’ legal fees. HarbourVest’s share of these fees stands at more than \$7.5 million (as of June 30, 2020).

5. HarbourVest’s own legal fees spent protecting its interests have reached more than \$1 million to date, which include legal fees associated with HarbourVest responding to Rule

2004 discovery requests seeking documents and a deposition from HarbourVest in the Acis bankruptcy, monitoring the Acis bankruptcy for false statements regarding HarbourVest, assessment of legal claims and damages to HarbourVest attributable to Highland's conduct, as well as protecting HarbourVest's rights in the Highland bankruptcy, including through filing proofs of claim regarding HarbourVest's claims. These fees continue to accrue.

*[Remainder of page left intentionally blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 18, 2020  
Needham, MA, USA

By: /s/ Michael J. Pugatch  
Michael J. Pugatch  
Managing Director  
HarbourVest Partners, LLC

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

-----	<b>x</b>
	:
In re:	: Chapter 11
	:
<b>HIGHLAND CAPITAL MANAGEMENT, L.P.,</b>	: Case No. 19-34054
	:
Debtor.	: Hearing Date: November 10, : 2020
	: Objection Date: November 8, : 2020
-----	<b>x</b>

**MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A) OF THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY ALLOWANCE OF  
CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN**

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HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P.,<sup>1</sup> HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”) hereby moves (this “**Motion**”) this Court pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”) for entry of an order temporarily allowing HarbourVest’s claims for the purpose of voting to accept or reject the Highland Capital Management, L.P. (the “**Debtor**” or “**Highland**”) Plan (as defined below) in the above-captioned Chapter 11 case (“**Chapter 11 Case**”). In support of the Motion, HarbourVest respectfully represents the following:

### INTRODUCTION

1. In its Solicitation Motion, the Debtor proposes to disallow for voting purposes all claims to which it has objected for any reason. The Debtor objected to the HarbourVest Claims (as defined below) on a perfunctory and unfounded basis, by tucking them in among the 92 claims in the *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the “**Claim Objection**” or “**Objection**”), which was an omnibus objection simply claiming, with no substance or explanation, that there was “no liability” for HarbourVest’s Claims. More than a month ago, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the “**Response**”), which amply

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<sup>1</sup> HV International Secondary L.P.’s claim (#153) was not included in the Claim Objection (as defined herein); however, the Debtor has represented to HarbourVest that it was inadvertently omitted, and that Highland objects to it on the same grounds as other HarbourVest Claims.

detailed the legal and factual predicates for its claims. To date, that Response remains entirely un rebutted.

2. If the Solicitation Motion is granted, HarbourVest—one of Highland’s most significant creditors—would be disenfranchised in this Chapter 11 Case on the basis of a meritless, one-sentence “no liability” objection that is wholly insufficient to rebut HarbourVest’s prima facie case for its Claims. To avoid this unjust result, HarbourVest has filed this Motion pursuant to Bankruptcy Rule 3018, and seeks that the HarbourVest Claims be temporarily allowed for purposes of voting in full recognition of HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### **JURISDICTION AND VENUE**

3. The United States Bankruptcy Court for the Northern District of Texas (the “**Court**” or “**Bankruptcy Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

4. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief requested herein are sections 502 and 1126 of the Bankruptcy Code (“**Bankruptcy Code**”) and Bankruptcy Rules 3001 and 3018(a).

### **BACKGROUND**

#### **A. Case Background**

7. On October 16, 2019 (“**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

8. Since filing the petition, the Debtor has been operating as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. On September 21, 2020, the Debtor filed the *First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1079] (the “**Plan**”) and related *Disclosure Statement for the First Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1080] (the “**Disclosure Statement**”).

10. On September 28, 2020, the Debtor submitted the *Debtor’s Motion for Entry of an Order (A) Approving the Adequacy of the Disclosure Statement; (B) Scheduling a Hearing to Confirm the First Amended Plan of Reorganization; (C) Establishing Deadline for Filing Objections to Confirmation of Plan; (D) Approving Form of Ballots, Voting Deadline and Solicitation Procedures; and (E) Approving Form and Manner of Notice* [Docket No. 1108] (“**Solicitation Motion**”). The Solicitation Motion requests that the confirmation hearing for the Plan be held on December 3, 2020 at 9:30 a.m. (prevailing Central Time), or such other date as may be scheduled by the Court, and requests a Voting Deadline (as defined in the Solicitation Motion) of November 20, 2020 at 5:00 p.m. (prevailing Central Time).

### **B. HarbourVest Claims**

11. HarbourVest’s claims against Highland arise out of its November 15, 2017, investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. (“**HCLOF**”) to acquire a 49% interest as a minority, passive investor (the “**Investment**”). Highland’s pattern of fraudulent behavior preceding and following the Investment, including its scheme to drain Acis Capital Management L.P. of assets and its many lies and omissions regarding this scheme to (and, in this Court, about) HarbourVest, and the subsequent fallout, caused serious injury to HarbourVest. This caused HarbourVest damages in excess of \$100 million, as detailed below. As a consequence of those damages, on April 8, 2020, HarbourVest timely filed its proofs of claim, which are listed in the Debtor’s claims register as claims number 143, 147, 149, 150, 153, and 154 (the “**Proofs of Claim**”), describing its claims (the “**HarbourVest Claims**”). In

addition, in its still-unrebutted response to Highland’s Claim Objection filed on September 11, 2020, HarbourVest described the HarbourVest Claims, and the supporting facts and law, in significant detail.<sup>2</sup>

12. As described in the Response, HarbourVest has strong claims against Highland under a number of legal theories, including but not limited to claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duties, misuse of fund assets, U.S. state and federal securities law claims, violations of the federal Racketeer Influenced and Corrupt Organizations Act (“**RICO**”), and unfair prejudice under the Guernsey Companies Law.

13. These claims entitle HarbourVest to recovery of the significant damages it has experienced following Highland’s fraudulent inducement of HarbourVest into the HCLOF investment, which include:

- Investment-related losses as of August 31, 2020 of **more than \$100 million**, taking into account the original expected proceeds<sup>3</sup> from HarbourVest’s **\$78,521,429 of contributions to HCLOF<sup>4</sup> plus 5% interest per year<sup>5</sup>**;

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<sup>2</sup> The Response, which is incorporated into this Motion by reference to avoid repetition, provides an extensive description of the HarbourVest Claims, as well as a thorough demonstration of the fatal defects of the Claim Objection as applied to them, which are only summarized herein.

<sup>3</sup> 41 Tex. Jur. 3d Fraud and Deceit § 105; *Aquaplex, Inc. v. Rancho La Valencia, Inc.*, 297 S.W.3d 768 (Tex. 2009). As discussed further in the Response, separate from the remedies available to HarbourVest for its claims under U.S. federal and state law, the court’s remedial powers for a Guernsey unfair prejudice claim, *see* Response at 23–25, are broad. Section 350 of the Guernsey Companies Law provides: “[i]f the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.” Such relief may include ordering a buyout of the applicant’s interests as a member of the Company at a price adjusted to reflect what the value of such interests *would have been* had the prejudicial conduct not taken place. *Id.*; *see also Re Bird Precision Bellows Ltd.* (1985) 3 All ER 523. Relief is commonly granted against those who have caused the unfairly prejudicial conduct, including non-members of the company, where it is just to do so. *Re Little Olympian Each-Ways Ltd.* (1994) 2 BCLC 420.

- HarbourVest’s share of years of staggering legal fees inappropriately charged to HCLOF: **more than \$7.5 million to date**<sup>6</sup>;
- **Exemplary or punitive damages** for Highland’s fraudulent behavior<sup>7</sup>;
- HarbourVest’s own legal fees incurred as a result of the Acis Trustee’s investigation of HarbourVest in the Acis bankruptcy and HarbourVest’s protection of its own rights: **more than \$1 million to date**.<sup>8</sup>

### C. Highland Objection and Subsequent Discussions

14. After HarbourVest filed its Proofs of Claim, Highland filed its Claim Objection.

While styled as a procedural and technical objection to claims which are facially deficient (such

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<sup>4</sup> See Pugatch Decl. ¶¶ 2–3. See also *Language People, Inc. v. Barish*, No. 03-18-00538-CV, 2019 WL 5057659, at \*7 (Tex. App. Oct. 9, 2019). For reference, the unaudited net asset value of HCLOF as of August 31, 2020 was \$44,587,820. HarbourVest’s share of HCLOF is thus valued at a mere \$22,287,228.

<sup>5</sup> See, e.g., Tex. Rev. Civ. Stat. Ann. art. 581-33(D)(1) (“On rescission, a buyer shall recover (a) the consideration he paid for the security plus interest thereon at the legal rate from the date of payment by him, less (b) the amount of any income he received on the security, upon tender of the security (or a security of the same class and series).”); see also *Duperier v. Texas State Bank*, 28 S.W.3d 740, 754 (Tex. App. 2000); *Covenant Capital Partners v. Soil Savers, Inc.*, No. 3:06-CV-0399-O, 2008 WL 2941125, at \*9 (N.D. Tex. July 30, 2008); Tex. Fin. Code Ann. § 304.003; Judgment Rate Ceilings Tex. Fin. Code §304.003 (2019), <https://occc.texas.gov/sites/default/files/uploads/interest/19.judgement-rate-summary.pdf>. Such remedies are available to HarbourVest for its securities fraud claims, among others.

<sup>6</sup> Pugatch Decl. ¶ 4.

<sup>7</sup> *Gen. Res. Org., Inc. v. Deadman*, 907 S.W.2d 22, 32 (Tex. App. 1995) (“Given the egregiousness of this scheme to defraud investors of large amounts of money we feel the award of punitive damages is warranted.”); *Artripe v. Hughes*, 857 S.W.2d 82, 87 (Tex. App. 1993) (“Fraudulent misrepresentations used to induce the creation of a contract, coupled with damages caused by the misrepresentation, will support an award for exemplary damages.”).

<sup>8</sup> Pugatch Decl. ¶ 5; see also *supra* n. 3, *Aquaplex*, 297 S.W.3d at 775-777. Under the Texas Securities Act, a party may also be entitled to recover reasonable attorney’s fees if the court finds that such recovery would be equitable. Tex. Rev. Civ. Stat. Ann. art. 581–33D(7); *Lane Hartman Ltd. v. P.R.O. Missions, Inc.*, No. 3:95-CV-0869, 1997 WL 457512, at \*9 (N.D. Tex. Aug. 5, 1997).

as late-filed claims and duplicate claims), it also included conclusory assertions of “no liability” regarding a number of claims, including the HarbourVest Claims. The Claim Objection—which makes no attempt to rebut any of the factual or legal bases of the well-founded HarbourVest Claims—fails for all the reasons set forth at length in the Response.

15. The Debtor advised HarbourVest that its objection to the Highland Claims was scheduled to be heard on October 6, 2020. However, after the Response was filed, recognizing that the HarbourVest Claims could not be easily disposed of, the Debtor sought to adjourn the hearing on its objection to the HarbourVest Claims. In an effort to be accommodating, and in light of the competing demands on the Court’s time and docket, HarbourVest agreed to temporarily adjourn the hearing.<sup>9</sup> Counsel to the respective parties continue to discuss an appropriate discovery and trial schedule.

### **RELIEF REQUESTED**

16. By this Motion, HarbourVest seeks entry of an order temporarily allowing the Claims for voting purposes, pursuant to Bankruptcy Rule 3018(a), in an amount that recognizes HarbourVest’s over \$100 million in damages, \$300 million post-trebling.

### **BASIS FOR RELIEF**

#### **A. Legal Authority**

17. Holders of allowed claims or interests are permitted to vote to accept or reject a chapter 11 plan. 11 U.S.C. § 1126. A claim represented by a timely and properly filed proof of claim “is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Once a party in interest objects to a filed claim, the holder of that claim may not (absent other relief) be entitled to vote on a chapter 11 plan while the objection is pending. *See* 11 U.S.C. § 1126. The

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<sup>9</sup> HarbourVest reserves all rights in connection with such adjournment.

proposed Solicitation Procedures, which provide that holders of claims that are subject to a pending objection are not entitled to vote on account of the disputed portion of their claims, reflects this statutory structure. *See* Solicitation Motion ¶ 43(d).

18. However, where a claim is not yet allowed (due to a pending objection or otherwise), bankruptcy courts “may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018. The policy behind Bankruptcy Rule 3018(a) is “to prevent possible abuse by plan proponents” who attempt to ensure acceptance of a plan by strategically objecting to the claims of dissenting creditors. *In re Armstrong*, 292 B.R. 678, 686 (10th Cir. B.A.P. 2003). Unless HarbourVest is permitted to vote the estimated amount of its claim, exactly this sort of abuse will be at play in this Chapter 11 Case.

19. Bankruptcy courts are given significant discretion and flexibility in estimating claims, with the goal that the process “must be accomplished quickly and efficiently.” *In re Adelpia Bus. Sols., Inc.*, 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003); *see also In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771, 774 (Bankr. S.D.N.Y. 1996). Bankruptcy courts also have flexibility to “employ whatever method is best suited to the circumstances of the case” when determining whether and in what amount to allow a claim for voting purposes. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. at 775; *see also In re Frascella Enters., Inc.*, 360 B.R. 435, 458 (Bankr. E.D. Pa. 2007). Rule 3018(a) contemplates only a summary estimation proceeding, not a full trial on the merits of the claim. *See, e.g., In re Windsor Plumbing Supply Co.*, 170 B.R. 503, 521 (Bankr. E.D.N.Y. 1994); *In re Zolner*, 173 B.R. 629, 633 (Bankr. N.D. Ill. 1994).

20. Although the Bankruptcy Code and the Bankruptcy Rules do not dictate a formal procedure for calculating a claim for voting purposes, courts have held that the calculation

“should ensure that the voting power is commensurate with the creditor’s economic interests in the case.” *In re Quigley Co.*, 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006). When determining whether to temporarily allow a claim, courts may look to (1) the debtor’s scheduling of the claim, (2) the details of the claim itself, and (3) the debtor’s objection to determine parties’ expectations regarding the amount and nature of the claim to be voted. *In re Stone Hedge Props.*, 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995). Calculation of a claim under Bankruptcy Rule 3018(a), however, is not determinative or preclusive of the ultimate validity or amount of the claim or any causes of action before a non-bankruptcy court. *See In re Quigley*, 346 B.R. at 654.

### **B. Argument**

21. The Debtor is well aware that the HarbourVest Claims cannot be disposed of through any rote objection—or even through briefing. Indeed, this is why the Debtor has sought to adjourn the hearing on the HarbourVest Claims. In three steps, the Debtor seeks to avoid having to litigate the HarbourVest Claims on a timely basis, while simultaneously denying HarbourVest a voice on the Plan and the ultimate treatment of its substantial claims in this Chapter 11 Case:

Step 1: File a one-line, baseless, procedurally improper, and facially insufficient objection to the HarbourVest Claims to render them *technically* “disputed” (without actually providing any facts or even argument to refute their validity).

Step 2: Refuse to withdraw the frivolous objection when HarbourVest provides a detailed basis for the HarbourVest Claims and emphasizes the impropriety of including the HarbourVest Claims in an unsupported omnibus objection.

Step 3: When publicly challenged in the Response—a pleading demonstrating the strength of the HarbourVest Claims, the extent of the Debtor’s deception and misconduct, and the vacuity of the Debtor’s objection——adjourn the hearing on that objection.

The result, if successful? The Debtor would have handily disenfranchised one of its largest creditors—located in what is likely to be a key class for its Plan—on the eve of confirmation.

22. Bankruptcy Rule 3018 is precisely the mechanism designed to avoid this sort of mischief. The Debtor contends that it cannot resolve the HarbourVest Claims prior to the confirmation hearing. While HarbourVest reserves its rights to seek formal allowance of its claims prior to confirmation, it acknowledges that a Rule 3018 valuation of its claims in full for voting purposes would allow the Debtor and the Court to focus time and resources on the Plan process while avoiding prejudice to HarbourVest.

23. Nonetheless, it is worth underscoring that the time pressure here was manufactured by the Debtor—it did not have to file a baseless objection it was unprepared to defend. It could instead have deferred litigation on the HarbourVest Claims and filed an objection later in the case (but for its desire to wrongfully strip HarbourVest, a major economic stakeholder, of its rightful say in the Plan process without a hearing). Or, the Debtor could have timely engaged with and provided a substantive response to HarbourVest’s detailed support of its claim filed weeks ago. The Debtor has done neither, however, and it would be unfair to permit the Debtor to strip HarbourVest of its voting rights based on an entirely unsupported objection that it is not timely pressing forward. Bankruptcy Rule 3018(a) “was designed to give all creditors, *even those holding disputed claims*, the opportunity to vote.” *In re Century Glove, Inc.*, 88 B.R. 45, 46 (Bankr. D. Del. 1988) (emphasis added).

24. HarbourVest has presented substantial and credible evidence and arguments in support of the validity and amount of its more than \$100 million damages directly caused by Highland's behavior. These damages are appropriately recoverable for the HarbourVest Claims.<sup>10</sup> In addition, HarbourVest's RICO claim entitles it to treble damages, which are properly considered in the claims estimation process. *See In re Hydrox Chem. Co.*, 194 B.R. 617 (Bankr. N.D. Ill. 1996) (estimating value of claim for Rule 3018 purposes based off of trebled RICO damages). Thus, for purposes of this Rule 3018 motion and without prejudice to its right to adduce additional evidence in the future regarding its damages, HarbourVest respectfully requests that its claims be estimated at \$300 million for voting purposes.

25. To date, the Debtor has provided no evidence, no factual assertions, and no analysis of the HarbourVest Claims under the applicable standard, to rebut the prima facie case that HarbourVest has put forward on its claims. To the contrary, Highland has unjustly attempted to disenfranchise HarbourVest on the eve of confirmation of the Plan by filing an objection to the HarbourVest Claims that does not satisfy the Debtor's minimal burden to provide sufficient evidence that an actual dispute exists as to the validity or amount of HarbourVest's Claims. Under the circumstances present here, the Court should exercise its discretion to temporarily allow the HarbourVest Claims in their full face amount for purposes of voting on the Plan. Allowing HarbourVest to vote the full face value of its claims comports with the spirit of the Bankruptcy Code, which encourages creditor voting and participation in the reorganization process. *In re Amarex Inc.*, 61 B.R. 301, 303 (Bankr. W.D. Okla. 1985) (“[T]o allow [the disputed claims] to vote on the plans, even though some may be eventually disallowed

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<sup>10</sup> *See supra* nn. 3–8.

for purposes of distribution, is more in keeping with the spirit of Chapter 11 which encourages creditor vote [sic] and participation in the reorganization process”).

26. In sum, the HarbourVest Claims should be entitled to temporary allowance for purposes of voting on the Plan because: (i) HarbourVest’s filing of proofs of claim constitutes prima facie evidence of the validity of the Claims and HarbourVest’s Response—now filed more than a month ago—provides credible and detailed descriptions of the HarbourVest Claims and remains unrebutted; (ii) the Debtor’s Objection is procedurally and substantively deficient, and (iii) even if the Debtor’s Objection were not flawed, it would have been filed with insufficient time and insufficient specificity to be addressed prior to the deadline for voting on the Plan. Allowing the full amount of the HarbourVest Claims for voting purposes simply restores the status quo that would have obtained if Highland had not engaged in yet another scheme—this time to deprive a major creditor of its voting rights—and had instead only filed objections it was prepared to defend, when it was prepared to do so. This is the precise circumstance for which temporary allowance of claims was created.

#### **RESERVATION OF RIGHTS**

27. The liquidation of the HarbourVest Claims is only for voting on the Plan and shall not constitute or be construed as an admission by HarbourVest of any limitation on the ultimate allowed amount of the HarbourVest Claims or the classification of such claims. HarbourVest does not waive, and expressly reserves, all rights, arguments, counterarguments, and defenses, including, without limitation, the right to contest in any court of competent jurisdiction any objection to the basis and/or validity of the ultimate amounts of the HarbourVest Claims.

### **NOTICE**

28. HarbourVest will provide notice of this Motion to: (a) the Debtor; (b) counsel to the Debtor; (c) the United States Trustee; and (d) all parties that have filed a notice of appearance and request for service of papers pursuant to Local Bankruptcy Rule 2002. In light of the nature of the relief requested herein, HarbourVest respectfully submits that such notice is sufficient and that no other or further notice is necessary.

### **NO PRIOR WRITTEN REQUEST**

29. No prior written request for the relief sought herein has been made to this Court or any other court.

### **CONCLUSION**

WHEREFORE, for the reasons set forth herein, HarbourVest respectfully requests that this Court enter an order granting the relief requested in the Motion and temporarily allowing the HarbourVest Claims for voting on the Plan and granting such other and further relief as the Court deems just and proper.

*[Signatures on Next Page]*

Dated: Dallas, Texas

October 18, 2020

Respectfully submitted,

*/s/ Vickie L. Driver*

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HarbourVest Skew Base AIF L.P., and  
HarbourVest Partners L.P., on behalf of funds  
and accounts under management*

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

----- X  
In re: : Chapter 11  
: :  
**HIGHLAND CAPITAL MANAGEMENT, L.P.,** : Case No. 19-34054  
: :  
Debtor. : :  
: :  
----- X

**ORDER SUSTAINING MOTION OF HARBOURVEST PURSUANT TO RULE 3018(A)  
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR TEMPORARY  
ALLOWANCE OF CLAIMS FOR PURPOSES OF VOTING TO ACCEPT OR REJECT  
THE PLAN**

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CAME ON to be considered the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. [1207] (the “**Motion**”), which was filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover

Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P., on behalf of funds and accounts under management (collectively, “**HarbourVest**”). As more fully set forth in the Motion, this Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; that consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; that due and proper notice of the Motion has been provided to the necessary parties; that no other or further notice need be provided; that the relief sought in the Motion is in the best interests of the Debtor<sup>1</sup>, their creditors, and all parties in interest; that HarbourVest has established just cause for the relief requested in the Motion; and that, upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED that the Motion is hereby SUSTAINED; and it is further

ORDERED that claim Nos. 143, 147, 149, 150, 153, and 154 are temporarily allowed in the aggregate amount of \$300,000,000.00; and it is further

ORDERED that notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim; (b) a waiver of any party’s right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section

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<sup>1</sup> All capitalized terms uses but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

365 of the Bankruptcy Code; or (e) a waiver of the Debtor's or HarbourVest's rights under the Bankruptcy Code or any other applicable law.

**### End of Order ###**

Submitted by:

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002918

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

<b>In Re: Highland Capital Management, LP</b>	§	Case No. <b>19-34054-SGJ-11</b>
<b>The Dugaboy Investment Trust, et al</b>	§	
Appellant	§	
vs.	§	
<b>Highland Capital Management, L.P.</b>	§	<b>3:21-CV-00261-L (Lindsay)</b>
Appellee	§	

**[1788] Order granting motion to compromise controversy with Harbour Vest and authorizing actions. Entered on 1/21/2021.**

**APPELLEE RECORD  
VOLUME 13**



**APPELLEE’S AMENDED SUPPLEMENTAL  
 DESIGNATION OF RECORD ON APPEAL**

Appellee Highland Capital Management, L.P. (“Appellee”), pursuant to Rule 8009(a)(2) of the Federal Rules of Bankruptcy Procedure, hereby submits its amended supplemental designation of the record in the appeal filed by The Dugaboy Investment Trust and Get Good Trust (together, the “Appellants”) from the *Order Approving Debtor’s Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1788] entered by the United States Bankruptcy Court for the Northern District of Texas on January 21, 2021 in the above-captioned chapter 11 bankruptcy case (the “Bankruptcy Case”). Appellee respectfully reserves the right to supplement and/or amend the record on appeal designated herein.

**I. Supplemental Items Designated from the Docket in the Bankruptcy Case**

Appellee designates the following additional items from the docket in the Bankruptcy Case, in addition to the items previously designated by the Appellants:

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol. 10 002202	April 8, 2020	Proof of Claim No. 143	HarbourVest 2017 Global Fund L.P. Claim No. 143
002211	April 8, 2020	Proof of Claim No. 147	HarbourVest 2017 Global AIF L.P. Claim No. 147
002220	April 8, 2020	Proof of Claim No. 149	HarbourVest Partners L.P. on behalf of funds and accounts under management Claim No. 149
002229	April 8, 2020	Proof of Claim No. 150	HarbourVest Dover Street IX Investment L.P. Claim No. 150
002238	April 8, 2020	Proof of Claim No. 153	HV International VIII Secondary L.P. Claim No. 153
002247	April 8, 2020	Proof of Claim No. 154	HarbourVest Skew Base AIF L.P. Claim No. 154

	<u>DATE</u>	<u>DOCKET NO.</u>	<u>DESCRIPTION</u>
Vol 10 002256	July 30, 2020	906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
002279 thru Vol. 12	September 11, 2020	1057	HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
Vol. 12 002896	October 18, 2020	1208	Declaration of Michael Pugatch
002900	October 18, 2020	1207	Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan
			Highland CLO Funding Portfolio Management Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
			Highland CLO Funding Subscription and Transfer Agreement <b>[TO BE OFFERED UNDER SEAL]</b>
Vol. 13 002919	November 24, 2020	1473	Liquidation Analysis
			All exhibits necessary for impeachment and/or rebuttal purposes

**II. Docket Items from Case 18-30264-sgj11**

003097	April 13, 2018	118	Findings of Fact & Conclusions of Law in Support of Order for Relief Issued After Trial on Contested Involuntary Bankr. Petitions ( <i>In re Acis Capital Mgmt., L.P.</i> , Case No. 18-30264- sgj11, (Bankr. N.D. Tex. Apr. 13, 2018))
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Vol. 13

January 31, 2019

827

Bench Ruling & Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee's Third Amended Joint Plan (*In re Acis Capital Mgmt.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. Jan. 31, 2019))

003150

Appellee reserves the right to designate additional items depending on the arguments made by Appellants on appeal.

*[Remainder of Page Intentionally Left Blank]*

Dated: February 25, 2021.

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

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In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

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**DISCLOSURE STATEMENT FOR THE FIFTH AMENDED PLAN OF  
REORGANIZATION OF HIGHLAND CAPITAL MANAGEMENT, L.P.**

---

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

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned cases (the “Debtor”), is sending you this document and the accompanying materials (the “Disclosure Statement”) because you are a creditor or interest holder in connection with the *Fifth Amended Chapter 11 Plan of Reorganization of Highland Capital Management, L.P.*, dated November 24, 2020, as the same may be amended from time to time (the “Plan”).<sup>2</sup> The Debtor has filed a voluntary petition under chapter 11 of title 11 of the United States Code, as amended (the “Bankruptcy Code”).

This Disclosure Statement has not yet been approved by the Bankruptcy Court as containing adequate information within the meaning of section 1125(a) of the Bankruptcy Code. The Debtor intends to seek an order or orders of the Bankruptcy Court (a) approving this Disclosure Statement as containing adequate information and (b) confirming the Plan.

A copy of the Plan is attached hereto as Exhibit A.

The Debtor believes that the Plan is fair and equitable, will maximize the value of the Debtor’s Estate, and is in the best interests of the Debtor and its constituents. Notably, the Plan provides for the transfer of the majority of the Debtor’s Assets to a Claimant Trust. The balance of the Debtor’s Assets, including the management of the Managed Funds, will remain with the Reorganized Debtor. The Reorganized Debtor will be managed by New GP LLC – a wholly-owned subsidiary of the Claimant Trust. This structure will allow for continuity in the Managed Funds and an orderly and efficient monetization of the Debtor’s Assets.

The Claimant Trust, the Litigation Trust, or the Reorganized Debtor, as applicable, will institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action without any further order of the Bankruptcy Court, and the Claimant Trust and Reorganized Debtor, as applicable, will sell, liquidate, or otherwise monetize all Claimant Trust Assets and Reorganized Debtor Assets and resolve all Claims, except as otherwise provided in the Plan, the Claimant Trust Agreement, or the Reorganized Limited Partnership Agreement.

**IMPORTANT INFORMATION ABOUT THIS  
DISCLOSURE STATEMENT FOR YOU TO READ**

**The Debtor is providing the information in this Disclosure Statement to Holders of Claims and Equity Interests in connection with the Debtor’s Plan. Nothing in this Disclosure Statement may be relied upon or used by any Entity for any purpose other than with respect to confirmation of the Plan. The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose.**

**This Disclosure Statement has not been filed for approval with the Securities and Exchange Commission (“SEC”) or any state authority and neither the SEC nor any state authority has passed upon the accuracy or adequacy of this Disclosure Statement or upon**

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan. To the extent that a definition of a term in the text of this Disclosure Statement and the definition of such term in the Plan are inconsistent, the definition included in the Plan shall control and govern.

the merits of the Plan. Any representation to the contrary is a criminal offense. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction.

This Disclosure Statement contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The Debtor considers all statements regarding anticipated or future matters to be forward-looking statements. Forward-looking statements may include statements about:

- the effects of insolvency proceedings on the Debtor’s business and relationships with its creditors;
- business strategy;
- financial condition, revenues, cash flows, and expenses;
- financial strategy, budget, projections, and operating results;
- variation from projected operating and financial data;
- substantial capital requirements;
- availability and terms of capital;
- plans, objectives, and expectations;
- the adequacy of the Debtor’s capital resources and liquidity; and
- the Claimant Trust’s or the Reorganized Debtor’s ability to satisfy future cash obligations.

Statements concerning these and other matters are not guarantees of the Claimant Trust’s or Reorganized Debtor’s future performance. There are risks, uncertainties, and other important factors that could cause the Claimant Trust’s or Reorganized Debtor’s actual performance or achievements to be different from those that may be projected. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements. Therefore, any analyses, estimates, or recovery projections may or may not turn out to be accurate.

This Disclosure Statement has been prepared pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and is not necessarily in accordance with federal or state securities laws or other similar laws.

No legal or tax advice is provided to you by this Disclosure Statement. The Debtor urges each Holder of a Claim or an Equity Interest to consult with its own advisers with respect to any legal, financial, securities, tax or business advice in reviewing this Disclosure Statement, the Plan and each of the proposed transactions contemplated thereby. Further, the Bankruptcy Court's approval of the adequacy of disclosures contained in this Disclosure Statement does not constitute the Bankruptcy Court's approval of the merits of the Plan or a guarantee by the Bankruptcy Court of the accuracy or completeness of the information contained herein.

Pachulski Stang Ziehl & Jones LLP ("PSZ&J") is general insolvency counsel to the Debtor. Development Specialists, Inc. ("DSI") is the Debtor's financial advisor. PSZ&J, DSI, and the Independent Board (as defined below) have relied upon information provided by the Debtor in connection with preparation of this Disclosure Statement. PSZ&J has not independently verified the information contained herein.

This Disclosure Statement contains, among other things, summaries of the Plan, the management of the Reorganized Debtor, the Claimant Trust, certain statutory provisions, certain events in the Debtor's Chapter 11 Case, and certain documents related to the Plan that are attached hereto and incorporated herein by reference or that may be filed later with the Plan Supplement. Although the Debtor believes that these summaries are fair and accurate, these summaries are qualified in their entirety to the extent that the summaries do not set forth the entire text of such documents or statutory provisions or every detail of such events. In the event of any conflict, inconsistency or discrepancy between a description in this Disclosure Statement and the terms and provisions of the Plan or any other documents incorporated herein by reference, the Plan or such other documents will govern and control for all purposes. Except where otherwise specifically noted, factual information contained in this Disclosure Statement has been provided by the Debtor's management. The Debtor does not represent or warrant that the information contained herein or attached hereto is without any material inaccuracy or omission.

In preparing this Disclosure Statement, the Debtor relied on financial data derived from the Debtor's books and records and on various assumptions regarding the Debtor's business. The Debtor's management has reviewed the financial information provided in this Disclosure Statement. Although the Debtor has used its reasonable business judgment to ensure the accuracy of this financial information, the financial information contained in, or incorporated by reference into, this Disclosure Statement has not been audited (unless otherwise expressly provided herein) and no representations or warranties are made as to the accuracy of the financial information contained herein or assumptions regarding the Debtor's business and its, the Reorganized Debtor's, and the Claimant Trust's future results. The Debtor expressly cautions readers not to place undue reliance on any forward-looking statements contained herein.

This Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation or waiver. Rather, this Disclosure Statement shall constitute a statement made in settlement negotiations related to potential contested matters, potential adversary proceedings and other pending or threatened litigation or actions.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in the Disclosure Statement. Except as provided under the Plan, the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, may seek to investigate, file and prosecute Claims and Causes of Action and may object to Claims or Equity Interests after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies any such Claims or Equity Interests or objections to Claims or Equity Interests on the terms specified in the Plan.

The Debtor is generally making the statements and providing the financial information contained in this Disclosure Statement as of the date hereof where feasible, unless otherwise specifically noted. Although the Debtor may subsequently update the information in this Disclosure Statement, the Debtor has no affirmative duty to do so. Holders of Claims and Equity Interests reviewing this Disclosure Statement should not infer that, at the time of their review, the facts set forth herein have not changed since the Disclosure Statement was sent. Information contained herein is subject to completion, modification, or amendment. The Debtor reserves the right to file an amended or modified Plan and related Disclosure Statement from time to time.

The Debtor has not authorized any Entity to give any information about or concerning the Plan other than that which is contained in this Disclosure Statement. The Debtor has not authorized any representations concerning the Debtor or the value of its property other than as set forth in this Disclosure Statement.

Holders of Claims or Equity Interests must rely on their own evaluation of the Debtor and their own analyses of the terms of the Plan in considering the Plan. Importantly, each Holder of a Claim should review the Plan in its entirety and consider carefully all of the information in this Disclosure Statement and any exhibits hereto, including the risk factors described in greater detail in ARTICLE IV herein, "Risk Factors."

If the Plan is confirmed by the Bankruptcy Court and the Effective Date occurs, all Holders of Claims against, and Holders of Equity Interests in, the Debtor will be bound by the terms of the Plan and the transactions contemplated thereby.

The effectiveness of the Plan is subject to certain material conditions precedent described herein and set forth in Article IX of the Plan. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied for the Plan to become effective will be satisfied (or waived).

**EXHIBITS**

**EXHIBIT A** – Plan of Reorganization

**EXHIBIT B** – Organizational Chart of the Debtor

**EXHIBIT C** – Liquidation Analysis/Financial Projections

THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN.

**ARTICLE I.**  
**EXECUTIVE SUMMARY**

**This Disclosure Statement is provided for informational purposes only.**

**In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distributions to the Debtor's creditors and interest holders. The Debtor believes that any delay in confirmation of the Plan would result in significant administrative expenses resulting in less value available to the Debtor's constituents. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.**

This Executive Summary is being provided to Holders of Allowed Claims and Equity Interests as an overview of the material items addressed in the Disclosure Statement and the Plan, which is qualified by reference to the entire Disclosure Statement and by the actual terms of the Plan (including all exhibits attached hereto and to the Plan and the Plan Supplement), and should not be relied upon for a comprehensive discussion of the Disclosure Statement and/or the Plan. Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance or rejection of the plan of reorganization or liquidation. As such, this Disclosure Statement is being submitted in accordance with the requirements of section 1125 of the Bankruptcy Code. This Disclosure Statement includes, without limitation, information about:

- the Debtor's operating and financial history;
- the significant events that have occurred to date;
- the Confirmation process; and
- the terms and provisions of the Plan, including key aspects of the Claimant Trust and the Reorganized Debtor, certain effects of Confirmation of the Plan, certain risk factors relating to the Plan, and the manner in which distributions will be made under the Plan.

The Debtor believes that any alternative to Confirmation of the Plan would result in significant delays, litigation, and additional costs, and ultimately would diminish the Debtor's value. **Accordingly, the Debtor strongly supports confirmation of the Plan.**

**A. Summary of the Plan**

The Plan represents a significant achievement for the Debtor. As discussed herein, the Plan provides that the Claimant Trust will receive the majority of the Debtor's assets, including Causes of Action. The assets being transferred to the Claimant Trust are referred to, collectively, as the Claimant Trust Assets. The Claimant Trust will – for the benefit of the Claimant Trust

Beneficiaries – monetize the Claimant Trust Assets, pursue the Causes of Action, and work to conclude the various lawsuits and litigation claims pending against the Estate.

The Plan also provides for the reorganization of the Debtor. This will be accomplished by the cancellation of the Debtor’s current Equity Interests, which consist of partnership interests held by: The Dugaboy Investment Trust;<sup>3</sup> the Hunter Mountain Investment Trust (“Hunter Mountain”); Mark Okada, personally and through family trusts; and Strand, the Debtor’s general partner. On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor. The Reorganized Debtor will be managed by the Claimant Trust, as the managing member of New GP LLC.

The Reorganized Debtor will oversee the monetization of the Reorganized Debtor Assets, which consist of, among other Assets, the management of the Managed Funds. The net proceeds from the Reorganized Debtor Assets will ultimately be distributed to the Claimant Trust and available for distribution to the Claimant Trust Beneficiaries.

The following is an overview of certain other material terms of the Plan:

- Allowed Priority Non-Tax Claims will be paid in full;
- Allowed Retained Employee Claims will be Reinstated;
- Allowed Convenience Claims will receive the lesser of (i) 85% of their Allowed Claim or (ii) such Holder’s Pro Rata share of the Convenience Claims Cash Pool (*i.e.*, \$13,150,000). Holders of Convenience Claims can elect the treatment provided to General Unsecured Claims by making the GUC Election on their Ballots;
- Allowed General Unsecured Claims and Allowed Subordinated Claims will receive their Pro Rata share of Claimant Trust Interests. The Claimant Trust Interests distributed to Allowed General Unsecured Claims will be senior to those distributed to Allowed Subordinated Claims as set forth in the Claimant Trust Agreement. Holders of General Unsecured Claims that are liquidated as of the Confirmation Date can elect the treatment provided to Convenience Class Election by reducing their Claims to \$1,000,000 and making the Convenience Class Election on their Ballots; and
- Allowed Class B/C Limited Partnership Interests and Allowed Class A Limited Partnership Interests will receive their Pro Rata share of the Contingent Claimant Trust Interests.

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<sup>3</sup> The Dugaboy Investment Trust is a Delaware trust created to manage the assets of James Dondero and his family.

## **B. An Overview of the Chapter 11 Process**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Pursuant to chapter 11 of the Bankruptcy Code, a debtor may remain in possession of its assets and business and attempt to reorganize its business for the benefit of such debtor, its creditors, and other parties in interest. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The commencement of a Chapter 11 case creates an estate comprised of all of the legal and equitable interests of a debtor in property as of the date that the bankruptcy petition is filed. Sections 1107 and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor-in-possession,” unless the bankruptcy court orders the appointment of a trustee. The filing of a bankruptcy petition also triggers the automatic stay provisions of section 362 of the Bankruptcy Code which provide, among other things, for an automatic stay of all attempts to collect prepetition claims from a debtor or otherwise interfere with its property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay generally remains in full force and effect until the consummation of a plan of reorganization or liquidation, following confirmation of such plan of reorganization.

The Bankruptcy Code provides that upon commencement of a chapter 11 bankruptcy case, the Office of the United States Trustee may appoint a committee of unsecured creditors and may, in its discretion, appoint additional committees of creditors or of equity interest holders if necessary to assure adequate representation. Please see ARTICLE II for a discussion of the U.S. Trustee and the statutory committees.

Upon the commencement of a chapter 11 bankruptcy case, all creditors and equity interest holders generally have standing to be heard on any issue in the chapter 11 proceedings pursuant to section 1109(b) of the Bankruptcy Code.

The formulation and confirmation of a plan is the principal objective of a chapter 11 case. The plan sets forth the means of satisfying the claims against and equity interests in the debtor.

## **C. Purpose and Effect of the Plan**

### **1. The Plan of Reorganization**

The Debtor is reorganizing pursuant to chapter 11 of the Bankruptcy Code. As a result, the Confirmation of the Plan means that the Debtor’s business will continue to operate following confirmation of the Plan through the Claimant Trust and the Reorganized Debtor to monetize assets for distribution to Holders of Allowed Claims. The Claimant Trust will hold the Claimant Trust Assets and manage the efficient monetization of, the Claimant Trust Assets. The Claimant Trust will also manage the Reorganized Debtor through the Claimant Trust’s ownership of the Reorganized Debtor’s general partner, New GP LLC. The Claimant Trust will also be the sole limited partner in the Reorganized Debtor. The Reorganized Debtor will manage the wind down

of the Managed Funds as well as the monetization of the balance of the Reorganized Debtor Assets. The Claimant Trust will also establish a Litigation Sub-Trust in accordance with the Plan, which will also be for the benefit of the Claimant Trust Beneficiaries. The Litigation Sub-Trust will receive the Estate Claims. The Litigation Trustee shall be the exclusive trustee of the Estate Claims included in the Claimant Trust Assets subject to oversight by the Claimant Trust Oversight Committee

A bankruptcy court's confirmation of a plan binds the debtor, any entity acquiring property under the plan, any holder of a claim or an equity interest in a debtor and all other entities as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code to the terms and conditions of the confirmed plan, whether or not such Entity voted on the plan or affirmatively voted to reject the plan.

## 2. Plan Overview

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtor. For classification and treatment of Claims and Equity Interests, the Plan designates Classes of Claims and Classes of Equity Interests. These Classes and Plan treatments take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Equity Interests.

The following chart briefly summarizes the classification and treatment of Claims and Equity Interests under the Plan.<sup>4</sup> Amounts listed below are estimated.

In accordance with section 1122 of the Bankruptcy Code, the Plan provides for eight Classes of Claims against and/or Equity Interests in the Debtor.

**The projected recoveries set forth in the table below are estimates only and therefore are subject to change. For a complete description of the Debtor's classification and treatment of Claims or Equity Interests, reference should be made to the entire Plan and the risk factors described in ARTICLE IV below. For certain classes of Claims, the actual amount of Allowed Claims could be materially different than the estimated amounts shown in the table below.**

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<sup>4</sup> This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. References should be made to the entire Disclosure Statement and the Plan for a complete description.

Class	Type of Claim or Interest	Estimated Prepetition Claim Amount [1]	Impaired	Entitled to Vote	Estimated Recovery
1	Jefferies Secured Claim	\$0.00	No	No	100%
2	Frontier Secured Claim[2]	\$5,209,964	Yes	Yes	100%
3	Other Secured Claims	\$551,116	No	No	100%
4	Priority Non-Tax Claim	\$16,489	No	No	100%
5	Retained Employee Claim	\$0	No	No	100%
6	PTO Claims [3]	\$1,181,886	No	No	100%
7	Convenience Claims[4]	\$12,064,333	Yes	Yes	85.00%
8	General Unsecured Claims[5]	\$180,442,199	Yes	Yes	85.31%
9	Subordinated Claims	Undetermined	Yes	Yes	Undetermined
10	Class B/C Limited Partnership Interests	N/A	Yes	Yes	Undetermined
11	Class A Limited Partnership Interests	N/A	Yes	Yes	Undetermined

[1] Excludes Priority Tax Claims and certain other unclassified amounts totaling approximately \$1.1 million owed to Joshua and Jennifer Terry and Acis under a settlement agreement.

[2] Excludes interest accrued postpetition estimated at \$318,000, which will be paid on the Effective Date. The Liquidation Analysis/Financial Projections provide for the payment of postpetition interest.

[3] Represents outstanding PTO Claims as of September 30, 2020. PTO Claims are subject to adjustment depending on the amount of actual prepetition PTO Claims outstanding as of the Effective Date. PTO claims are accounted for in the Liquidation Analysis/Financial Projections as an administrative claim and will be paid out in ordinary courses pursuant to applicable state law.

[4] Represents the estimated gross prepetition amount of Convenience Claims with a total payout amount estimated at 85% of \$12.06 million, or \$10.25 million. This number includes approximately \$1.113 million of potential Rejection Claims and assumes that Holders of Allowed General Unsecured Claims that are each less than \$2.50 million opt into the Convenience Class.

[5] Assumes no recovery for UBS, the HarbourVest Entities, IFA, Hunter Mountain, and an Allowed Claim of only \$3,722,019 for Mr. Daugherty (each as discussed further below). Assumes \$1.440 million of potential rejection damage claims. The Liquidation Analysis/Financial Projections assume Highland RCP, LP and Highland RCP Offshore, LP offset their Claim of \$4.4 million against amounts owed to the Debtor.

### 3. Voting on the Plan

Under the Bankruptcy Code, acceptance of a plan by a Class of Claims or Equity Interests is determined by calculating the number and the amount of Claims voting to accept, based on the actual total Allowed Claims or Equity Interests voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan. Acceptance by a Class of Equity Interests requires at least two-thirds in amount of the total Allowed Equity Interests in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Equity Interests that are “Impaired” and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is “Unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is “Impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims and Equity Interests in those Classes are entitled to vote to accept or reject the Plan. Whether a Holder of a Claim or Equity Interest in Class 2 and Class 7 through Class 11 may vote to accept or reject the Plan will also depend on whether the Holder held such Claim or Equity Interest as of November 23, 2020 (the “Voting Record Date”). The Voting Record Date and all of the Debtor’s solicitation and voting procedures shall apply to all of the Debtor’s Creditors and other parties in interest.

Pursuant to the Plan, Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, there are no Classes that will not receive or retain any property and no Classes are deemed to reject the Plan.

#### 4. Confirmation of the Plan

##### (a) Confirmation Generally

“Confirmation” is the technical term for the Bankruptcy Court’s approval of a plan of reorganization or liquidation. The timing, standards and factors considered by the Bankruptcy Court in deciding whether to confirm a plan of reorganization are discussed below.

The confirmation of a plan by the Bankruptcy Court binds the debtor, any issuer of securities under a plan, any person acquiring property under a plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan discharges a debtor from any debt that arose before the confirmation of such plan and provides for the treatment of such debt in accordance with the terms of the confirmed plan.

##### (b) The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Debtor will provide notice of the Confirmation Hearing to all necessary parties. The Confirmation Hearing may be adjourned from time to time without further notice except for an

announcement of the adjourned date made at the Confirmation Hearing of any adjournment thereof.

5. Confirming and Effectuating the Plan

It is a condition to the Effective Date of the Plan that the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Official Committee of Unsecured Creditors (the "Committee"). Certain other conditions contained in the Plan must be satisfied or waived pursuant to the provisions of the Plan.

6. Rules of Interpretation

The following rules for interpretation and construction shall apply to this Disclosure Statement: (1) capitalized terms used in the Disclosure Statement and not otherwise defined shall have the meaning ascribed to such terms in the Plan; (2) unless otherwise specified, any reference in this Disclosure Statement to a contract, instrument, release, indenture, or other agreement or document shall be a reference to such document in the particular form or substantially on such terms and conditions described; (3) unless otherwise specified, any reference in this Disclosure Statement to an existing document, schedule, or exhibit, whether or not filed, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (4) any reference to an entity as a Holder of a Claim or Equity Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references in this Disclosure Statement to Sections are references to Sections of this Disclosure Statement; (6) unless otherwise specified, all references in this Disclosure Statement to exhibits are references to exhibits in this Disclosure Statement; (7) unless otherwise set forth in this Disclosure Statement, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in this Disclosure Statement that is not otherwise defined in this Disclosure Statement or the Plan but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

7. Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests

As set forth above, Holders of Claims in Class 1 and Class 3 through Class 6 are not entitled to vote on the Plan. As a result, such parties will not receive solicitation packages or ballots but, instead, will receive this a notice of non-voting status, a notice of the Confirmation Hearing, and instructions on how to receive a copy of the Plan and Disclosure Statement.

The Debtor, with the approval of the Bankruptcy Court, has engaged Kurtzman Carson Consultants LLC (the "Voting Agent") to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- A single Ballot, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

On November 13, 2020, the Debtor filed the Plan Supplement [D.I. 1389] that included, among other things, the form of Claimant Trust Agreement, the Litigation Sub-Trust Agreement, the Reorganized Limited Partnership Agreement, New GP LLC Documents, the New Frontier Note, the Senior Employee Stipulation, and the identity of the initial members of the Claimant Trust Oversight Committee. The Plan Supplement also includes a schedule of the Causes of Action that will be retained after the Effective Date. The Plan Supplement may be supplemented or amended through and including December 18, 2020. If the Plan Supplement is supplemented, such supplemented documents will be made available on the Debtor’s restructuring website at [www.kccllc.net/hcmlp](http://www.kccllc.net/hcmlp).

If you are the Holder of a Claim or Equity Interest and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, via email at [HighlandInfo@kccllc.com](mailto:HighlandInfo@kccllc.com) and reference “Highland Capital Management, L.P.” in the subject line or by telephone at toll free: (877) 573-3984, or international: (310) 751-1829. If your Claim or Equity Interest is subject to a pending claim objection and you wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim or Equity Interest for voting purposes or you will not be entitled to vote to accept or reject the Plan. Any such motion must be filed so that it is heard in sufficient time prior to the Voting Deadline to allow for your vote to be tabulated.

**THE DEBTOR, THE REORGANIZED DEBTOR, AND THE CLAIMANT TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.**

8. Instructions and Procedures for Voting

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtor or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed November 23, 2020, as the Voting Record Date for the determination of the Holders of Claims and Equity Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtor's solicitation and voting procedures shall apply to all of the Debtor's Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is January 5, 2021 at 5:00 p.m. (prevailing Central Time) (the "Voting Deadline").** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the following address, as applicable:

**If by first class mail, personal delivery, or overnight mail to:**

**HCMLP Ballot Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245**

**If by electronic voting:**

**You may submit your Ballot via the Balloting Agent's online portal. Please visit <http://www.kccllc.net/hcmlp> and click on the "Submit Electronic Ballot" section of the website and follow the instructions to submit your Ballot. IMPORTANT NOTE: You will need the Unique Electronic Ballot ID Number and the Unique Electronic Ballot PIN Number set forth on your customized ballot in order to vote via the Balloting Agent's online portal. Each Electronic Ballot ID Number is to be used solely for voting on those Claims or Interests on your electronic ballot. You must complete and submit an electronic ballot for each Electronic Ballot ID Number you receive, as applicable. Parties who cast a Ballot using the Balloting Agent's online portal should NOT also submit a paper Ballot.**

Only the Holders of Claims and Equity Interests in Class 2 and Class 7 through Class 11 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim and Equity Interest must vote its entire Claim or Equity Interest, as applicable, within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim or Equity Interest prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to

reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM OR EQUITY INTEREST IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim or Equity Interest, (b) the Solicitation Package that you have received, or (c) the amount of your Claim or Equity Interest, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents filed in these Chapter 11 Case may be obtained free of charge on the Voting Agent's website at [www.kcellc.net/hcmlp](http://www.kcellc.net/hcmlp) or by calling toll free at: (877) 573-3984, or international at: (310) 751-1829. You may also obtain copies of pleadings filed in the Debtor's case for a fee via PACER at [pacer.uscourts.gov](http://pacer.uscourts.gov). Subject to any rules or procedures that have or may be implemented by the Court as a result of the COVID 19 Pandemic, documents filed in this case may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Central Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce Street, Room 1254, Dallas, Texas 75242-1496.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") by January 11, 2021. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE DEBTOR URGES HOLDERS OF CLAIMS AND EQUITY INTERESTS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

9. The Confirmation Hearing

**The Bankruptcy Court has scheduled Confirmation Hearing Dates on January 13, 2021, and January 14, 2021, at 9:30 a.m. prevailing Central time.** The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties-in-interest.

10. The Deadline for Objecting to Confirmation of the Plan

**The Bankruptcy Court has set a deadline of January 5, 2021, at 5:00 p.m. prevailing Central time, for the filing of objections to confirmation of the Plan (the “Confirmation Objection Deadline”).** Any objection to confirmation of the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Local Rules; (iii) state the name of the objecting party and the amount and nature of the Claim of such Entity or the amount of Equity Interests held by such Entity; (iv) state with particularity the legal and factual bases and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is **actually received** no later than the Confirmation Objection Deadline by the parties set forth below (the “Notice Parties”).

**CONFIRMATION OBJECTIONS NOT TIMELY FILED AND SERVED IN THE MANNER SET FORTH HEREIN MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE OVERRULED WITHOUT FURTHER NOTICE. INSTRUCTIONS WITH RESPECT TO THE CONFIRMATION HEARING AND DEADLINES WITH RESPECT TO CONFIRMATION WILL BE INCLUDED IN THE NOTICE OF CONFIRMATION HEARING APPROVED BY THE BANKRUPTCY COURT.**

11. Notice Parties

- Debtor: Highland Capital Management, L.P., 300 Crescent Court, Suite 700, Dallas, Texas 75201 (Attn: James P. Seery, Jr.);
- Counsel to the Debtor: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067-4003 (Attn: Jeffrey Pomerantz, Esq.; Ira Kharasch, Esq., and Gregory Demo, Esq.);
- Counsel to the Committee: Sidley Austin, LLP, One South Dearborn, Chicago, Illinois 60603 (Attn: Matthew Clemente, Esq., and Alyssa Russell, Esq.); and
- Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Lisa Lambert, Esq.).

12. Effect of Confirmation of the Plan

The Plan contains certain provisions relating to (a) the compromise and settlement of Claims and Equity Interests; (b) exculpation of certain parties; and (c) the release of claims against certain parties by the Debtor.

**The Plan shall bind all Holders of Claims against and Equity Interests in the Debtor to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder (i) will receive or retain any property or interest in property under the Plan, (ii) has filed a proof of claim in the Chapter 11 Case, or (iii) did not vote to accept or reject the Plan.**

**D. Effectiveness of the Plan**

It will be a condition to the Effective Date of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following confirmation, the Plan will go into effect on the Effective Date.

**E. RISK FACTORS**

**Each Holder of a Claim or an Equity Interest is urged to consider carefully all of the information in this Disclosure Statement, including the risk factors described in ARTICLE IV herein titled, “Risk Factors.”**

**ARTICLE II.**  
**BACKGROUND TO THE CHAPTER 11 CASE AND SUMMARY OF**  
**BANKRUPTCY PROCEEDINGS TO DATE**

**A. Description and History of the Debtor’s Business**

Prior to the Petition Date, the Debtor was a multibillion-dollar global alternative investment manager founded in 1993 by James Dondero and Mark Okada. A pioneer in the leveraged loan market, the firm evolved over twenty-five years, building on its credit expertise and value-based approach to expand into other asset classes.

As of the Petition Date, the Debtor operated a diverse investment platform, serving both institutional and retail investors worldwide. In addition to high-yield credit, the Debtor’s investment capabilities include public equities, real estate, private equity and special situations, structured credit, and sector- and region-specific verticals built around specialized teams. Additionally, the Debtor provided shared services to its affiliated registered investment advisers.

**B. The Debtor’s Corporate Structure**

The Debtor is headquartered in Dallas, Texas. The Debtor itself is a Delaware limited partnership and one of the principal operating arms of the Debtor’s business. As of the Petition Date, the Debtor employed approximately 76 people, including executive-level management employees, finance and legal staff, investment professionals, and back-office accounting and administrative personnel.

Pursuant to various contractual arrangements, the Debtor, as of the Petition Date, provided money management and advisory services for approximately \$2.5 billion of assets under management shared services for approximately \$7.5 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. None of these affiliates filed for Chapter 11 protection. As of September 30, 2020, the Debtor provided money management and advisory services for approximately \$1.641 billion of assets under management and shared services for approximately \$7.136 billion of assets managed by a variety of affiliated and unaffiliated entities, including other affiliated registered investment advisers. Further, on the Petition Date, the value of the Debtor’s Assets was approximately

\$566.5 million. As of September 30, 2020, the total value of Debtor’s Assets totaled approximately \$328.3 million.

The drop in the value of the Debtor’s Assets and assets under management was caused, in part, by the COVID-19 global pandemic. Specifically, the decline was the result of, among other things, the drop in value of the Debtor’s assets generally, the loss of value in the Prime Accounts discussed below, the professional and other costs associated with the Chapter 11 Case, and the reserve of approximately \$59 million against a loan receivable listed as an asset.

<u>Asset</u>	<u>10/16/2019</u>	<u>9/30/2020</u>
Investments (FV)[1]	\$232,620,000	\$109,479,000
Investments (Equity)	\$161,819,000	\$101,213,000
Cash/Cash Equivalents	\$2,529,000	\$5,888,000
Management/Incentive Fees Receivable	\$2,579,000	\$3,350,000
Fixed Assets, net	\$3,754,000	\$2,823,000
Loan Receivables	\$151,901,000	\$93,445,000[2]
Other Assets	\$11,311,000	\$12,105,000
<b>Totals</b>	\$566,513,000	\$328,302,000

[1] Includes decrease in value of assets, costs of Chapter 11 Cases, and assets sold to satisfy liabilities.

[2] Net of reserve of \$59 million.

The Debtor’s organizational chart is attached hereto as Exhibit B. The organizational chart is not all inclusive and certain entities have been excluded for the sake of brevity.

**C. Business Overview**

The Debtor’s primary means of generating revenue has historically been from fees collected for the management and advisory services provided to funds that it manages, plus fees generated for services provided to its affiliates. For additional liquidity, the Debtor, prior to the Petition Date, would sell liquid securities in the ordinary course held through its prime brokerage account at Jefferies, LLC (“Jefferies”), as described in additional detail below. The Debtor would also, from time to time, sell assets at non-Debtor subsidiaries and distribute those proceeds to the Debtor in the ordinary course of business. During calendar year 2018, the Debtor’s stand-alone annual revenue totaled approximately \$50 million. During calendar year 2019, the Debtor’s stand-alone revenue totaled approximately \$36.1 million.

**D. Prepetition Capital Structure**

1. Jefferies Margin Borrowings (Secured)

The Debtor is party to that certain *Prime Brokerage Customer Agreement* with Jefferies dated May 24, 2013 (the “Brokerage Agreement”). Pursuant to the terms of the Brokerage Agreement and related documents, the Debtor maintains a prime brokerage account with

Jefferies (the “Prime Account”). A prime brokerage account is a unique type of brokerage account that allows sophisticated investors to, among other things, borrow both money on margin to purchase securities and common stock to facilitate short positions. A prime brokerage account also serves as a custodial account and holds client securities in the prime broker’s street name.

As of the Petition Date, the Debtor held approximately \$57 million of equity in liquid and illiquid securities (the “Securities”) in the Prime Account. Pursuant to the Brokerage Agreement, the Debtor granted a lien in favor of Jefferies in the Securities and all of the proceeds thereof.

However, because of the economic distress caused by the COVID-19 global pandemic, the value of the Securities held in the Prime Account dropped since the Petition Date, and Jefferies has exerted significant pressure on the Debtor to liquidate the Securities to satisfy margin calls. As of September 30, 2020, the equity value of the Securities in the Prime Account was approximately \$23.3 million, and the Debtor owed no amounts to Jefferies. The Debtor has been actively selling Securities to cover operating expenses and professional fees.

2. The Frontier Bank Loan (Secured)

The Debtor and Frontier State Bank (“Frontier Bank”) are parties to that certain *Loan Agreement* dated as of August 17, 2015 (the “Original Frontier Loan Agreement”), pursuant to which Frontier Bank loaned to the Debtor the aggregate principal amount of \$9.5 million. On March 29, 2018, the Debtor and Frontier Bank entered into that certain First Amended and Restated Loan Agreement (the “Amended Frontier Loan Agreement”), amending and superseding the Original Frontier Loan Agreement. Pursuant to the Amended Frontier Loan Agreement, Frontier Bank made an additional \$1 million loan to the Debtor (together with the borrowings under the Original Frontier Loan Agreement, the “Frontier Loan”). The Frontier Loan matures on August 17, 2021.

Pursuant to that certain Security and Pledge Agreement dated August 17, 2015, between Frontier Bank and the Debtor, as amended by the Amended Frontier Loan Agreement, the Debtor’s obligations under the Frontier Loan are secured by 171,724 shares of voting common stock of MGM Holdings, Inc. (collectively, the “Frontier Collateral”).

The aggregate principal balance of the Frontier Loan was approximately \$5.2 million. As of September 30, 2020, the value of the Frontier Collateral was approximately \$13.1 million, and approximately \$318,000 in postpetition interest had accrued.

3. Other Unsecured Obligations

As discussed below, the Plan provides for four Classes of unsecured claims: (i) PTO Claims, (ii) the Convenience Claims, (iii) the General Unsecured Claims, and (iv) the Subordinated Claims.

The Debtor has various substantial litigation claims asserted against it, which have been classified as General Unsecured Claims. In addition, as of the Petition Date, the Debtor had ordinary course trade debt, unaccrued employee bonus obligations and loan repayment, and

contractual commitments to various affiliated and unaffiliated non-Debtor entities for capital calls, contributions, and other potential reimbursement or funding obligations that were potentially in the tens of millions of dollars. The Debtor is still assessing these claims and its liability for such amounts. These Claims have been classified as Convenience Claims and Subordinated Claims.

#### 4. Equity Interests

The Debtor is a Delaware limited partnership. As of the Petition Date, the Debtor had three classes of limited partnership interest (Class A, Class B, and Class C). The Class A interests were held by The Dugaboy Investment Trust, Mark Okada, personally and through family trusts, and Strand, the Debtor's general partner. The Class B and C interests were held by Hunter Mountain.

In the aggregate, the Debtor's limited partnership interests were held: (a) 99.5% by Hunter Mountain; (b) 0.1866% by The Dugaboy Investment Trust, (c) 0.0627% by Mark Okada, personally and through family trusts, and (d) 0.25% by Strand.

#### **E. SEC Filings**

The Debtor is an investment adviser registered with the SEC as required by the Investment Advisers Act of 1940. As a registered investment adviser, the Debtor is required to file (at least annually) a Form ADV. The Debtor's current Form ADV is available at <https://adviserinfo.sec.gov/>.

Following the Effective Date, it is anticipated that the Reorganized Debtor will maintain its registration with the SEC as a registered investment adviser.

#### **F. Events Leading Up to the Debtor's Bankruptcy Filings**

The Chapter 11 Case was precipitated by the rendering of an Arbitration Award (as that term is defined below) against the Debtor on May 9, 2019, by a panel of the American Arbitration Association (the "Panel"), in favor of the Redeemer Committee of the Highland Crusader Fund (the "Redeemer Committee").

The Debtor was formerly the investment manager for the Highland Crusader Funds (the "Crusader Funds") that were formed between 2000 and 2002. In September and October 2008, as the financial markets in the United States began to fail, the Debtor was flooded with redemption requests from Crusader Funds' investors, as the Crusader Funds' assets lost significant value.

On October 15, 2008, the Debtor placed the Crusader Funds in wind-down, thereby compulsorily redeeming the Crusader Funds' limited partnership interests. The Debtor also declared that it would liquidate the Crusader Funds' remaining assets and distribute the proceeds to investors.

However, disputes concerning the distribution of the assets arose among certain investors. After several years of negotiations, a Joint Plan of Distribution of the Crusader Funds

(the “Crusader Plan”), and the Scheme of Arrangement between Highland Crusader Fund and its Scheme Creditors (the “Crusader Scheme”), were adopted in Bermuda and became effective in August 2011. As part of the Crusader Plan and the Crusader Scheme, the Redeemer Committee was elected from among the Crusader Funds’ investors to oversee the Debtor’s management of the Crusader Funds.

Between October 2011 and January 2013, in accordance with the Crusader Plan and the Crusader Scheme, the Debtor distributed in excess of \$1.2 billion to the Crusader Funds’ investors. The Debtor distributed a further \$315.3 million through June 2016.

However, disputes subsequently arose between the Redeemer Committee and the Debtor. On July 5, 2016, the Redeemer Committee (a) terminated and replaced the Debtor as investment manager of the Crusader Fund, (b) commenced an arbitration against the Debtor (the “Arbitration”), and (c) commenced litigation in Delaware Chancery Court, to, among other things, obtain a status quo order in aid of the arbitration, which order was subsequently entered.

Following an evidentiary hearing, the Panel issued (a) a *Partial Final Award*, dated March 6, 2019 (the “March Award”), (b) a *Disposition of Application for Modification of Award*, dated March 14, 2019 (the “Modification Award”), and (c) a *Final Award*, dated May 9, 2019 (the “Final Award” and together with the March Award and the Modification Award, the “Arbitration Award”). Pursuant to the Arbitration Award, the Redeemer Committee was awarded gross damages against the Debtor in the aggregate amount of \$136,808,302; as of the Petition Date, the total value of the Arbitration Award was \$190,824,557, inclusive of interest

Prior to the Petition Date, the Redeemer Committee moved in the Chancery Court to confirm the Arbitration Award. For its part, the Debtor moved to vacate parts of the Final Award contending that certain aspects were procedurally improper. The Redeemer Committee’s motion to confirm the Arbitration Award and the Debtor’s motion to vacate were fully briefed and were scheduled to be heard by the Chancery Court on the day the Debtor filed for bankruptcy

On the Petition Date, the Debtor believed that the aggregate value of its assets exceeded the amount of its liabilities; however, the Debtor filed the Chapter 11 Case because it did not have sufficient liquidity to immediately satisfy the Award or post a supersedeas bond necessary to pursue an appeal.

### **G. Additional Prepetition Litigation**

In addition to the litigation with the Redeemer Committee described above, the Debtor, both directly and through certain subsidiaries, affiliates, and related entities, was party to substantial prepetition litigation. Although the Debtor disputes the allegations raised in this litigation and believes it has substantial defenses, this litigation has resulted in substantial Claims against the Debtor’s Estate, each of which has been classified as a General Unsecured Claim. To the extent that these litigation Claims cannot be resolved consensually, they will be litigated by the Claimant Trustee or Reorganized Debtor, as applicable. The Debtor’s major prepetition litigation is as follows:

- Redeemer Committee: The dispute with the Redeemer Committee is described in ARTICLE II.F above. As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves the Redeemer Committee's claims against the Estate; however, that order is currently subject to appeal.
- Acis Capital Management, L.P., & Acis Capital Management GP, LLC: On January 30, 2018, Joshua Terry filed involuntary bankruptcy petitions against both Acis Capital Management, L.P. ("Acis LP") and its general partner, Acis Capital Management GP, LLC ("Acis GP," and collectively with Acis LP, "Acis") in the Bankruptcy Court for the Northern District of Texas, Dallas Division, the Honorable Judge Jernigan presiding (the same judge presiding over the Chapter 11 Case), Case No. 18-30264-SGJ (the "Acis Case"). Mr. Terry had been an employee of the Debtor and a limited partner of Acis LP. Mr. Terry was terminated in June 2016, and obtained a multi-million dollar arbitration award against Acis. Overruling various objections, the Bankruptcy Court entered the orders for relief for the Acis debtors in April 2018, and a chapter 11 trustee was appointed. The Debtor filed a proof of claim against Acis and an administrative claim. Acis disputes the Debtor's claim, and the Debtor has not received any distributions on its claim to date. On January 31, 2019, Acis's chapter 11 plan was confirmed, and Mr. Terry become the sole owner of reorganized Acis. Several appeals remain pending, including an appeal of the entry of the Acis orders for relief and the Acis confirmation order.

The Acis trustee commenced a lawsuit against the Debtor, among others, alleging fraudulent conveyance and other causes of action in relation to the Debtor's alleged prepetition effort to control and transfer away Acis's assets to avoid paying Mr. Terry's claim. After the confirmation of the Acis plan, reorganized Acis allegedly supplanted the Acis Trustee as plaintiff and filed an amended complaint against the Debtor and other defendants, which claims comprise Acis's pending proof of claim against the Debtor.

As discussed in ARTICLE II.R, the Bankruptcy Court entered an order approving a settlement that resolves Acis's claims against the Estate; however, that order is currently subject to appeal.

- UBS Securities LLC and UBS AG London Branch: UBS Securities LLC ("UBS Securities") filed a proof of claim in the amount of \$1,039,957,799.40 [Claim No. 190] (the "UBS Securities Claim"), and UBS AG, London Branch ("UBS London," and together with UBS Securities, "UBS") filed a substantively identical proof of claim in the amount of \$1,039,957,799.40 [Claim No. 191] (the "UBS London Claim" and together with the UBS Securities Claim, the "UBS Claim"). The UBS Claim was based on the amount of a judgment UBS received on a breach of contract claim against funds related to the Debtor that were unable to honor margin calls in 2008. Although the Debtor had no obligation under UBS's contracts with the funds, UBS alleges the Debtor is liable for the judgment because it (i) breached an alleged duty to ensure that the funds could pay UBS, (ii) caused or permitted \$233 million in alleged fraudulent transfers to be made by

Highland Financial Partners, L.P. (“HFP”) in March 2009, and (iii) is an alter ego of the funds. The Debtor believes there are meritorious defenses to most, if not all, of the UBS Claim for numerous reasons, including: (i) decisions by the New York Appellate Division that limited UBS’s claims to the March 2009 transfers that it alleges were fraudulent; (ii) those decisions should also apply to any alter ego claim (which at this time has not been formally asserted against the Debtor); (iii) UBS settled claims relating to \$172 million of the \$233 million in alleged fraudulent transfers and the Debtor is covered by the release; and (iv) the March 2009 transfers were in any event part of a wholly legitimate transaction that did not target UBS and for which HFP received fair consideration. Those and several additional defenses are described in the *Debtor’s Objection to Proofs of Claim 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 928].

On October 19, 2020, both the Debtor and the Redeemer Committee filed motions seeking partial summary judgment of the UBS Claim, which, if granted, will significantly decrease the UBS Claim.<sup>5</sup> UBS responded to these motions on November 6, 2020 [D.I. 1341]. On November 20, 2020, the Bankruptcy Court granted partial summary judgment in favor of the Debtor and the Redeemer Committee. It is anticipated that the Bankruptcy Court will enter a formal order within the next couple of weeks.

- Patrick Daugherty: Patrick Daugherty has Filed a Proof of Claim for “at least \$37,483,876.62” [Claim Nos. 67; 77] (the “Daugherty Claim”).<sup>6</sup> Mr. Daugherty is a former limited partner and employee of the Debtor. The Daugherty Claim has three components, and Mr. Daugherty asserts claims: (1) for indemnification for any taxes Mr. Daugherty is required to pay as a result of the IRS audit of the Debtor’s 2008-2009 tax return; (2) for defamation arising from a 2017 press release posted by the Debtor; and (3) arising from a pending Delaware lawsuit against the Debtor, which seeks to recover a judgment of \$2.6 million in respect of Highland Employee Retention Assets (“HERA”), plus interest, from assets Mr. Daugherty claims were fraudulently transferred to the Debtor. The Daugherty Claim also seeks (a) the value of Mr. Daugherty’s asserted interest in HERA, which he values at approximately \$26 million; and (b) indemnification for fees incurred in the Delaware action and in previous litigation in Texas State Court. The Debtor believes that the Daugherty Claim should be allowed in the amount of

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<sup>5</sup> See *Debtor’s Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1180]; *Debtor’s Opening Brief in Support of Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS Securities LLC and UBS AG, London Branch* [D.I. 1181]; *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1183]; and *Redeemer Committee of the Highland Crusader Fund and the Crusaders Funds’ Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor’s Motion for Partial Summary Judgment on Proof of Claim No. 190 and 191 of UBS AG, London Branch and UBS Securities LLC* [D.I. 1186].

<sup>6</sup> On October 23, 2020, Mr. Daugherty filed *Patrick Hagaman Daugherty’s Motion for Leave to Amend Proof of Claim No. 77* [D.I. 1280] pursuant to which Mr. Daugherty has asked leave to amend the Daugherty Claim to assert damages of \$40,710,819.42. On November 17, 2020, the Bankruptcy Court approved Mr. Daugherty’s request to amend the Daugherty Claim from the bench.

\$3,722,019; however, the Debtor believes, for various reasons, that the balance of the Daugherty Claim lacks merit. The Debtor's defenses to the Daugherty Claim are described in the *Debtor's (i) Objection to Claim No. 77 of Patrick Hagaman Daugherty and (ii) Complaint to Subordinate Claim of Patrick Hagaman Daugherty* [D.I. 1008].

## **H. The Debtor's Bankruptcy Proceeding**

On October 16, 2019, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court"). On December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Chapter 11 Case to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").<sup>7</sup> The Debtor continues to operate its business and manage its properties as debtor-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

An immediate effect of commencement of the Chapter 11 Case was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts, the enforcement of liens against property of the Debtor, and the continuation of litigation against the Debtor during the pendency of the Chapter 11 Case. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the later of the Effective Date and the date indicated in any order providing for the implementation of such stay or injunction.

## **I. First Day Relief**

On or about the Petition Date, the Debtor filed certain "first day" motions and applications (the "First Day Motions") with the Delaware Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case and to facilitate the Debtor's transition to debtor-in-possession status. A brief description of each of the First Day Motions and the evidence in support thereof is set forth in the *Declaration of Frank Waterhouse in Support of First Day Motions* [D.I. 11] (the "First Day Declaration"). At a hearing on October 19, 2019, the Delaware Bankruptcy Court granted virtually all of the relief initially requested in the First Day Motions [D.I. 39, 40, 42-44].

The Delaware Bankruptcy Court subsequently entered an order authorizing the Debtor to pay critical vendor claims on a final basis [D.I. 168]. Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Bankruptcy Court entered an order authorizing the Debtor to continue its cash management system on a final basis [D.I. 379].

The First Day Motions, the First Day Declaration, and all orders for relief granted in this case can be viewed free of charge at <https://www.kccllc.net/hcmlp>.

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<sup>7</sup> All docket reference numbers refer to the docket maintained by the Bankruptcy Court.

## **J. Other Procedural and Administrative Motions**

On and after the Petition Date, the Debtor also filed a number of motions and applications to retain professionals and to streamline the administration of the Chapter 11 Case, including:

- Interim Compensation Motion. On October 29, 2019, the Debtor filed the *Debtor's Motion Pursuant o Sections 105(a), 330 and 331 of the Bankruptcy Code for Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [D.I. 72] (the "Interim Compensation Motion"). The Interim Compensation Motion sought to establish procedures for the allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals whose retentions are approved by the Bankruptcy Court pursuant to section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to section 330 and 331 of the Bankruptcy Code. On November 14, 2019, the Delaware Bankruptcy Court entered an order granting the Interim Compensation Motion [D.I. 141].
- Ordinary Course Professionals. On October 29, 2019, the Debtor filed the Motion of the Debtor for an Order Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course of Business [D.I. 75] (the "OCP Motion"). The OCP Motion sought authority for the Debtor to retain and compensate certain professionals in the ordinary course of its business. On November 26, 2019, the Delaware Bankruptcy Court entered an order granting the OCP Motion [D.I. 176].
- Retention Applications. During the course of the chapter 11 case, the Delaware Bankruptcy Court or Bankruptcy Court, as applicable, have approved a number of applications by the Debtor seeking to retain certain professionals pursuant to sections 327, 328 and/or 363 of the Bankruptcy Code, including Pachulski Stang Ziehl & Jones LLP as legal counsel [D.I. 183], Development Specialists, Inc. as chief restructuring officer and financial advisor [D.I. 342], Kurtzman Carson Consultants LLC as administrative advisor [D.I. 74], Mercer (US) Inc. as compensation consultant [D.I. 381], Hayward & Associates PLLC as local counsel [D.I. 435], Foley Gardere, Foley & Lardner LLP as special Texas counsel [D.I. 513], Deloitte Tax LLP as tax services provider [D.I. 551], Wilmer Cutler Pickering Hale and Dorr LLP as regulatory and compliance counsel [D.I. 669], and Hunton Andrews Kurth LLP as special tax counsel [D.I. 763].

## **K. United States Trustee**

While the Chapter 11 Case was pending in the Delaware Bankruptcy Court, the U.S. Trustee for Region 3 appointed Jane Leamy as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Delaware U.S. Trustee"). Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Delaware U.S. Trustee no longer represented the U.S. Trustee, and the U.S. Trustee for Region 6 appointed Lisa Lambert as the attorney for the U.S. Trustee in connection with this Chapter 11 Case (the "Texas U.S. Trustee," and together with the

Delaware U.S. Trustee, the “U.S. Trustee”). The Debtor has worked cooperatively to address concerns and comments from the U.S. Trustee’s office during this Chapter 11 Case.

**L. Appointment of Committee**

On October 29, 2019, the Delaware U.S. Trustee appointed the Committee in this Chapter 11 Case [D.I. 65]. The members of the Committee are (a) Redeemer Committee of Highland Crusader Fund, (b) Meta-e Discovery, (c) UBS Securities LLC and UBS AG London Branch, and (d) Acis Capital Management, L.P. and Acis Capital Management GP, LLP. Meta-E Discovery is a vendor to the Debtor. The other members of the Committee are litigants in prepetition litigation with the Debtor as described in ARTICLE II.G. The Bankruptcy Court approved the retention of Sidley Austin LLP as counsel to the Committee [D.I. 334], Young Conaway Stargatt & Taylor, LLP as Delaware co-counsel to the Committee [D.I. 337], and FTI Consulting, Inc. as financial advisor to the Committee [D.I. 336].

**M. Meeting of Creditors**

The meeting of creditors under section 341(a) of the Bankruptcy Code was initially scheduled for November 20, 2019, at 9:30 a.m. (prevailing Eastern Time) at the J. Caleb Boggs Federal Building, 844 N. King Street, Room 3209, Wilmington, Delaware 19801, and was rescheduled to December 3, 2019, at 10:30 a.m. (prevailing Eastern Time). At the meeting of creditors, the Delaware U.S. Trustee and creditors asked questions of a representative of the Debtor.

Following the transfer of the Chapter 11 Case to the Bankruptcy Court, the Texas U.S. Trustee scheduled an additional meeting of creditors under section 341(a) for January 9, 2020, at 11:00 a.m. (prevailing Central Time) at the Office of the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242, at the conclusion of that meeting, the Texas U.S. Trustee continued the meeting to January 22, 2020. The Texas U.S. Trustee and creditors asked questions of a representative of the Debtor at the January 9 and January 22, 2020 meetings.

**N. Schedules, Statements of Financial Affairs, and Claims Bar Date**

The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) on December 19, 2019 [D.I. 247-248]. A creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated or disputed may have elected to file a proof of claim against the Debtor.

The Bankruptcy Court established (i) April 8, 2020 as the deadline for Creditors (other than governmental units) to file proofs of claim against the Debtor; (ii) April 13, 2020, as the deadline for any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code), (iii) April 23, 2020, and as the deadline for any investors in any fund managed by the Debtor to file proofs of claim against the Debtor; and (iv) May 26, 2020 as the deadline for the Debtor’s employees to file proofs of claim against the Debtor pursuant to and accordance with Court’s order entered on April 3, 2020 [D.I. 560].<sup>8</sup> Consequently, the bar date for filing proofs

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<sup>8</sup> During the course of its Chapter 11 Case, the Debtor entered into stipulations to extend the Bar Date for certain other claimants or potential claimants.

of claims has passed and any claims filed after the applicable bar date will be considered late filed.

**O. Governance Settlement with the Committee**

On January 9, 2020, the Bankruptcy Court entered the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [D.I. 339] (the “Settlement Order”).

Among other things, the Settlement Order approved a term sheet (the “Term Sheet”) agreed to by the Debtor and the Committee pursuant to which the Debtor agreed to abide by certain protocols governing the production of documents and certain protocols governing the operation of the Debtor’s business (the “Operating Protocols”). Under the Operating Protocols, the Debtor agreed to seek consent from the Committee prior to entering into certain “Transactions” (as defined in the Operating Protocols. The Operating Protocols were amended on February 21, 2020, with the consent of the Committee [D.I. 466].

Pursuant to the Term Sheet, the Debtor also granted the Committee standing to pursue certain estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and the Related Entities (as defined in the Operating Protocols) (collectively, the “Estate Claims”). To the extent permitted, the Estate Claims and the ability to pursue the Estate Claims are being transferred to either the Claimant Trust or Litigation Sub-Trust pursuant to the Plan.

In connection with the Settlement Order, an independent board of directors was also appointed at Strand, the Debtor’s general partner (the “Independent Board”). The members of the Independent Board are John S. Dubel, James P. Seery, Jr., and Russell Nelms. The Independent Board was tasked with managing the Debtor’s operations during the Chapter 11 Case and facilitating a reorganization or orderly liquidation of the Debtor’s Estate.

**P. Appointment of James P. Seery, Jr., as Chief Executive Officer and Chief Restructuring Officer**

Following their appointment in January 2020, the Independent Board determined that it would be more efficient for the Debtor to have a traditional corporate management structure, i.e. a fully engaged chief executive officer supervised by the Independent Board. The Independent Board ultimately determined that Mr. Seery – a member of the Independent Board – had the requisite experience and expertise to lead the Debtor. On June 23, 2020, the Debtor filed *Debtor’s Motion Under Bankruptcy Code Sections 105(a) and 363(b) for Authorization to Retain James P. Seery, Jr., as Chief Executive Officer, Chief Restructuring Officer and Foreign Representative Nunc Pro Tunc to March 15, 2020* [D.I. 774] (the “Seery Retention Motion”) to retain Mr. Seery as chief executive officer, chief restructuring officer, and foreign representative.

The Bankruptcy Court entered an order approving the Seery Retention Motion on July 16, 2020 [D.I. 854]. Mr. Seery was retained as the Debtor’s chief executive officer and the duties of Bradley Sharp of DSI as the Debtor’s chief restructuring officer and foreign representative were transferred to Mr. Seery.

## Q. Mediation

On August 3, 2020, the Bankruptcy Court entered the *Order Directing Mediation* [D.I. 912] pursuant to which the Bankruptcy Court ordered the Debtor, the Committee, UBS, Acis, the Redeemer Committee, and Mr. Dondero into mediation and appointed Sylvia Mayer and Allan Gropper as the mediators (the “Mediators”). The mediation began on August 27, 2020, and is still open as of the date of this Disclosure Statement

## R. Postpetition Settlements

### 1. Settlement with Acis and the Terry Parties

With the assistance of the Mediators, on September 9, 2020, (i) the Debtor, (ii) Acis LP, (iii) Acis GP, and (iv) Joshua N. Terry, individually and for the benefit of his individual retirement accounts, and Jennifer G. Terry, individually and for the benefit of her individual retirement accounts and as trustee of the Terry Family 401-K Plan (together, the “Terry Parties”) executed that certain Settlement Agreement and General Release. On September 23, 2020, the Debtor filed the *Debtor’s Motion for Entry of an Order Approving Settlement with (a) Acis Capital Management, L.P. and Acis Capital Management GP LLC (Claim No. 23), (b) Joshua N. Terry and Jennifer G. Terry (Claim No. 156), and (c) Acis Capital Management, L.P. (Claim No. 159) and Authorizing Actions Consistent Therewith* [D.I. 1087] (the “Acis Settlement Motion”).

The Settlement Agreement and General Release contain the following material terms, among others:

- The proof of claim filed by Acis [Claim No. 23] will be Allowed in the amount of \$23,000,000 as a General Unsecured Claim.
- On the Effective Date of the Plan (or any other plan of reorganization confirmed by the Bankruptcy Court), the Debtor will pay in cash to:
  - Mr. and Mrs. Terry in the amount of \$425,000 plus 10% simple interest (calculated on the basis of a 360-day year from and including June 30, 2016), in full and complete satisfaction of the proof of claim filed by the Terry Parties [Claim No. 156];
  - Acis LP in the amount of \$97,000, which amount represents the legal fees incurred by Acis LP with respect to the *NWCC, LLC v. Highland CLO Management, LLC, et al.*, Index No. 654195/2018 (N.Y. Sup. Ct. 2018), in full and complete satisfaction of the proof of claim filed by Acis LP [Claim No. 159]; and
  - Mr. Terry in the amount of \$355,000 in full and complete satisfaction of the legal fees assessed against Highland CLO Funding, Ltd., in *Highland CLO Funding v. Joshua Terry*, [No Case Number], pending in the Royal Court of the Island of Guernsey;

The Settlement Agreement also provides that within five days of the Bankruptcy Court's approval of the Settlement Agreement and the General Release, the Debtor will move to withdraw, with prejudice, the proofs of claim that the Debtor filed in the Acis bankruptcy cases and the motion filed by the Debtor in the Acis bankruptcy cases seeking an administrative claim for postpetition services provided to Acis.

On October 5, 2020, James Dondero filed an objection to the Acis Settlement Motion [D.I. 1121] (the "Dondero Objection"). On October 28, 2020, the Bankruptcy Court entered an order approving the Acis Settlement Motion and overruling the Dondero Objection in its entirety [D.I. 1347]. On November 9, 2020, Mr. Dondero filed a notice of his intent to appeal the order approving the Acis Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Acis Settlement Motion and related documents for additional information on the Settlement Agreement and General Release.

## 2. Settlement with the Redeemer Committee

The Debtor, Eames, Ltd., the Redeemer Committee, and the Crusader Funds (collectively, the "Settling Parties") executed a settlement (the "Redeemer Stipulation"). The Redeemer Stipulation was also executed, solely with respect to paragraphs 10 through 15 thereof, by Hockney, Ltd., Strand, Highland CDO Opportunity Master Fund, L.P., Highland Credit Strategies Master Fund, L.P., Highland Credit Opportunities CDO, L.P., House Hanover, LLC, and Alvarez & Marsal CRF Management, LLC (collectively, the "Additional Release Parties"). On September 23, 2020, the Debtor filed *Debtor's Motion for Entry of an Order Approving Settlements with (A) the Redeemer Committee of the Highland Crusader Funds (Claim No. 72), and (B) the Highland Crusader Funds (Claim No. 81), and Authorizing Actions Consistent Therewith* [D.I. 1089] seeking approval of the Redeemer Stipulation (the "Redeemer Settlement Motion").

The Redeemer Stipulation contains the following material terms, among others:

- The proof of claim filed by the Redeemer Committee [Claim No. 72] will be Allowed in the amount of \$137,696,610 as a General Unsecured Claim;
- The proof of claim filed by the Crusader Funds [Claim No. 81] will be Allowed in the amount of \$50,000 as a General Unsecured Claim;
- The Debtor and Eames, Ltd., each (a) consented to the cancellation of certain interests in the Crusader Funds held by them, and (b) agreed that they will not object to the cancellation of certain interests in the Crusader Funds held by the Charitable Donor Advised Fund;4
- The Debtor and Eames each acknowledged that they will not receive any portion of certain reserved distributions, and the Debtor further acknowledged that it will not receive any payments from the Crusader Funds in respect of any deferred fees, distribution fees, or management fees;

- The Debtor and the Redeemer Committee agreed to a form of amendment to the shareholders' agreement for Cornerstone Healthcare Group and to a process to monetize Cornerstone Healthcare Group;
- Upon the effective date of the Redeemer Stipulation, the Settling Parties and the Additional Release Parties shall exchange releases as set forth in the Redeemer Stipulation; and
- All litigation between the Debtor, Eames, Ltd., and the Additional Highland Release Parties (as defined in the Redeemer Stipulation) on the one hand, and the Redeemer Committee and the Crusader Funds, on the other hand, will cease.

On October 16, 2020, UBS filed an objection to the Redeemer Settlement Motion [D.I. 1190] (the "UBS Objection"). On October 22, 2020, the Bankruptcy Court entered an order approving the Redeemer Settlement Motion and overruling the UBS Objection in its entirety [D.I. 1273]. On November 6, 2020, UBS filed a notice of its intent to appeal the order approving the Redeemer Settlement Motion.

The foregoing is a summary only, and all parties are encouraged to review the Redeemer Settlement Motion and related documents for additional information on the Redeemer Stipulation.

#### **S. Certain Outstanding Material Claims**

As discussed above, April 8, 2020, was the general bar date for filing proofs of claim. The Debtor has begun the process of resolving those Claims. Although each Claim represents a potential liability of the Estate, the Debtor believes that, in addition to UBS's Claim, the Claims filed by Integrated Financial Associates, Inc. ("IFA"), the HarbourVest Entities,<sup>9</sup> and Hunter Mountain represent the largest unresolved Claims against the Estate.

- IFA Proof of Claim. IFA filed a proof of claim [Claim No. 93] (the "IFA Claim") seeking damages in the amount of \$241,002,696.73 arising from the purported joint control of the Debtor and NexBank, SSB, and the Debtor's management of various lenders to IFA. The Debtor believes that IFA's claim should be disallowed in its entirety. IFA's claim and the Debtor's defenses thereto are described in greater detail in the *Objection to Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 868]. On October 4, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Proof of Claim No. 93 of Integrated Financial Associates, Inc.* [D.I. 1126], which capped the IFA Claim, for all purposes, at \$8,000,000.
- HarbourVest Entities Proofs of Claim. The HarbourVest Entities are investors in Highland CLO Funding, Ltd. ("HCLOF") and filed proofs of claim against the

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<sup>9</sup> "HarbourVest Entities" means HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

Debtor's Estate [Claim No. 143, 147, 149, 150, 153, 154] (the "HarbourVest Claims"). The Debtor included an assertion of "no liability" in respect of the HarbourVest Claims in its Debtor's *First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No-Liability Claims; and (f) Insufficient Documentation Claims* [D.I. 906]. HarbourVest provided a response in its *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [D.I. 1057]. The HarbourVest Entities' response argued that the Debtor's objection should be overruled, and set forth allegations in support of claims under federal and state law and Guernsey law, including claims for fraud, violations of securities laws, breaches of fiduciary duties, and RICO violations. The Debtor intends to vigorously defend the HarbourVest Claims on various grounds, including, among others, the failure to state a claim upon which relief can be granted, the lack of reasonable reliance, the lack of misrepresentations, the lack of reasonable reliance, the failure to mitigate damages, the parties' agreements bar or otherwise limit the Debtor's liability, and waiver and estoppel. The HarbourVest Entities invested approximately \$80 million in HCLOF but seek an allowed claim in excess of \$300 million dollars (after giving effect to treble damages for the alleged RICO violations).

- Hunter Mountain Proof of Claim. Hunter Mountain is one of the Debtor's limited partners. Hunter Mountain filed a proof of claim [Claim No. 152] seeking a \$60,298,739 indemnification claim against the Debtor because of the Debtor's alleged failures to make priority distributions to Hunter Mountain under the Debtor's Partnership Agreement. The Debtor believes that it has meritorious defenses to Hunter Mountain's claim. Hunter Mountain's claim and the Debtor's defenses to such claim are described in greater detail in the *Debtor's (i) Objection to Claim No. 152 of Hunter Mountain Investment Trust and (ii) Complaint to Subordinate Claim of Hunter Mountain Investment Trust and for Declaratory Relief* [D.I. 995]. The Debtor believes that Hunter Mountain's proof of claim should either be disallowed in its entirety or subordinated in its entirety.

In addition to the foregoing, the UBS Claim (in the amount of \$1,039,957,799.40) and the Daugherty Claim (in the amount of \$40,710,819.42) remain outstanding. As set forth above, partial summary judgment on the UBS Claim was granted in favor of the Debtor and the Redeemer Committee on November 20, 2020, and a formal order is expected to be entered within the next couple of weeks.

The Daugherty Claim has been allowed for voting purposes only in the amount of \$9,134,019 [D.I. 1422]. In a bench ruling on November 20, 2020, the Bankruptcy Court allowed UBS Claims for voting purposes only in the amount of \$94,761,076 [D.I. 1646].

## **T. Treatment of Shared Service and Sub-Advisory Agreements**

As discussed in the Plan, the Reorganized Debtor will manage the wind down of the Managed Funds. However, it is not anticipated that either the Reorganized Debtor or the

Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities<sup>10</sup> pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities.

Currently, the Debtor receives approximately \$2.2 million per month in revenue from such contracts. However, in order to service those contracts, the Debtor must maintain a full staff and the cost of providing services under such contracts, among other factors, has historically resulted in a net loss to the Debtor. As such, the Debtor does not believe that assuming these contracts would benefit the Estate.

Further, the contracts generally contain anti-assignment provisions which the Debtor believes may be enforceable under 11 U.S.C. § 365(c). These provisions, therefore, would arguably prevent the assignment of such contracts without the consent of the Debtor's contract counterparty. However, even if 11 U.S.C. § 365(c) would not prevent assignment, the contracts are generally terminable at will by either party. As such, assuming and assigning such contracts without the consent of the contract counterparty would be of nominal or no benefit to the Estate. It is doubtful that any assignee would provide consideration to the Debtor for the assignment of such contract as the contract counterparty could simply terminate the contract immediately following assignment. As such, the Debtor does not believe that there is any benefit to the Estate in attempting to assign these contracts.

Notwithstanding the foregoing disclosure, the Debtor is currently assessing whether it is both possible and in the best interests of the Estate to assume and assign such shared services and sub-advisory agreements to a Related Entity.

During the course of this Chapter 11 Case, Mr. Daugherty stated that he would be willing to assume the Debtor's obligations under the shared service and sub-advisory contracts. The Independent Directors reviewed Mr. Daugherty's proposal and for the foregoing reasons, among others, determined that it was not workable and would provide no benefit to the Estate.

#### **U. Portfolio Managements with Issuer Entities**

The Debtor is party to certain portfolio management agreements (including any ancillary agreements relating thereto collectively being the "Portfolio Management Agreements" and each a "Portfolio Management Agreement") with ACIS CLO 2017-7 Ltd., Brentwood CLO, Ltd., Gleneagles CLO, Ltd., Greenbriar CLO, Ltd., Highland CLO 2018-1, Ltd., Highland Legacy Limited, Highland Loan Funding V Ltd., Highland Park CDO I, Ltd., Pam Capital Funding LP, PamCo Cayman Ltd., Rockwall CDO II Ltd., Rockwall CDO Ltd., Southfork CLO Ltd., Stratford CLO Ltd., Westchester CLO, Ltd., Aberdeen Loan Funding, Ltd., Bristol Bay Funding Ltd. Eastland CLO, Ltd., Grayson CLO, Ltd., Highland Credit Opportunities CDO Ltd., Jasper CLO, Ltd., Liberty Cayman Holdings, Ltd., Liberty CLO, Ltd., Red River CLO, Ltd., Valhalla CLO, Ltd. (each an "Issuer" and collectively the "Issuers") wherein the Debtor agreed to generally provide certain services to each Issuer in the Debtor's capacity as a portfolio manager in exchange for certain fees as described in the applicable Portfolio Management Agreement.

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<sup>10</sup> For the avoidance of doubt, the Debtor does not consider any of the Issuers (as defined herein) to be a Related Entity.

The Issuers filed proofs of claim [Claim No. 165, 168, and 169] asserting claims against the Debtor for damages arising from, relating to or otherwise concerning (i) such Issuer's Portfolio Management Agreement(s) with the Debtor, including, without limitation, failure to perform or other breach of the Portfolio Management Agreement(s), rejection of the Portfolio Management Agreement(s), any cure amount as a result of assumption of the Portfolio Management Agreement(s), any adequate assurance of future performance as a result of assumption of the Portfolio Management Agreement(s), and any failure to provide and pay for indemnification or other obligations under the Portfolio Management Agreement(s); and (ii) the action or inaction of the Debtor to the detriment of such Issuer (collectively, the "Issuer Claims"). The Debtor believes that it has satisfied its obligations to the Issuers; that the Issuer Claims lack merit; and that the Debtor will have no liability with respect to the Issuer Claims. However, such proofs of claim remain outstanding.

The Issuers have taken the position that the rejection of the Portfolio Management Agreements (including any ancillary documents) would result in material rejection damages and have encouraged the Debtor to assume such agreements. Nonetheless, the Issuers and the Debtor are working in good faith to address any outstanding issues regarding such assumption. The Portfolio Management Agreements may be assumed either pursuant to the Plan or by separate motion filed with the Bankruptcy Court.

The Debtor is still assessing its options with respect to the Portfolio Management Agreements, including whether to assume the Portfolio Management Agreements.

#### **V. Resignation of James Dondero**

On October 9, 2020, Mr. Dondero resigned as an employee and portfolio manager of the Debtor.

#### **W. Exclusive Periods for Filing a Plan and Soliciting Votes**

Under the Bankruptcy Code, a debtor has the exclusive right to file and solicit acceptance of a plan or plans of reorganization for an initial period of 120 days from the date on which the debtor filed for voluntary relief. If a debtor files a plan within this exclusive period, then the debtor has the exclusive right for 180 days from the petition date to solicit acceptances to the plan. During these exclusive periods, no other party in interest may file a competing plan of reorganization; however, a court may extend these periods upon request of a party in interest and "for cause."

The Debtor filed motions to extend the exclusive period, and the Bankruptcy Court entered the following orders granting such applications:

- Order Granting Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 460];
- Agreed Order Extending Exclusive Periods by Thirty Days [D.I. 668];

- Order Granting Debtor’s Third Motion for Entry of an Order Pursuant to 11 U.S.C. § 1121(d) and Local Rule 3016-1 Further Extending the Exclusivity Periods for the Filing and Solicitation of Acceptances of a Chapter 11 Plan [D.I. 820]; and
- Order Further Extending the Debtor’s Exclusive Period for Solicitation of Acceptance of a Chapter 11 Plan [D.I. 1092].

Pursuant to the foregoing orders, the Bankruptcy Court extended the exclusivity period through June 12, 2020, for the filing of a plan, which was subsequently extended through July 13, 2020, and again through August 12, 2020. The Bankruptcy Court also extended the exclusivity period for the solicitation of votes to accept such plan through August 11, 2020, which was subsequently extended through September 10, 2020, and again through October 13, 2020, and December 4, 2020.

#### **X. Negotiations with Constituents**

The Debtor, Mr. Dondero, and certain of the creditors have been negotiating a consensual reorganization plan for the Debtor that contemplates the Debtor continuing its business largely in its current form. Those negotiations have yet to reach conclusion but are continuing, and the negotiations were part of the previously discussed mediation. There is no certainty that those negotiations will reach a consensual resolution of the Debtor’s bankruptcy case.

#### **Y. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461.

The Debtor is the contributing sponsor of the Pension Plan. As such, the PBGC asserts that Debtor is liable to contribute to the Pension Plan the amounts necessary to satisfy the minimum funding standards in ERISA and the Internal Revenue Code of 1986, as amended (“IRC”). See 29 U.S.C. §§ 1082, 1083; 26 U.S.C. §§ 412, 430. As the sponsor of the Pension Plan, the PBGC asserts Debtor is also liable for insurance premiums owed to PBGC. See 29 U.S.C. §§ 1306, 1307. The PBGC asserts that any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) are also jointly and severally liable with the Debtor for such obligations relating to the Pension Plan.

The Pension Benefit Guaranty Corporation (“PBGC”), the federal agency that administers the pension insurance program under Title IV of ERISA, filed contingent proofs of claims against the Debtors for (1) the Pension Plan’s potential underfunded benefit liabilities; (2) the potential unliquidated unpaid minimum funding contributions owed to the Pension Plan; and (3) the potential unliquidated insurance premiums owed to PBGC. The PBGC acknowledges that, as of the date of this Disclosure Statement, there is nothing currently owed by the Debtor to the PBGC.

The Debtor reserves the right to contest any claims filed by the PBGC for any reason.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

No provision contained in the Disclosure Statement, the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof), shall be construed as discharging, releasing, exculpating, or relieving any person or entity, including the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, government policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions for satisfaction, release, injunction, exculpation, and discharge of claims in the Plan, Confirmation Order, or the Bankruptcy Code.

**ARTICLE III.**  
**SUMMARY OF THE PLAN**

**THIS ARTICLE III IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES OR CONFLICTS BETWEEN THIS ARTICLE III AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL CONTROL AND GOVERN.**

**A. Administrative and Priority Tax Claims**

1. Administrative Expense Claims

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions

relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

## 2. Professional Fee Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329, 330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

3. Priority Tax Claims

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**B. Classification and Treatment of Classified Claims and Equity Interests**

1. Summary

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

2. Elimination of Vacant Classes

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

3. Impaired/Voting Classes

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

Please refer to “Distribution of Confirmation Hearing Notice and Solicitation Package to Holders of Claims and Equity Interests” and “Instructions and Procedures for Voting” in ARTICLE I.C.7 and ARTICLE I.C.8 for a discussion of how the how votes on the Plan will be solicited and tabulated.

4. Unimpaired/Non-Voting Classes

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

5. Impaired/Non-Voting Classes

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

6. Cramdown

If any Class of Claims or Equity Interests is deemed to reject the Plan or does not vote to accept the Plan, the Debtor may (i) seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify the Plan in accordance with the terms of the Plan and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**C. Classification and Treatment of Claims and Equity Interests**

1. Class 1 – Jefferies Secured Claim

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.

- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

The New Frontier Note will include the following terms: (i) an extension of the maturity date to December 31, 2022; (ii) quarterly interest only payments; (iii) a payment on the New Frontier Note equal to fifty percent of the outstanding principal on December 31, 2021, if the New Frontier Note is not paid in full on or prior to such date; (iv) mandatory prepayments from the proceeds of the sale of any collateral securing the New Frontier Note; and (v) the payment of fees and expenses incurred in negotiating the terms of the New Frontier Note.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.

- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject the Plan and will not be solicited.

“PTO Claims” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is

Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.

- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

“*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

“*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

By making the GUC Election on their Ballots, each Holder of a Convenience Claim can elect the treatment provided to General Unsecured Claims.

8. *Class 8 – General Unsecured Claims*

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes the Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and

will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject the Plan.

“*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

“*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

9. *Class 9 – Subordinated Claims*

- *Classification:* Class 9 consists of the Subordinated Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject the Plan.

“*Subordinated Claim*” means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a

Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject the Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of the Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject the Plan.

#### **D. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

#### **E. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

#### **F. Means for Implementation of the Plan**

##### **1. Summary**

The Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor's limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor's current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to the Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in the Plan and the Claimant Trust Agreement.

2. The Claimant Trust<sup>11</sup>

(a) *Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant

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<sup>11</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in Article IV of the Plan, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

(a) *Claimant Trust Oversight Committee*

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

(b) *Purpose of the Claimant Trust.*

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in the Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in Article IV.C of the Plan.

(c) *Purpose of the Litigation Sub-Trust.*

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

(d) *Claimant Trust Agreement and Litigation Sub-Trust Agreement.*

The Claimant Trust Agreement generally will provide for, among other things:

- the payment of the Claimant Trust Expenses;
- the payment of other reasonable expenses of the Claimant Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- the orderly monetization of the Claimant Trust Assets;
- litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;

- the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- the payment of other reasonable expenses of the Litigation Sub-Trust;
- the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

(e) *Compensation and Duties of Trustees.*

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

(f) *Cooperation of Debtor and Reorganized Debtor.*

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

(g) *United States Federal Income Tax Treatment of the Claimant Trust.*

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(h) *Tax Reporting.*

The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

(i) *Claimant Trust Assets.*

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in the Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

(j) *Claimant Trust Expenses.*

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

(k) *Trust Distributions to Claimant Trust Beneficiaries.*

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

(l) *Cash Investments.*

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are

investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

(m) *Dissolution of the Claimant Trust and Litigation Sub-Trust.*

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

3. The Reorganized Debtor

(a) *Corporate Existence*

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

(b) *Cancellation of Equity Interests and Release*

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

(c) *Issuance of New Partnership Interests*

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

(d) *Management of the Reorganized Debtor*

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

(e) *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in the Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

(f) *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in the Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court

(g) *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust will be (i) deemed transferred in all respects as forth in Article IV.B.1 of the Plan, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

4. Company Action

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement

of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with the Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

5. Release of Liens, Claims and Equity Interests

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

6. Cancellation of Notes, Certificates and Instruments

Except for the purpose of evidencing a right to a distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the

cancellation thereof, except the rights provided for pursuant to the Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, Article IV.C.2 of the Plan.

7. Cancellation of Existing Instruments Governing Security Interests

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

8. Control Provisions

To the extent that there is any inconsistency between the Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, the Plan shall control.

9. Treatment of Vacant Classes

Any Claim or Equity Interest in a Class considered vacant under Article III.C of the Plan shall receive no Plan Distributions.

10. Plan Documents

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in Article I of the Plan) and fully enforceable as if stated in full herein.

11. Highland Capital Management, L.P. Retirement Plan and Trust

The Highland Capital Management, L.P. Retirement Plan And Trust ("Pension Plan") is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor's controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal

Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

#### **A. Treatment of Executory Contracts and Unexpired Leases**

##### **1. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases**

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts

and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. ("Landlord") for the Debtor's headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the "Lease") in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [D.I. 1122].

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

3. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor's or Reorganized Debtor's intention to assume or assign the Executory Contract or Unexpired Lease in connection with the Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to Article V.C of the Plan shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to Article V.C of the Plan, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**B. Provisions Governing Distributions**

1. Dates of Distributions

Except as otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under the Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in the Plan. Except as otherwise provided in the Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to the Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under the Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under the Plan to such Persons or the date of such distributions.

2. Distribution Agent

Except as provided herein, all distributions under the Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions of the Plan.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

3. Cash Distributions

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

4. Disputed Claims Reserve

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

As used above, "*Disputed Claims Reserve*" means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant

Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

“*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

HarbourVest and Mr. Daugherty have objected to the mechanisms for calculating the amount of the Disputed Claims Reserve with respect to the HarbourVest Claim and the Daugherty Claim, respectively, and intend to press their objections at the hearing for confirmation of the Plan.

5. Distributions from the Disputed Claims Reserve

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of the Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

6. Rounding of Payments

Whenever the Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under the Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under the Plan.

7. De Minimis Distribution

Except as to any Allowed Claim that is Unimpaired under the Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in Article VI.I of the Plan within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall

revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

8. Distributions on Account of Allowed Claims

Except as otherwise agreed by the Holder of a particular Claim or as provided in the Plan, all distributions shall be made pursuant to the terms of the Plan and the Confirmation Order. Except as otherwise provided in the Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

9. General Distribution Procedures

The Distribution Agent shall make all distributions of Cash or other property required under the Plan, unless the Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under the Plan shall not be subject to any claim by any Person.

10. Address for Delivery of Distributions

Distributions to Holders of Allowed Claims, to the extent provided for under the Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor's books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

11. Undeliverable Distributions and Unclaimed Property

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under the Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

12. Withholding Taxes

In connection with the Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under the Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to the Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan.

13. Setoffs

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to the Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with the Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

14. Surrender of Cancelled Instruments or Securities

As a condition precedent to receiving any distribution pursuant to the Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to Article IV of the Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

15. Lost, Stolen, Mutilated or Destroyed Securities

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by the Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any

damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with Article VI.O of the Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under the Plan, be deemed to have surrendered such security or note to the Distribution Agent.

### **C. Procedures for Resolving Contingent, Unliquidated and Disputed Claims**

#### 1. Filing of Proofs of Claim

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

#### 2. Disputed Claims

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of the Plan.

#### 3. Procedures Regarding Disputed Claims or Disputed Equity Interests

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

#### 4. Allowance of Claims and Equity Interests

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

#### *Allowance of Claims*

After the Effective Date and subject to the other provisions of the Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and

defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

#### *Estimation*

Subject to the other provisions of the Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with the Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

#### *Disallowance of Claims*

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**D. Effectiveness of the Plan**

1. Conditions Precedent to the Effective Date

The Effective Date of the Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of Article VIII.B of the Plan of the following:

- the Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to the Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate the Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in the Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under the Plan; and (d) entering into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent; (iii) the implementation of the Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under the Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under the Plan upon the Effective Date.
- All documents and agreements necessary to implement the Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

- All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement the Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
- The Professional Fee Reserve shall be funded pursuant to the Plan in an amount determined by the Debtor in good faith.

2. Waiver of Conditions

The conditions to effectiveness of the Plan set forth in Article VIII of the Plan (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate the Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable.

3. Effect of Non-Occurrence of Conditions to Effectiveness

Unless waived as set forth in Article VIII.B of the Plan, if the Effective Date of the Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw the Plan and, if withdrawn, the Plan shall be of no further force or effect.

4. Dissolution of the Committee

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**E. Exculpation, Injunction, and Related Provisions**

1. General

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

For purposes of the following provisions:

- “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”
- “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.
- “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO

Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

2. Discharge of Claims

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all consideration distributed under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

3. Exculpation

Subject in all respects to Article XII.D of the Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of the Plan, including Article IV.C.2 of the Plan, protecting such Exculpated Parties from liability.

4. Releases by the Debtor

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to Article IX.D of the Plan (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with

respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to Article IX.D of the Plan will vest and the Employee will be indefeasibly released pursuant to Article IX.D of the Plan if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

In addition to the obligations set forth in Article IX.D of the Plan, as additional consideration for the foregoing releases, the Senior Employees will waive their rights to certain deferred compensation owed to them by the Debtor. As of the date hereof, the total deferred compensation owed to the Senior Employees was approximately \$3.9 million, which will be reduced by approximately \$2.2 million to approximately \$1.7 million. That reduction is composed of a reduction of (i) approximately \$560,000 in the aggregate in order to qualify as Convenience Claims, (ii) approximately \$510,000 in the aggregate to reflect the Convenience Claims treatment of 85% (and may be lower depending on the number of Convenience Claims), and (iii) of approximately \$1.15 million in the aggregate to reflect an additional reduction of 40%.

As of the date of this Disclosure Statement, the Debtor has not identified any Causes of Action against any Released Parties. However, as set forth above, during the Chapter 11 Case, the Committee was granted sole standing to investigate and pursue the Estate Claims, which may include Causes of Action against certain of the Released Parties. As of the date of this Disclosure Statement, the Committee has not identified any Estate Claims against any Released Parties. The Debtor currently believes that there are no material Estate Claims or other Causes of Action against any Released Party.

##### 5. Preservation of Rights of Action

###### *Maintenance of Causes of Action*

Except as otherwise provided in the Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such Causes of Action have been expressly released in the Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

6. Injunction

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest, along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any

judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to Article XII. D of the Plan, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however*, the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in Article XI of the Plan, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

7. Term of Injunctions or Stays

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

8. Continuance of January 9 Order

Unless otherwise provided in the Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on

January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**F. Article XII.D of the Plan**

Article XII.D of the Plan provides that, notwithstanding anything in the Plan to the contrary, nothing in the Plan will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**G. Binding Nature of Plan**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in Article IX of the Plan, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to any taxes of the kind specified in Bankruptcy Code section 1146(a)

**H. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (i) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- The Debtor has complied and will comply with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Debtor's bankruptcy case, or in connection with the Plan and incident to the case, has been or will be disclosed to the Bankruptcy Court, and any such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the

approval of the Bankruptcy Court as reasonable if it is to be fixed after confirmation of the Plan;

- Each Class of Claims or Equity Interests that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code;
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expense Claims and Priority Claims will be paid in full in Cash on the Effective Date, or as soon thereafter as is reasonably practicable;
- Confirmation of the Plan will not likely be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor thereto under the Plan;
- The Debtor has paid or will pay all fees payable under section 1930 of title 28, and the Plan provides for the payment of all such fees on the Effective Date; and
- The Plan provides for the continuation after the Effective Date of payment of all retiree benefits, if applicable.

1. Best Interests of Creditors Test

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that the bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that each holder of a claim or equity interest in each impaired class: (i) has accepted the plan; or (ii) among other things, will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such Person would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the net Cash proceeds (the “Liquidation Proceeds”) that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case on the Effective Date and the assets of such Debtor’s Estate were liquidated; (b) determine the distribution (the “Liquidation Distribution”) that each non-accepting Holder of a Claim or Equity Interest would receive from the Liquidation Proceeds under the priority scheme dictated in chapter 7; and (c) compare each Holder’s Liquidation Distribution to the distribution under the Plan that such Holder would receive if the Plan were confirmed and consummated.

2. Liquidation Analysis

Any liquidation analysis, including the estimation of Liquidation Proceeds and Liquidation Distributions, with respect to the Debtor (the “Liquidation Analysis”) is subject to numerous assumptions and there can be no guarantee that the Liquidation Analysis will be accurate. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims and Equity Interests at the projected amounts of Allowed Claims

and Equity Interests set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtor has projected an amount of Allowed Claims and Equity Interests that represents its best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims and Equity Interests. The estimate of the amount of Allowed Claims and Equity Interests set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any Plan Distribution to be made on account of Allowed Claims and Equity Interests under the Plan and Disclosure Statement.

The full Liquidation Analysis is attached hereto as **Exhibit C**.

Furthermore, any chapter 7 trustee appointed in a chapter 7 liquidation would have to confront all of the issues described in this Disclosure Statement, including the prepetition litigation claims. This process would be significantly time-consuming and costly, and reduce any recoveries available to the Debtor's Estate. The Debtor believes that liquidation under chapter 7 would result in (i) smaller distributions being made to creditors than those provided for in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee, (ii) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's operations, and (iii) the failure to realize greater value from all of the Debtor's assets.

Therefore, the Debtor believes that confirmation of the Plan will provide each Holder of a Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

### 3. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that the bankruptcy court find that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor, unless the plan contemplates such liquidation or reorganization. For purposes of demonstrating that the Plan meets this "feasibility" standard, the Debtor has analyzed the ability of the Claimant Trust and the Reorganized Debtor to meet their obligations under the Plan and to retain sufficient liquidity and capital resources to conduct their business. A copy of the financial projections prepared by the Debtor is attached hereto as **Exhibit C**.

The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources. The Debtor believes that its available Cash and any additional proceeds from the Debtor's Assets will be sufficient to allow the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, to make all payments required to be made under the Plan. Accordingly, the Debtor believes that the Plan is feasible.

4. Valuation

In order to provide information and full disclosure to parties in interest regarding the Debtor's assets, the Debtor estimates that its value and the total value of its Assets, as of September 30, 2020, was approximately \$328.3 million.

5. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accepts the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (i) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default— (a) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as such maturity existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (d) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (e) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan and are not insiders. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of equity interests as acceptance by holders of at least two-thirds in amount of the allowed interests of such class. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. Section 1126(d) of the Bankruptcy Code, except as otherwise provided in section 1126(e) of the Bankruptcy Code, defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of equity interests in that class actually voting to accept or to reject the plan.

Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims or Equity Interests in any voting class must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Class, and without considering whether the Plan "discriminates unfairly" with respect to such Class, as both standards are described herein.

6. Confirmation Without Acceptance by Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if less than all impaired classes entitled to vote on the plan have accepted it, *provided* that the plan has been accepted by at least one impaired class of claims. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired Class's rejection or deemed rejection of the Plan, the Plan will be confirmed, at the Debtor's request, in a procedure commonly known as "cram down," so long as the Plan does not "discriminate unfairly" and is "fair and equitable" with respect to each Class of Claims or Equity Interests that is impaired under, and has not accepted, the Plan.

7. No Unfair Discrimination

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

8. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or equity interests in such class:

The condition that a plan be "fair and equitable" to a non-accepting Class of Secured Claims includes the requirements that: (a) the Holders of such Secured Claims retain the liens securing such Claims to the extent of the Allowed amount of the Claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the Plan; and (b) each Holder of a Secured Claim in the Class receives deferred Cash payments totaling at least the Allowed amount of such Claim with a present value, as of the Effective Date of the Plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting Class of unsecured Claims includes the requirement that either: (a) the plan provides that each Holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the allowed amount of such Claim; or (b) the Holder of any Claim or Equity Interest that is junior to the Claims of such Class will not receive or retain under the plan on account of such junior Claim or Equity Interest any property.

The condition that a plan be "fair and equitable" to a non accepting Class of Equity Interests includes the requirements that either: (a) the plan provides that each Holder of an Equity Interest in that Class receives or retains under the plan, on account of that Equity Interest, property of a value, as of the Effective Date of the plan, equal to the greater of (i) the allowed

amount of any fixed liquidation preference to which such Holder is entitled, (ii) any fixed redemption price to which such Holder is entitled, or (iii) the value of such interest; or (b) if the Class does not receive such an amount as required under (a), no Class of Equity Interests junior to the non-accepting Class may receive a distribution under the plan.

To the extent that any class of Claims or Class of Equity Interests rejects the Plan, the Debtor reserves the right to seek (a) confirmation of the Plan under section 1129(b) of the Bankruptcy Code and/or (b) modify the Plan in accordance with Article XIII.C of the Plan.

The Debtor believes that the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for non-consensual confirmation of the Plan.

#### ARTICLE IV. RISK FACTORS

**ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTOR'S BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.**

##### A. Certain Bankruptcy Law and Other Considerations

1. Parties in Interest May Object to the Debtor's Classification of Claims and Equity Interests, or Designation as Unimpaired.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Holders of Claims or Equity Interests or the Bankruptcy Court will reach the same conclusion.

There is also a risk that the Holders of Claims or Equity Interests could object to the Debtor's designation of Claims or Equity Interests as Unimpaired, and the Bankruptcy Court could reach the same conclusion.

2. The Debtor May Not Be Able to Secure Confirmation of the Plan.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan and requires, among other things, findings by the bankruptcy court that: (i) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (ii) confirmation of such plan is not likely to be followed by a liquidation or a

need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to Holders of Claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.

As more fully set forth in Article IX of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place.

4. Continued Risk Following Effectiveness.

Even if the Effective Date of the Plan occurs, the Debtor, the Reorganized Debtor, and Claimant Trust will continue to face a number of risks, including certain risks that are beyond its control, such as changes in assets, asset values, and increasing expenses. Some of these concerns and effects typically become more acute when a case under the Bankruptcy Code continues for a protracted period without indication of how or when the case may be completed. As a result of these risks and others, there is no guarantee that a chapter 11 plan of liquidation reflecting the Plan will achieve the Debtor's stated goals.

In addition, at the outset of the Chapter 11 Case, the Bankruptcy Code provides the Debtor with the exclusive right to propose the Plan and prohibits creditors and others from proposing a plan. The Debtor will have retained the exclusive right to propose the Plan upon filing its petition. If the Bankruptcy Court terminates that right, however, or the exclusivity period expires, there could be a material adverse effect on the Debtor's ability to achieve confirmation of the Plan in order to achieve the Debtor's stated goals.

5. The Effective Date May Not Occur.

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur.

6. The Chapter 11 Case May Be Converted to Cases Under Chapter 7 of the Bankruptcy Code

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the debtor's assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that liquidation under chapter 7 would result in significantly smaller distributions being made to creditors than those provided for in the Plan because of (a) the likelihood that the assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time, rather than selling the assets in an orderly and controlled manner, (b) additional administrative expenses involved in the appointment of a chapter 7 trustee, and (c) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

7. Claims Estimation

There can be no assurance that the estimated Claim amounts set forth herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated herein.

8. The Financial Information Contained Herein is Based on the Debtor's Books and Records and, Unless Otherwise Stated, No Audit was Performed.

**The financial information contained in this Disclosure Statement has not been audited.** In preparing this Disclosure Statement, the Debtor relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtor has used its reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement and, while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

**B. Risks Related to Recoveries under the Plan**

1. The Reorganized Debtor and/or Claimant Trust May Not Be Able to Achieve the Debtor's Projected Financial Results

The Reorganized Debtor or Claimant Trust, as applicable, may not be able to achieve their projected financial results. The Financial Projections represent the best estimate of the Debtor's future financial performance, which is necessarily based on certain assumptions regarding the anticipated future performance of the Reorganized Debtor or Claimant Trust, as well as the United States and world economies in general, and the investment industry in which the Debtor operates. The Debtor's Financial Projections include key assumptions on (i) target asset monetization values, (ii) timing of asset monetization, and (iii) costs to effectuate the Plan. In terms of achieving target asset monetization values, the Debtor faces issues including investment assets with cross-ownership across related entities and challenges associated with

collecting notes due from affiliates. The Debtor's Financial Projections anticipate that all investment assets will be sold by 2022, which may be at risk due to the semi-liquid or illiquid nature of the Debtor's assets, as well as general market conditions, including the sustained impact of COVID-19. Costs are based on estimates and may increase with delays or any other unforeseen factor. If the Reorganized Debtor or Claimant Trust do not achieve their projected financial results, the recovery for Claimant Trust Beneficiaries may be negatively affected and the Claimant Trust may lack sufficient liquidity after the Effective Date.

2. Claim Contingencies Could Affect Creditor Recoveries

The estimated Claims and projected creditor recoveries set forth in this Disclosure Statement are based on various assumptions the actual amount of Allowed Claims may differ from the estimates. Should one or more of the underlying assumptions ultimately prove incorrect, the actual Allowed amounts of Claims may vary materially from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time, the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan.

3. If Approved, the Debtor Release Could Release Claims Against Potential Defendants of Estate Causes of Action With Respect to Which the Claimant Trust Would Otherwise Have Recourse

The Claimant Trust Assets will include, among other things, Causes of Action, including Estate Claims that will be assigned to the Litigation Sub-Trust. The Committee's investigation of potential Estate Claims is still ongoing. Because the Committee has not concluded its investigation as of the date hereof, and such investigation will be transferred to the Litigation Trustee, there is no certainty of whether there are viable Estate Claims against any of the Released Parties. In the event there are viable Estate Claims against any of the Released Parties, such claims cannot be pursued for the ultimate benefit of Claimant Trust Beneficiaries if the Debtor Release is approved.

**C. Investment Risk Disclaimer**

1. Investment Risks in General.

The Reorganized Debtor is and will remain a registered investment adviser under the Investment Advisers Act of 1940, and the Reorganized Debtor will continue advising the Managed Funds. No guarantee or representation is made that the Reorganized Debtor's or the Managed Funds' investment strategy will be successful, and investment results may vary substantially over time.

2. General Economic and Market Conditions and Issuer Risk.

Any investment in securities carries certain market risks. Investments by the Reorganized Debtor, the Managed Funds, or the Claimant Trust may decline in value for any number of reasons over which none of the Managed Funds, the Reorganized Debtor, the Claimant Trust, or the Claimant Trustee may have control, including changes in the overall

market and other general economic and market conditions, such as interest rates, availability of credit, inflation rates, economic uncertainty, changes in laws, currency exchange rates and controls and national, international political circumstances (including wars and security operations), and acts of God (including pandemics like COVID-19). The value of the Managed Funds or the assets held by the Reorganized Debtor or Claimant Trust may also decline as a result of factors pertaining to particular securities held by the Managed Funds, Reorganized Debtor, or Claimant Trust, as applicable, such as perception or changes in the issuer's management, the market for the issuer's products or services, sources of supply, technological changes within the issuer's industry, the availability of additional capital and labor, general economic conditions, political conditions, acts of God, and other similar conditions. All of these factors may affect the level and volatility of security prices and the liquidity and the value of the securities held by the Managed Fund, Reorganized Debtor, or Claimant Trust. Unexpected volatility or illiquidity could impair the Managed Funds', Reorganized Debtor's, or Claimant Trust's profitability or result in it suffering losses.

#### **D. Disclosure Statement Disclaimer**

1. The Information Contained Herein is for Disclosure Purposes Only.

The information contained in this Disclosure Statement is for purposes of disclosure in connection with the Plan and may not be relied upon for any other purposes.

2. This Disclosure Statement was Not Approved by the SEC.

Neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained herein, and any representation to the contrary is unlawful.

3. This Disclosure Statement Contains Forward-Looking Statements.

This Disclosure Statement contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "expect," "anticipate," "estimate" or "continue" or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward-looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward-looking statements.

4. No Legal or Tax Advice is Provided to You by This Disclosure Statement.

**This Disclosure Statement is not legal or tax advice to you.** The contents of this Disclosure Statement should not be construed as legal, business or tax advice, and are not personal to any person or entity. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than as a disclosure of certain information to determine how to vote on the Plan or object to confirmation of the Plan.

5. No Admissions Are Made by This Disclosure Statement.

The information and statements contained in this Disclosure Statement will neither (i) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (ii) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, the Reorganized Debtor, the Claimant Trust, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

6. No Reliance Should Be Placed on Any Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. The Debtor or the Reorganized Debtor or Claimant Trustee, as applicable, may seek to investigate, file and prosecute litigation rights and claims against any third parties and may object to Claims after the Confirmation Date or Effective Date of the Plan irrespective of whether the Disclosure Statement identifies such litigation claims or objections to Claims or Equity Interests.

7. Nothing Herein Constitutes a Waiver of Any Right to Object to Claims or Equity Interests or Recover Transfers and Assets.

The Debtor, the Reorganized Debtor, the Claimant Trustee, or any party in interest, as the case may be, reserve any and all rights to object to that Holder's Allowed Claim regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

8. The Information Used Herein was Provided by the Debtor and was Relied Upon by the Debtor's Advisors.

Counsel to and other advisors retained by the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

9. The Disclosure Statement May Contain Inaccuracies.

The statements contained in this Disclosure Statement are made by the Debtor as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtor has used its reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtor nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, the information contained in this Disclosure Statement is as of the date of the Disclosure Statement and does not address events that may occur after such date. The Debtor may update this Disclosure Statement but is not required to do so.

10. No Representations Made Outside the Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. You should promptly report unauthorized representations or inducements to the counsel to the Debtor and the U.S. Trustee.

**ARTICLE V.  
ALTERNATIVES TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

If no chapter 11 plan can be confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code in which case, a trustee would be elected or appointed to liquidate the Debtor's assets. If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of reorganization or liquidation would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

**ARTICLE VI.  
U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Implementation of the Plan will have federal, state, local or foreign tax consequences to the Debtor and Holders of Equity Interests as well as Holders of Claims. No tax opinion or ruling has been sought or will be obtained with respect to any tax consequences of the Plan, and the following discussion does not constitute and is not intended to constitute either a tax opinion or tax advice to any person.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims. This discussion assumes that each Holder of Claims is for United States federal income tax purposes:

- An individual who is a citizen or resident of the United States for federal income tax purposes;
- a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any other person that is subject to U.S. federal income taxation on a net income basis.
- an estate the income of which is subject to United States federal income tax without regard to its source; or
- a trust (1) that is subject to the primary supervision of a United States court and the control of one or more United States persons or (2) that has a valid election in effect under applicable treasury regulations to be treated as a United States person.

This discussion also assumes that each Holder holds the Claims as capital assets under Section 1221 of the Internal Revenue Code.

The summary provides general information only and does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder of Claims in light of such Holder's own individual circumstances. In particular, the summary does not address the federal income tax consequences of the Plan to Holders of Claims that may be subject to special rules, such as non-U.S. persons, insurance companies, financial institutions, regulated investment companies, broker-dealers, persons who acquired Claims as part of a straddle, hedge, conversion transaction or other integrated transaction, or persons who acquired Claims in connection with the performance of services; persons who hold Claims through a partnership or other pass-through entity and tax-exempt organizations. The summary does not address foreign, state, local, estate or gift tax consequences of the Plan, nor does it address the federal income tax consequences to Holders of Equity Interests.

This summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the final, temporary and proposed Treasury regulations promulgated thereunder, judicial decisions and administrative rulings and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof and all of which are subject to change (possibly with retroactive effect) by legislation, judicial decision or administrative action. Moreover, due to a lack of definitive authority, substantial uncertainties exist with respect to various tax consequences of the Plan.

**THE TAX CONSEQUENCES TO THE HOLDERS OF CLAIMS OR EQUITY INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN DUE TO THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN THE APPLICABLE TAX LAW. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE SUSTAINED. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FOREIGN, FEDERAL, STATE AND LOCAL TAX CONSEQUENCES OF THE PLAN.**

**A. Consequences to the Debtor**

It is anticipated that the consummation of the Plan will not result in any federal income tax liability to the Debtor. The Debtor is a partnership for federal income tax purposes. Therefore, the income and loss of the Debtor is passed-through to the Holders of its Equity Interests, and the Debtor does not pay federal income tax.

1. Cancellation of Debt

Generally, the discharge of a debt obligation of a debtor for an amount less than the adjusted issue price (in most cases, the amount the debtor received on incurring the obligation, with certain adjustments) creates cancellation of indebtedness ("COD") income that must be included in the debtor's income. Due to the nature of the Impaired Claims, it is anticipated that

the Debtor will not recognize any material amount of COD income. If any such COD income is recognized, it will be passed-through to the Holders of its Equity Interests, and the Holders of such Equity Interest generally will be required to include such amounts in income, unless a Holder is entitled to exclude such amounts from income under Section 108 of the Internal Revenue Code, based on the Holder's individual circumstances.

## 2. Transfer of Assets

Pursuant to the Plan, the Debtor's assets (including the Claimant Trust Assets and Reorganized Debtor Assets) will be transferred directly or indirectly to the Claimant Trust. For federal income tax purposes, any such assets transferred to the Claimant Trust will be deemed to have been transferred to the Claimant Trust Beneficiaries followed by the transfer by such Holders to the Claimant Trust of such assets in exchange for the respective Holders' beneficial interests in the Claimant Trust. The Claimant Trust thereafter will be treated as a grantor trust for federal income tax purposes. See U.S. Federal Income Tax Treatment of the Claimant Trust, below.

The Debtor's transfer of its assets pursuant to the Plan will constitute a taxable disposition of such assets. As discussed above, the Debtor is a partnership for federal income tax purposes. Any gain or loss recognized as a result of the taxable disposition of such assets will be passed through to the Holders of Equity Interests in the Debtor. The Debtor will not be required to pay any tax as a result of such disposition.

### **B. U.S. Federal Income Tax Treatment of the Claimant Trust**

It is intended that the Claimant Trust will be treated as a "grantor trust" for U.S. federal income tax purposes. In general, a grantor trust is not a separate taxable entity. The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an advanced ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. Consistent with the requirements of Revenue Procedure 94-45, the Claimant Trust Agreement requires all relevant parties to treat, for U.S. federal income tax purposes, the transfer of the Debtor's assets to the Claimant Trust as (i) a transfer of such assets to the Claimant Trust Beneficiaries (to the extent of the value of their respective interests in the applicable Claimant Trust Assets) followed by (ii) a transfer of such assets by such beneficiaries to the Claimant Trust (to the extent of the value of their respective interests in the applicable Claimant Trust Assets), with the beneficiaries being treated as the grantors and owners of the Claimant Trust.

The Plan and the Claimant Trust Agreement generally provide that the Claimant Trust Beneficiaries must value the assets of the Claimant Trust consistently with the values determined by the Claimant Trustee for all U.S. federal income tax purposes. As soon as possible after the Effective Date, the Claimant Trustee, based upon his good faith determination after consultation with his counsel and other advisors, shall inform the beneficiaries in writing as to his estimate of the value of the assets transferred to the Claimant Trust and the value of such assets allocable to each Class of beneficiaries.

Consistent with the treatment of the Claimant Trust as a grantor trust, the Claimant Trust Agreement will require each beneficiary to report on its U.S. federal income tax return its allocable share of the Claimant Trust's income, gain, loss or deduction that reflects the

beneficiary's interest in the interim and final distributions to be made by the Claimant Trust. Furthermore, certain of the assets of the Claimant Trust will be interests in the Reorganized Debtor, which will be a partnership for U.S. federal income tax purposes. The income, gain, loss or deduction of the Reorganized Debtor will also flow through the Claimant Trust to the beneficiaries of the Claimant Trust. Therefore, a beneficiary may incur a federal income tax liability with respect to its allocable share of the income of the Claimant Trust (including the income of the Reorganized Debtor) whether or not the Claimant Trust has made any distributions to such beneficiary. The character of items of income, gain, deduction, and credit to any beneficiary and the ability of such beneficiary to benefit from any deduction or losses will depend on the particular situation of such beneficiary. The interests of the beneficiaries may shift from time to time as the result of the allowance or disallowance of claims that have not been allowed at the Effective Date, which could give rise to tax consequences both to the Holders of claims that have, and have not been, allowed at the Effective Date. The Claimant Trustee will file with the IRS tax returns for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and will also send to each beneficiary a separate statement setting forth such beneficiary's share of items of Trust income, gain, loss, deduction, or credit. Each beneficiary will be required to report such items on its U.S. federal income tax return. Holders are urged to consult their tax advisors regarding the appropriate federal income tax treatment of distributions from the Claimant Trust.

The discussion above assumes that the Claimant Trust will be respected as a grantor trust for U.S. federal income tax purposes. If the IRS were to challenge successfully such classification, the U.S. federal income tax consequences to the Claimant Trust and the beneficiaries could differ materially from those discussed herein (including the potential for an entity level tax to be imposed on all income of the Claimant Trust).

### **C. Consequences to Holders of Allowed Claims**

#### **1. Recognized Gain or Loss**

In general, each Holder of an Allowed Claim will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such Holder in satisfaction of its Claim (other than any Claim for accrued but unpaid interest) and (ii) such holder's adjusted tax basis in such Claim (other than any Claim for accrued but unpaid interest). In general, the "amount realized" by a Holder will equal the sum of any cash and the aggregate fair market value of any property received by such Holder pursuant to the Plan (for example, such Holder's undivided beneficial interest in the assets of the Claimant Trust). A Holder that receives or is deemed to receive for U.S. federal income tax purposes a non-cash asset under the Plan in respect of its Claim should generally have a tax basis in such asset in an amount equal to the fair market value of such asset on the date of its receipt or deemed receipt. See U.S. Federal Income Tax Treatment of the Claimant Trust, above for more information regarding the tax treatment of the Claimant Trust Interests.

Where gain or loss is recognized by a Holder, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, whether the claim constitutes a capital asset in the hands of the Holder and how long it has been held, whether the claim was acquired at

a market discount, and whether and to what extent the Holder had previously claimed a bad debt deduction.

A Holder who, under the Plan, receives in respect of an Allowed Claim an amount less than the Holder's tax basis in the Allowed Claim may be entitled to a deduction for U.S. federal income tax purposes. The rules governing the character, timing and amount of such a deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

## 2. Distribution in Discharge of Accrued Unpaid Interest

Pursuant to the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general, to the extent that an amount received (whether cash or other property) by a Holder of a claim is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the Holder as interest income if not previously included in the Holder's gross income. Conversely, a Holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult their tax advisors regarding the allocation of consideration and the deductibility of unpaid interest for tax purposes.

## 3. Information Reporting and Withholding

All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding" (currently at a rate of up to 24%). Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

## **D. Treatment of the Disputed Claims Reserve**

Pursuant to the Plan, the Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity. Such taxes will be paid out of the Disputed Claims Reserve and therefore may reduce amounts paid to Holders of Allowed Claims from the Claimant Trust. If the Claimant Trustee does not make such an election to treat the Disputed Claims Reserve as a separate taxable entity, the net income, if any, earned in the Disputed Claims Reserve will be taxable to the Holders of Allowed Claims in accordance with

the principles discussed above under the heading “U.S. Federal Income Tax Treatment of the Claimant Trust”, possibly in advance of any distributions to the Holders.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS STRONGLY URGED TO CONSULT WITH HIS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES OF THE PLAN.**

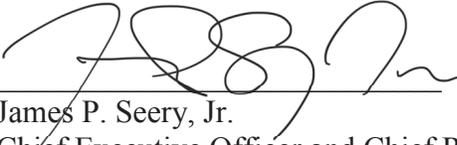
**ARTICLE VII.  
RECOMMENDATION**

In the opinion of the Debtor, the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for the highest distribution to the Debtor’s creditors and interest holders. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims and Equity Interests than that which is proposed under the Plan. Accordingly, the Debtor recommends that all Holders of Claims and Equity Interests support confirmation of the Plan.

Dated: November 24, 2020

Respectfully submitted,

HIGHLAND CAPITAL MANAGEMENT, L.P.



James P. Seery, Jr.  
Chief Executive Officer and Chief Restructuring  
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003019

**EXHIBIT A**

**PLAN OF REORGANIZATION**

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

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In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	
	)	

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**FIFTH AMENDED PLAN OF REORGANIZATION OF HIGHLAND  
CAPITAL MANAGEMENT, L.P.**

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

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**DEBTOR’S CHAPTER 11 PLAN OF REORGANIZATION**

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HIGHLAND CAPITAL MANAGEMENT, L.P., as debtor and debtor-in-possession in the above-captioned case (the “Debtor”), proposes the following chapter 11 plan of reorganization (the “Plan”) for, among other things, the resolution of the outstanding Claims against, and Equity Interests in, the Debtor. Unless otherwise noted, capitalized terms used in this Plan have the meanings set forth in Article I of this Plan. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor’s history, business, results of operations, historical financial information, projections and assets, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents that may be Filed with the Bankruptcy Court that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Documents. All such Exhibits and Plan Documents are incorporated into and are a part of this Plan as if set forth in full herein. Subject to the other provisions of this Plan, and in accordance with the requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to the Effective Date.

If this Plan cannot be confirmed, for any reason, then subject to the terms set forth herein, this Plan may be revoked.

**ARTICLE I.**  
**RULES OF INTERPRETATION, COMPUTATION OF TIME,**  
**GOVERNING LAW AND DEFINED TERMS**

**A. Rules of Interpretation, Computation of Time and Governing Law**

For purposes hereof: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document, as previously amended, modified or supplemented, if applicable, shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented in accordance with its terms; (d) unless otherwise specified, all references herein to “Articles,” “Sections,” “Exhibits” and “Plan Documents” are references to Articles, Sections, Exhibits and Plan Documents hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity’s successors and assigns;

(h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (i) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (j) “\$” or “dollars” means Dollars in lawful currency of the United States of America. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

**B. Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Acis*” means collectively Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

2. “*Administrative Expense Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Case that is Allowed pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of title 28 of the United States Code, and that have not already been paid by the Debtor during the Chapter 11 Case and a Professional Fee Claim.

3. “*Administrative Expense Claims Bar Date*” means, with respect to any Administrative Expense Claim (other than a Professional Fee Claim) becoming due on or prior to the Effective Date, 5:00 p.m. (prevailing Central Time) on such date that is forty-five days after the Effective Date.

4. “*Administrative Expense Claims Objection Deadline*” means, with respect to any Administrative Expense Claim, the later of (a) ninety (90) days after the Effective Date and (b) sixty (60) days after the timely Filing of the applicable request for payment of such Administrative Expense Claim; *provided, however*, that the Administrative Expense Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

5. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code and also includes any other Entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such affiliate. For the purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

6. “*Allowed*” means, with respect to any Claim, except as otherwise provided in the Plan: (a) any Claim that is evidenced by a Proof of Claim that has been timely Filed by the Bar Date, or that is not required to be evidenced by a Filed Proof of Claim under the Bankruptcy Code or a Final Order; (b) a Claim that is listed in the Schedules as not contingent, not

unliquidated, and not disputed and for which no Proof of Claim has been timely filed; (c) a Claim Allowed pursuant to the Plan or an order of the Bankruptcy Court that is not stayed pending appeal; or (d) a Claim that is not Disputed (including for which a Proof of Claim has been timely filed in a liquidated and noncontingent amount that has not been objected to by the Claims Objection Deadline or as to which any such objection has been overruled by Final Order); *provided, however*, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed as set forth above.

7. “*Allowed Claim or Equity Interest*” means a Claim or an Equity Interest of the type that has been Allowed.

8. “*Assets*” means all of the rights, titles, and interest of the Debtor, Reorganized Debtor, or Claimant Trust, in and to property of whatever type or nature, including, without limitation, real, personal, mixed, intellectual, tangible, and intangible property, the Debtor’s books and records, and the Causes of Action.

9. “*Available Cash*” means any Cash in excess of the amount needed for the Claimant Trust and Reorganized Debtor to maintain business operations as determined in the sole discretion of the Claimant Trustee.

10. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable nonbankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510, 544, 545, and 547-553 of the Bankruptcy Code or under similar state or federal statutes and common law, including fraudulent transfer laws

11. “*Ballot*” means the form(s) distributed to holders of Impaired Claims or Equity Interests entitled to vote on the Plan on which to indicate their acceptance or rejection of the Plan.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, or any other court having jurisdiction over the Chapter 11 Case.

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in each case as amended from time to time and as applicable to the Chapter 11 Case.

15. “*Bar Date*” means the applicable deadlines set by the Bankruptcy Court for the filing of Proofs of Claim against the Debtor as set forth in the Bar Date Order, which deadlines may be or have been extended for certain Claimants by order of the Bankruptcy Court.

16. “*Bar Date Order*” means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [D.I. 488].

17. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

18. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

19. “*Causes of Action*” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, defense, remedy, offset, power, privilege, license and franchise of any kind or character whatsoever, in each case whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including, without limitation, under alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action includes, without limitation,: (a) any right of setoff, counterclaim or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) the right to object to Claims or Equity Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) any claim or defense including fraud, mistake, duress and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any claims under any state or foreign law, including, without limitation, any fraudulent transfer or similar claims; (f) the Avoidance Actions, and (g) the Estate Claims. The Causes of Action include, without limitation, the Causes of Action belonging to the Debtor’s Estate listed on the schedule of Causes of Action to be filed with the Plan Supplement.

20. “*CEO/CRO*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer.

21. “*Chapter 11 Case*” means the Debtor’s case under chapter 11 of the Bankruptcy Code commenced on the Petition Date in the Delaware Bankruptcy Court and transferred to the Bankruptcy Court on December 4, 2019, and styled *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj-11.

22. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

23. “*Claims Objection Deadline*” means the date that is 180 days after the Confirmation Date; *provided, however*, the Claims Objection Deadline may be extended by the Bankruptcy Court upon a motion by the Claimant Trustee.

24. “*Claimant Trust*” means the trust established for the benefit of the Claimant Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the Claimant Trust Agreement.

25. “*Claimant Trust Agreement*” means the agreement Filed in the Plan Supplement establishing and delineating the terms and conditions of the Claimant Trust.

26. “*Claimant Trust Assets*” means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

27. “*Claimant Trust Beneficiaries*” means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, including, upon Allowance, Disputed General Unsecured Claims and Disputed Subordinated Claims that become Allowed following the Effective Date, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, post-petition interest from the Petition Date at the Federal Judgment Rate in accordance with the terms and conditions set forth in the Claimant Trust Agreement and all Disputed Claims in Class 8 and Class 9 have been resolved, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

28. “*Claimant Trustee*” means James P. Seery, Jr., the Debtor’s chief executive officer and chief restructuring officer, or such other Person identified in the Plan Supplement who will act as the trustee of the Claimant Trust in accordance with the Plan, the Confirmation Order, and Claimant Trust Agreement or any replacement trustee pursuant to (and in accordance with) the Claimant Trust Agreement. The Claimant Trustee shall be responsible for, among other things, monetizing the Estate’s investment assets, resolving Claims (other than those Claims assigned to the Litigation Sub-Trust for resolution), and, as the sole officer of New GP LLC, winding down the Reorganized Debtor’s business operations.

29. “*Claimant Trust Expenses*” means all reasonable legal and other reasonable professional fees, costs, and expenses incurred by the Trustees on account of administration of the Claimant Trust, including any reasonable administrative fees and expenses, reasonable attorneys’ fees and expenses, reasonable insurance costs, taxes, reasonable escrow expenses, and other expenses.

30. “*Claimant Trust Interests*” means the non-transferable interests in the Claimant Trust that are issued to the Claimant Trust Beneficiaries pursuant to this Plan; *provided, however*, Holders of Class A Limited Partnership Interests, Class B Limited Partnership Interests, and Class C Limited Partnership Interests will not be deemed to hold Claimant Trust Interests unless and until the Contingent Claimant Trust Interests distributed to such Holders vest in accordance with the terms of this Plan and the Claimant Trust Agreement.

31. “*Claimant Trust Oversight Committee*” means the committee of five Persons established pursuant to ARTICLE IV of this Plan to oversee the Claimant Trustee’s performance of its duties and otherwise serve the functions described in this Plan and the Claimant Trust Agreement.

32. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in ARTICLE III hereof pursuant to section 1122(a) of the Bankruptcy Code.

33. “*Class A Limited Partnership Interest*” means the Class A Limited Partnership Interests as defined in the Limited Partnership Agreement held by The Dugaboy Investment Trust, Mark and Pamela Okada Family Trust – Exempt Trust 2, Mark and Pamela Okada – Exempt Descendants’ Trust, and Mark Kiyoshi Okada, and the General Partner Interest.

34. “*Class B Limited Partnership Interest*” means the Class B Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

35. “*Class B/C Limited Partnership Interests*” means, collectively, the Class B Limited Partnership and Class C Limited Partnership Interests.

36. “*Class C Limited Partnership Interest*” means the Class C Limited Partnership Interests as defined in the Limited Partnership Agreement held by Hunter Mountain Investment Trust.

37. “*Committee*” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee pursuant to 11 U.S.C. § 1102(a)(1) on October 29, 2019 [D.I. 65], consisting of (i) the Redeemer Committee of Highland Crusader Fund, (ii) Meta-e Discovery, (iii) UBS, and (iv) Acis.

38. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

39. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

40. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

41. “*Convenience Claim*” means any prepetition, liquidated, and unsecured Claim against the Debtor that as of the Confirmation Date is less than or equal to \$1,000,000 or any General Unsecured Claim that makes the Convenience Class Election. For the avoidance of doubt, the Reduced Employee Claims will be Convenience Claims.

42. “*Convenience Claim Pool*” means the \$13,150,000 in Cash that shall be available upon the Effective Date for distribution to Holders of Convenience Claims under the Plan as set forth herein. Any Cash remaining in the Convenience Claim Pool after all

distributions on account of Convenience Claims have been made will be transferred to the Claimant Trust and administered as a Claimant Trust Asset.

43. “*Convenience Class Election*” means the option provided to each Holder of a General Unsecured Claim that is a liquidated Claim as of the Confirmation Date on their Ballot to elect to reduce their claim to \$1,000,000 and receive the treatment provided to Convenience Claims.

44. “*Contingent Claimant Trust Interests*” means the contingent Claimant Trust Interests to be distributed to Holders of Class A Limited Partnership Interests, Holders of Class B Limited Partnership Interests, and Holders of Class C Limited Partnership Interests in accordance with this Plan, the rights of which shall not vest, and consequently convert to Claimant Trust Interests, unless and until the Claimant Trustee Files a certification that all holders of Allowed General Unsecured Claims have been paid indefeasibly in full, plus, to the extent all Allowed unsecured Claims, excluding Subordinated Claims, have been paid in full, all accrued and unpaid post-petition interest from the Petition Date at the Federal Judgment Rate and all Disputed Claims in Class 8 and Class 9 have been resolved. As set forth in the Claimant Trust Agreement, the Contingent Claimant Trust Interests distributed to the Holders of Class A Limited Partnership Interests will be subordinated to the Contingent Claimant Trust Interests distributed to the Holders of Class B/C Limited Partnership Interests.

45. “*Debtor*” means Highland Capital Management, L.P. in its capacity as debtor and debtor in possession in the Chapter 11 Case.

46. “*Delaware Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware.

47. “*Disclosure Statement*” means that certain *Disclosure Statement for Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, as amended, supplemented, or modified from time to time, which describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

48. “*Disputed*” means with respect to any Claim or Equity Interest, any Claim or Equity Interest that is not yet Allowed.

49. “*Disputed Claims Reserve*” means the appropriate reserve(s) or account(s) to be established on the Initial Distribution Date and maintained by the Claimant Trustee for distributions on account of Disputed Claims that may subsequently become an Allowed Claim.

50. “*Disputed Claims Reserve Amount*” means, for purposes of determining the Disputed Claims Reserve, the Cash that would have otherwise been distributed to a Holder of a Disputed Claim at the time any distributions of Cash are made to the Holders of Allowed Claims. The amount of the Disputed Claim upon which the Disputed Claims Reserve is calculated shall be: (a) the amount set forth on either the Schedules or the filed Proof of Claim, as applicable; (b) the amount agreed to by the Holder of the Disputed Claim and the Claimant Trustee or Reorganized Debtor, as applicable; (c) the amount ordered by the Bankruptcy Court if it enters an order disallowing, in whole or in part, a Disputed Claim; or (d) as otherwise ordered by the Bankruptcy Court, including an order estimating the Disputed Claim.

51. “*Distribution Agent*” means the Claimant Trustee, or any party designated by the Claimant Trustee to serve as distribution agent under this Plan.

52. “*Distribution Date*” means the date or dates determined by the Reorganized Debtor or the Claimant Trustee, as applicable, on or after the Initial Distribution Date upon which the Distribution Agent shall make distributions to holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

53. “*Distribution Record Date*” means the date for determining which Holders of Claims and Equity Interests are eligible to receive distributions hereunder, which date shall be the Effective Date or such later date determined by the Bankruptcy Court.

54. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in ARTICLE VIII hereof.

55. “*Employees*” means the employees of the Debtor set forth in the Plan Supplement.

56. “*Entity*” means any “entity” as defined in section 101(15) of the Bankruptcy Code and also includes any Person or any other entity.

57. “*Equity Interest*” means any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding partnership interests, shares, of stock or limited company interests, the Class A Limited Partnership Interests, the Class B Limited Partnership Interests, and the Class C Limited Partnership Interests.

58. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

59. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

60. “*Estate Claims*” has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [D.I. 354].

61. “*Exculpated Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Independent Directors, (v) the Committee, (vi) the members of the Committee (in their official capacities), (vii) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (viii) the CEO/CRO; and (ix) the Related Persons of each of the parties listed in (iv) through (viii); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), NexBank, SSB (and any of its subsidiaries), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the

Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Exculpated Party.”

62. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

63. “*Exhibit*” means an exhibit annexed hereto or to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time), which are incorporated by reference herein.

64. “*Federal Judgment Rate*” means the post-judgment interest rate set forth in 28 U.S.C. § 1961 as of the Effective Date.

65. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

66. “*Final Order*” means an order or judgment of the Bankruptcy Court, which is in full force and effect, and as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be Filed with respect to such order shall not preclude such order from being a Final Order.

67. “*Frontier Secured Claim*” means the loan from Frontier State Bank to the Debtor in the principal amount of \$7,879,688.00 made pursuant to that certain First Amended and Restated Loan Agreement, dated March 29, 2018.

68. “*General Partner Interest*” means the Class A Limited Partnership Interest held by Strand, as the Debtor’s general partner.

69. “*General Unsecured Claim*” means any prepetition Claim against the Debtor that is not Secured and is not a/an: (a) Administrative Expense Claim; (b) Professional Fee Claim; (c) Priority Tax Claim; (d) Priority Non-Tax Claim; or (e) Convenience Claim.

70. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

71. “*GUC Election*” means the option provided to each Holder of a Convenience Claim on their Ballot to elect to receive the treatment provided to General Unsecured Claims.

72. “*Holder*” means an Entity holding a Claim against, or Equity Interest in, the Debtor.

73. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

74. “*Independent Directors*” means John S. Dubel, James P. Seery, Jr., and Russell Nelms, the independent directors of Strand appointed on January 9, 2020, and any additional or replacement directors of Strand appointed after January 9, 2020, but prior to the Effective Date.

75. “*Initial Distribution Date*” means, subject to the “Treatment” sections in ARTICLE III hereof, the date that is on or as soon as reasonably practicable after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims and Equity Interests.

76. “*Insurance Policies*” means all insurance policies maintained by the Debtor as of the Petition Date.

77. “*Jefferies Secured Claim*” means any Claim in favor of Jefferies, LLC, arising under that certain Prime Brokerage Customer Agreement, dated May 24, 2013, between the Debtor and Jefferies, LLC, that is secured by the assets, if any, maintained in the prime brokerage account created by such Prime Brokerage Customer Agreement.

78. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

79. “*Limited Partnership Agreement*” means that certain Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 24, 2015, as amended.

80. “*Litigation Sub-Trust*” means the sub-trust established within the Claimant Trust or as a wholly –owned subsidiary of the Claimant Trust on the Effective Date in each case in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement and Claimant Trust Agreement. As set forth in the Litigation Sub-Trust Agreement, the Litigation Sub-Trust shall hold the Claimant Trust Assets that are Estate Claims.

81. “*Litigation Sub-Trust Agreement*” means the agreement filed in the Plan Supplement establishing and delineating the terms and conditions of the Litigation Sub-Trust.

82. “*Litigation Trustee*” means the trustee appointed by the Committee and reasonably acceptable to the Debtor who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

83. “*Managed Funds*” means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to this Plan.

84. “*New Frontier Note*” means that promissory note to be provided to the Allowed Holders of Class 2 Claims under this Plan and any other documents or security agreements securing the obligations thereunder.

85. “*New GP LLC*” means a limited liability company incorporated in the State of Delaware pursuant to the New GP LLC Documents to serve as the general partner of the Reorganized Debtor on the Effective Date.

86. “*New GP LLC Documents*” means the charter, operating agreement, and other formational documents of New GP LLC.

87. “*Ordinary Course Professionals Order*” means that certain *Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtor in the Ordinary Course* [D.I. 176].

88. “*Other Unsecured Claim*” means any Secured Claim other than the Jefferies Secured Claim and the Frontier Secured Claim.

89. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, individual, corporation, company, general or limited partnership, limited liability company, unincorporated organization firm, trust, estate, business trust, association, joint stock company, joint venture, government, governmental agency, Governmental Unit or any subdivision thereof, the United States Trustee, or any other entity, whether acting in an individual, fiduciary or other capacity.

90. “*Petition Date*” means October 16, 2019.

91. “*Plan*” means this *Debtor’s Fifth Amended Chapter 11 Plan of Reorganization*, including the Exhibits and the Plan Documents and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

92. “*Plan Distribution*” means the payment or distribution of consideration to Holders of Allowed Claims and Allowed Equity Interests under this Plan.

93. “*Plan Documents*” means any of the documents, other than this Plan, but including, without limitation, the documents to be filed with the Plan Supplement, to be executed, delivered, assumed, or performed in connection with the occurrence of the Effective Date, and as may be modified consistent with the terms hereof with the consent of the Committee.

94. “*Plan Supplement*” means the ancillary documents necessary for the implementation and effectuation of the Plan, including, without limitation, (i) the form of

Claimant Trust Agreement, (ii) the forms of New GP LLC Documents, (iii) the form of Reorganized Limited Partnership Agreement, (iv) the Sub-Servicer Agreement (if applicable), (v) the identity of the initial members of the Claimant Trust Oversight Committee, (vi) the form of Litigation Sub-Trust Agreement; (vii) the schedule of retained Causes of Action; (viii) the New Frontier Note, (ix) the schedule of Employees; (x) the form of Senior Employee Stipulation,; and (xi) the schedule of Executory Contracts and Unexpired Leases to be assumed pursuant to this Plan, which, in each case, will be in form and substance reasonably acceptable to the Debtor and the Committee.

95. “*Priority Non-Tax Claim*” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, including any Claims for paid time-off entitled to priority under section 507(a)(4) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

96. “*Pro Rata*” means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class.

97. “*Professional*” means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 328 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 327, 328, 330, 331, 363, 503(b), 503(b)(4) and 1103 of the Bankruptcy Code.

98. “*Professional Fee Claim*” means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code, with respect to a particular Professional, for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

99. “*Professional Fee Claims Bar Date*” means with respect to Professional Fee Claims, the Business Day which is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

100. “*Professional Fee Claims Objection Deadline*” means, with respect to any Professional Fee Claim, thirty (30) days after the timely Filing of the applicable request for payment of such Professional Fee Claim.

101. “*Professional Fee Reserve*” means the reserve established and funded by the Claimant Trustee pursuant this Plan to provide sufficient funds to satisfy in full unpaid Allowed Professional Fee Claims.

102. “*Proof of Claim*” means a written proof of Claim or Equity Interest Filed against the Debtor in the Chapter 11 Case.

103. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

104. “*Protected Parties*” means, collectively, (i) the Debtor and its successors and assigns, direct and indirect majority-owned subsidiaries, and the Managed Funds, (ii) the Employees, (iii) Strand, (iv) the Reorganized Debtor, (v) the Independent Directors, (vi) the Committee, (vii) the members of the Committee (in their official capacities), (viii) the Claimant Trust, (ix) the Claimant Trustee, (x) the Litigation Sub-Trust, (xi) the Litigation Trustee, (xii) the members of the Claimant Trust Oversight Committee (in their official capacities), (xiii) New GP LLC, (xiv) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case, (xv) the CEO/CRO; and (xvi) the Related Persons of each of the parties listed in (iv) through (xv); *provided, however*, that, for the avoidance of doubt, none of James Dondero, Mark Okada, NexPoint Advisors, L.P. (and any of its subsidiaries and managed entities), the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and managed entities), Highland CLO Funding, Ltd. (and any of its subsidiaries, members, and managed entities), NexBank, SSB (and any of its subsidiaries), Highland Capital Management Fund Advisors, L.P. (and any of its subsidiaries and managed entities), the Hunter Mountain Investment Trust (or any trustee acting for the trust), the Dugaboy Investment Trust (or any trustee acting for the trust), or Grant Scott is included in the term “Protected Party.”

105. “*PTO Claims*” means any Claim for paid time off in favor of any Debtor employee in excess of the amount that would qualify as a Priority Non-Tax Claim under section 507(a)(4) of the Bankruptcy Code.

106. “*Reduced Employee Claims*” has the meaning set forth in ARTICLE IX.D.

107. “*Reinstated*” means, with respect to any Claim or Equity Interest, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim or Equity Interest in accordance with section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default: (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (iii) compensating the Holder of such Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim or Equity Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim or Equity Interest (other than any Debtor or an insider of any Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

108. “*Rejection Claim*” means any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Confirmation Order.

109. “*Related Entity*” means, without duplication, (a) James Dondero, (b) Mark Okada, (c) Grant Scott, (d) Hunter Covitz, (e) any entity or person that was an insider of the

Debtor on the Petition Date under Section 101(31) of the Bankruptcy Code, including any non-statutory insider, (f) any entity that, after the Effective Date, is controlled directly or indirectly by James Dondero, including, without limitation, The Dugaboy Investment Trust, (g) the Hunter Mountain Investment Trust and any of its direct or indirect parents, and (h) the Charitable Donor Advised Fund, L.P., and any of its direct or indirect subsidiaries.

110. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise), and each of their respective present and former officers, directors, employees, managers, managing members, members, financial advisors, attorneys, accountants, investment bankers, consultants, professionals, advisors, shareholders, principals, partners, employees, subsidiaries, divisions, management companies, and other representatives, in each case solely in their capacity as such.

111. “*Released Parties*” means, collectively, (i) the Independent Directors; (ii) Strand (solely from the date of the appointment of the Independent Directors through the Effective Date); (iii) the CEO/CRO; (iv) the Committee; (v) the members of the Committee (in their official capacities), (vi) the Professionals retained by the Debtor and the Committee in the Chapter 11 Case; and (vii) the Employees.

112. “*Reorganized Debtor*” means the Debtor, as reorganized pursuant to this Plan on and after the Effective Date.

113. “*Reorganized Debtor Assets*” means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, “Reorganized Debtor Assets” includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

114. “*Reorganized Limited Partnership Agreement*” means that certain Fifth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., by and among the Claimant Trust, as limited partner, and New GP LLC, as general partner, Filed with the Plan Supplement.

115. “*Restructuring*” means the restructuring of the Debtor, the principal terms of which are set forth in this Plan and the Disclosure Statement.

116. “*Retained Employee Claim*” means any Claim filed by a current employee of the Debtor who will be employed by the Reorganized Debtor upon the Effective Date.

117. “*Schedules*” means the schedules of Assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and all amendments or supplements thereto Filed by the Debtor with the Bankruptcy Court [D.I. 247].

118. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor’s Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the

creditor's interest in the interest of the Debtor's Estate in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or (b) Allowed pursuant to the Plan as a Secured Claim.

119. "*Security*" or "*security*" means any security as such term is defined in section 101(49) of the Bankruptcy Code.

120. "*Senior Employees*" means the senior employees of the Debtor Filed in the Plan Supplement.

121. "*Senior Employee Stipulation*" means the agreements filed in the Plan Supplement between each Senior Employee and the Debtor.

122. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

123. "*Statutory Fees*" means fees payable pursuant to 28 U.S.C. § 1930.

124. "*Strand*" means Strand Advisors, Inc., the Debtor's general partner.

125. "*Sub-Servicer*" means a third-party selected by the Claimant Trustee to service or sub-service the Reorganized Debtor Assets.

126. "*Sub-Servicer Agreement*" means the agreement that may be entered into providing for the servicing of the Reorganized Debtor Assets by the Sub-Servicer.

127. "*Subordinated Claim*" means any Claim that (i) is or may be subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court or (ii) arises from a Class A Limited Partnership Interest or a Class B/C Limited Partnership Interest.

128. "*Subordinated Claimant Trust Interests*" means the Claimant Trust Interests to be distributed to Holders of Allowed Subordinated Claims under the Plan, which such interests shall be subordinated in right and priority to the Claimant Trust Interests distributed to Holders of Allowed General Unsecured Claims as provided in the Claimant Trust Agreement.

129. "*Trust Distribution*" means the transfer of Cash or other property by the Claimant Trustee to the Claimant Trust Beneficiaries.

130. "*Trustees*" means, collectively, the Claimant Trustee and Litigation Trustee.

131. “*UBS*” means, collectively, UBS Securities LLC and UBS AG London Branch.

132. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

133. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

134. “*Voting Deadline*” means the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Order of the Bankruptcy Court approving the Disclosure Statement as containing adequate information pursuant to section 1125(a) of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Plan.

135. “*Voting Record Date*” means November 23, 2020.

## **ARTICLE II.**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

#### **A. Administrative Expense Claims**

On the later of the Effective Date or the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Expense Claim (other than Professional Fee Claims) will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Expense Claim either (i) payment in full in Available Cash for the unpaid portion of such Allowed Administrative Expense Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or the Reorganized Debtor, as applicable, and such Holder; *provided, however*, that Administrative Expense Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in the discretion of the Debtor in accordance with such applicable terms and conditions relating thereto without further notice to or order of the Bankruptcy Court. All statutory fees payable under 28 U.S.C. § 1930(a) shall be paid as such fees become due.

If an Administrative Expense Claim (other than a Professional Fee Claim) is not paid by the Debtor in the ordinary course, the Holder of such Administrative Expense Claim must File, on or before the applicable Administrative Expense Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for allowance and payment of such Administrative Expense Claim.

Objections to any Administrative Expense Claim (other than a Professional Fee Claim) must be Filed and served on the Debtor or the Reorganized Debtor, as applicable, and the party asserting such Administrative Expense Claim by the Administrative Expense Claims Objection Deadline.

**B. Professional Fee Claims**

Professionals or other Entities asserting a Professional Fee Claim for services rendered through the Effective Date must submit fee applications under sections 327, 328, 329,330, 331, 503(b) or 1103 of the Bankruptcy Code and, upon entry of an order of the Bankruptcy Court granting such fee applications, such Professional Fee Claim shall promptly be paid in Cash in full to the extent provided in such order.

Professionals or other Entities asserting a Professional Fee Claim for services rendered on or prior to the Effective Date must File, on or before the Professional Fee Claims Bar Date, and serve on the Debtor or Reorganized Debtor, as applicable, and such other Entities who are designated as requiring such notice by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim.

Objections to any Professional Fee Claim must be Filed and served on the Debtor or Reorganized Debtor, as applicable, and the party asserting the Professional Fee Claim by the Professional Fee Claim Objection Deadline. Each Holder of an Allowed Professional Fee Claim will be paid by the Debtor or the Claimant Trust, as applicable, in Cash within ten (10) Business Days of entry of the order approving such Allowed Professional Fee Claim.

On the Effective Date, the Claimant Trustee shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Claimant Trust and shall be maintained by the Claimant Trustee in accordance with the Plan and Claimant Trust Agreement. The Claimant Trust shall fund the Professional Fee Reserve on the Effective Date in an estimated amount determined by the Debtor in good faith prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. Following the payment of all Allowed Professional Fee Claims, any excess funds in the Professional Fee Reserve shall be released to the Claimant Trust to be used for other purposes consistent with the Plan and the Claimant Trust Agreement.

**C. Priority Tax Claims**

On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or (b) such other less favorable treatment as agreed to in writing by the Debtor and such Holder. Payment of statutory fees due pursuant to 28 U.S.C. § 1930(a)(6) will be made at all appropriate times until the entry of a final decree; *provided, however*, that the Debtor may prepay any or all such Claims at any time, without premium or penalty.

**ARTICLE III.**  
**CLASSIFICATION AND TREATMENT OF**  
**CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary**

All Claims and Equity Interests, except Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, and Priority Tax Claims have not been classified.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes including, without limitation, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled (in each case, by the Debtor or any other Entity) prior to the Effective Date.

**B. Summary of Classification and Treatment of Classified Claims and Equity Interests**

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Jefferies Secured Claim	Unimpaired	Deemed to Accept
2	Frontier Secured Claim	Impaired	Entitled to Vote
3	Other Secured Claims	Unimpaired	Deemed to Accept
4	Priority Non-Tax Claim	Unimpaired	Deemed to Accept
5	Retained Employee Claim	Unimpaired	Deemed to Accept
6	PTO Claims	Unimpaired	Deemed to Accept
7	Convenience Claims	Impaired	Entitled to Vote
8	General Unsecured Claims	Impaired	Entitled to Vote
9	Subordinated Claims	Impaired	Entitled to Vote
10	Class B/C Limited Partnership Interests	Impaired	Entitled to Vote
11	Class A Limited Partnership Interests	Impaired	Entitled to Vote

**C. Elimination of Vacant Classes**

Any Class that, as of the commencement of the Confirmation Hearing, does not have at least one Holder of a Claim or Equity Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from the Plan for purposes of

voting to accept or reject the Plan, and disregarded for purposes of determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

**D. Impaired/Voting Classes**

Claims and Equity Interests in Class 2 and Class 7 through Class 11 are Impaired by the Plan, and only the Holders of Claims or Equity Interests in those Classes are entitled to vote to accept or reject the Plan.

**E. Unimpaired/Non-Voting Classes**

Claims in Class 1 and Class 3 through Class 6 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

**F. Impaired/Non-Voting Classes**

There are no Classes under the Plan that will not receive or retain any property and no Classes are deemed to reject the Plan.

**G. Cramdown**

If any Class of Claims or Equity Interests is deemed to reject this Plan or does not vote to accept this Plan, the Debtor may (i) seek confirmation of this Plan under section 1129(b) of the Bankruptcy Code or (ii) amend or modify this Plan in accordance with the terms hereof and the Bankruptcy Code. If a controversy arises as to whether any Claims or Equity Interests, or any class of Claims or Equity Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**H. Classification and Treatment of Claims and Equity Interests**

*1. Class 1 – Jefferies Secured Claim*

- *Classification:* Class 1 consists of the Jefferies Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 1 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor and the Holder of such Allowed Class 1 Claim will have agreed upon in writing; or (C) such other treatment rendering such Claim Unimpaired. Each Holder of an Allowed Class 1 Claim will retain the Liens securing its Allowed Class 1 Claim as of the Effective Date until full and final payment of such Allowed Class 1 Claim is made as provided herein.
- *Impairment and Voting:* Class 1 is Unimpaired, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan

pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

2. Class 2 – Frontier Secured Claim

- *Classification:* Class 2 consists of the Frontier Secured Claim.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 2 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim: (A) Cash in an amount equal to all accrued but unpaid interest on the Frontier Claim through and including the Effective Date and (B) the New Frontier Note. The Holder of an Allowed Class 2 Claim will retain the Liens securing its Allowed Class 2 Claim as of the Effective Date until full and final payment of such Allowed Class 2 Claim is made as provided herein.
- *Impairment and Voting:* Class 2 is Impaired, and the Holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

3. Class 3 – Other Secured Claims

- *Classification:* Class 3 consists of the Other Secured Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 3 Claim is Allowed on the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 3 Claim, at the option of the Debtor, or following the Effective Date, the Reorganized Debtor or Claimant Trustee, as applicable, (i) Cash equal to such Allowed Other Secured Claim, (ii) the collateral securing its Allowed Other Secured Claim, plus postpetition interest to the extent required under Bankruptcy Code Section 506(b), or (iii) such other treatment rendering such Claim Unimpaired.
- *Impairment and Voting:* Class 3 is Unimpaired, and the Holders of Class 3 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

4. Class 4 – Priority Non-Tax Claims

- *Classification:* Class 4 consists of the Priority Non-Tax Claims.

- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 4 Claim is Allowed on the Effective Date or (ii) the date on which such Class 4 Claim becomes an Allowed Class 4 Claim, each Holder of an Allowed Class 4 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 4 Claim Cash equal to the amount of such Allowed Class 4 Claim.
- *Impairment and Voting:* Class 4 is Unimpaired, and the Holders of Class 4 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 4 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

5. Class 5 – Retained Employee Claims

- *Classification:* Class 5 consists of the Retained Employee Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the Effective Date, each Allowed Class 5 Claim will be Reinstated.
- *Impairment and Voting:* Class 5 is Unimpaired, and the Holders of Class 5 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 5 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

6. Class 6 – PTO Claims

- *Classification:* Class 6 consists of the PTO Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes an Allowed Class 6 Claim, each Holder of an Allowed Class 6 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Claim 6 Claim Cash equal to the amount of such Allowed Class 6 Claim.
- *Impairment and Voting:* Class 6 is Unimpaired, and the Holders of Class 6 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 6 Claims are not entitled to vote to accept or reject this Plan and will not be solicited.

7. Class 7 – Convenience Claims

- *Classification:* Class 7 consists of the Convenience Claims.
- *Allowance and Treatment:* On or as soon as reasonably practicable after the later of (i) the Initial Distribution Date if such Class 7 Claim is Allowed on the Effective Date or (ii) the date on which such Class 7 Claim becomes an Allowed Class 7 Claim, each Holder of an Allowed Class 7 Claim will receive in full satisfaction, settlement, discharge and release of, and in exchange for, its Allowed Class 7 Claim (1) the treatment provided to Allowed Holders of Class 8 General Unsecured Claims if the Holder of such Class 7 Claim makes the GUC Election or (2) an amount in Cash equal to the lesser of (a) 85% of the Allowed amount of such Holder's Class 7 Claim or (b) such Holder's Pro Rata share of the Convenience Claims Cash Pool.
- *Impairment and Voting:* Class 7 is Impaired, and the Holders of Class 7 Claims are entitled to vote to accept or reject this Plan.

8. Class 8 – General Unsecured Claims

- *Classification:* Class 8 consists of the General Unsecured Claims.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 8 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Claimant Trust Interests, (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing, or (iii) the treatment provided to Allowed Holders of Class 7 Convenience Claims if the Holder of such Class 8 General Unsecured Claim is eligible and makes a valid Convenience Class Election.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any General Unsecured Claim, except with respect to any General Unsecured Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 8 is Impaired, and the Holders of Class 8 Claims are entitled to vote to accept or reject this Plan.

9. Class 9 – Subordinated Claims

- *Classification:* Class 9 consists of the Subordinated Claims.

- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 9 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive either (i) the treatment provided to Allowed Class 8 Claims or (ii) if such Allowed Class 9 Claim is subordinated to the Convenience Claims and General Unsecured Claims pursuant to 11 U.S.C. § 510 or Final Order of the Bankruptcy Court, its Pro Rata share of the Subordinated Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Subordinated Claim, except with respect to any Subordinated Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 9 is Impaired, and the Holders of Class 9 Claims are entitled to vote to accept or reject this Plan.

10. Class 10 – Class B/C Limited Partnership Interests

- *Classification:* Class 10 consists of the Class B/C Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 10 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class B/C Limited Partnership Interest Claim, except with respect to any Class B/C Limited Partnership Interest Claim Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 10 is Impaired, and the Holders of Class 10 Claims are entitled to vote to accept or reject this Plan.

11. Class 11 – Class A Limited Partnership Interests

- *Classification:* Class 11 consists of the Class A Limited Partnership Interests.
- *Treatment:* On or as soon as reasonably practicable after the Effective Date, each Holder of an Allowed Class 11 Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim shall receive (i) its Pro Rata share of the Contingent Claimant Trust Interests or (ii) such other less favorable treatment as to which such Holder and the Claimant Trustee shall have agreed upon in writing.

Notwithstanding anything to the contrary herein, after the Effective Date and subject to the other provisions of this Plan, the Debtor, the Reorganized Debtor, and the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Class A Limited Partnership Interest, except with respect to any Class A Limited Partnership Interest Allowed by Final Order of the Bankruptcy Court.

- *Impairment and Voting:* Class 11 is Impaired, and the Holders of Class 11 Claims are entitled to vote to accept or reject this Plan.

**I. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan will affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

**J. Subordinated Claims**

The allowance, classification, and treatment of all Claims under the Plan shall take into account and conform to the contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Under section 510 of the Bankruptcy Code, upon written notice, the Debtor the Reorganized Debtor, and the Claimant Trustee reserve the right to re-classify, or to seek to subordinate, any Claim in accordance with any contractual, legal, or equitable subordination relating thereto, and the treatment afforded any Claim under the Plan that becomes a subordinated Claim at any time shall be modified to reflect such subordination.

**ARTICLE IV.**

**MEANS FOR IMPLEMENTATION OF THIS PLAN**

**A. Summary**

As discussed in the Disclosure Statement, the Plan will be implemented through (i) the Claimant Trust, (ii) the Litigation Sub-Trust, and (iii) the Reorganized Debtor.

On the Effective Date, all Class A Limited Partnership Interests, including the Class A Limited Partnership Interests held by Strand, as general partner, and Class B/C Limited Partnerships in the Debtor will be cancelled, and new Class A Limited Partnership Interests in the Reorganized Debtor will be issued to the Claimant Trust and New GP LLC – a newly-chartered limited liability company wholly-owned by the Claimant Trust. The Claimant Trust, as limited partner, will ratify New GP LLC’s appointment as general partner of the Reorganized Debtor, and on and following the Effective Date, the Claimant Trust will be the Reorganized Debtor’s limited partner and New GP LLC will be its general partner. The Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement, which will amend and restate, in all respects, the Debtor’s current Limited Partnership Agreement. Following the Effective Date, the Reorganized Debtor will be managed consistent with the terms of the Reorganized Limited Partnership Agreement by New GP LLC. The sole managing member of New GP LLC will be the Claimant Trust, and the Claimant Trustee will be the sole officer of New GP LLC on the Effective Date.

Following the Effective Date, the Claimant Trust will administer the Claimant Trust Assets pursuant to this Plan and the Claimant Trust Agreement, and the Litigation Trustee will pursue, if applicable, the Estate Claims pursuant to the terms of the Litigation Sub-Trust Agreement and the Plan. The Reorganized Debtor will administer the Reorganized Debtor Assets and, if needed, with the utilization of a Sub-Servicer, which administration will include, among other things, managing the wind down of the Managed Funds.

Although the Reorganized Debtor will manage the wind down of the Managed Funds, it is currently anticipated that neither the Reorganized Debtor nor the Claimant Trust will assume or assume and assign the contracts between the Debtor and certain Related Entities pursuant to which the Debtor provides shared services and sub-advisory services to those Related Entities. The Debtor believes that the continued provision of the services under such contracts will not be cost effective.

The Reorganized Debtor will distribute all proceeds from the wind down to the Claimant Trust, as its limited partner, and New GP LLC, as its general partner, in each case in accordance with the Reorganized Limited Partnership Agreement. Such proceeds, along with the proceeds of the Claimant Trust Assets, will ultimately be distributed to the Claimant Trust Beneficiaries as set forth in this Plan and the Claimant Trust Agreement.

**B. The Claimant Trust<sup>2</sup>**

*1. Creation and Governance of the Claimant Trust and Litigation Sub-Trust.*

On or prior to the Effective Date, the Debtor and the Claimant Trustee shall execute the Claimant Trust Agreement and shall take all steps necessary to establish the Claimant Trust and the Litigation Sub-Trust in accordance with the Plan in each case for the benefit of the Claimant Trust Beneficiaries. Additionally, on or prior to the Effective Date, the Debtor shall irrevocably transfer and shall be deemed to have irrevocably transferred to the Claimant Trust all of its

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<sup>2</sup> In the event of a conflict between the terms of this summary and the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, the terms of the Claimant Trust Agreement or the Litigation Sub-Trust Agreement, as applicable, shall control.

rights, title, and interest in and to all of the Claimant Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Claimant Trust Assets shall automatically vest in the Claimant Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the Claimant Trust Interests and the Claimant Trust Expenses, as provided for in the Claimant Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, mortgage from any stamp, transfer, reporting, sales, use, or other similar tax.

The Claimant Trustee shall be the exclusive trustee of the Claimant Trust Assets, excluding the Estate Claims and the Litigation Trustee shall be the exclusive trustee with respect to the Estate Claims in each case for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Claimant Trust Assets. The Claimant Trustee shall also be responsible for resolving all Claims and Equity Interests in Class 8 through Class 11, under the supervision of the Claimant Trust Oversight Committee.

On the Effective Date, the Claimant Trustee and Litigation Trustee shall execute the Litigation Sub-Trust Agreement and shall take all steps necessary to establish the Litigation Sub-Trust. Upon the creation of the Litigation Sub-Trust, the Claimant Trust shall irrevocably transfer and assign to the Litigation Sub-Trust the Estate Claims. The Claimant Trust shall be governed by the Claimant Trust Agreement and administered by the Claimant Trustee. The powers, rights, and responsibilities of the Claimant Trustee shall be specified in the Claimant Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting to the Claimant Trust Oversight Committee as may be set forth in the Claimant Trust Agreement. The Claimant Trust shall hold and distribute the Claimant Trust Assets (including the proceeds from the Estate Claims, if any) in accordance with the provisions of the Plan and the Claimant Trust Agreement; *provided* that the Claimant Trust Oversight Committee may direct the Claimant Trust to reserve Cash from distributions as necessary to fund the Claimant Trust and Litigation Sub-Trust. Other rights and duties of the Claimant Trustee and the Claimant Trust Beneficiaries shall be as set forth in the Claimant Trust Agreement. After the Effective Date, neither the Debtor nor the Reorganized Debtor shall have any interest in the Claimant Trust Assets.

The Litigation Sub-Trust shall be governed by the Litigation Sub-Trust Agreement and administered by the Litigation Trustee. The powers, rights, and responsibilities of the Litigation Trustee shall be specified in the Litigation Sub-Trust Agreement and shall include the authority and responsibility to, among other things, take the actions set forth in this ARTICLE IV, subject to any required reporting as may be set forth in the Litigation Sub-Trust Agreement. The Litigation Sub-Trust shall investigate, prosecute, settle, or otherwise resolve the Estate Claims in accordance with the provisions of the Plan and the Litigation Sub-Trust Agreement and shall distribute the proceeds therefrom to the Claimant Trust for distribution. Other rights and duties of the Litigation Trustee shall be as set forth in the Litigation Sub-Trust Agreement.

## 2. Claimant Trust Oversight Committee

The Claimant Trust, the Claimant Trustee, the management and monetization of the Claimant Trust Assets, and the management of the Reorganized Debtor (through the Claimant Trust's role as managing member of New GP LLC) and the Litigation Sub-Trust will be

overseen by the Claimant Trust Oversight Committee, subject to the terms of the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as applicable.

The Claimant Trust Oversight Committee will initially consist of five members. Four of the five members will be representatives of the members of the Committee: (i) the Redeemer Committee of Highland Crusader Fund, (ii) UBS, (iii) Acis, and (iv) Meta-e Discovery. The fifth member will be an independent, natural Person chosen by the Committee and reasonably acceptable to the Debtor. The members of the Claimant Trust Oversight Committee may be replaced as set forth in the Claimant Trust Agreement. The identity of the members of the Claimant Trust Oversight Committee will be disclosed in the Plan Supplement.

As set forth in the Claimant Trust Agreement, in no event will any member of the Claimant Trust Oversight Committee with a Claim against the Estate be entitled to vote, opine, or otherwise be involved in any matters related to such member's Claim.

The independent member(s) of the Claimant Trust Oversight Committee may be entitled to compensation for their services as set forth in the Claimant Trust Agreement. Any member of the Claimant Trust Oversight Committee may be removed, and successor chosen, in the manner set forth in the Claimant Trust Agreement.

3. Purpose of the Claimant Trust.

The Claimant Trust shall be established for the purpose of (i) managing and monetizing the Claimant Trust Assets, subject to the terms of the Claimant Trust Agreement and the oversight of the Claimant Trust Oversight Committee, (ii) serving as the limited partner of, and holding the limited partnership interests in, the Reorganized Debtor, (iii) serving as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner, (iv) in its capacity as the sole member and manager of New GP LLC, overseeing the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement; and (v) administering the Disputed Claims Reserve and serving as Distribution Agent with respect to Disputed Claims in Class 7 or Class 8.

In its management of the Claimant Trust Assets, the Claimant Trust will also reconcile and object to the General Unsecured Claims, Subordinated Claims, Class B/C Limited Partnership Interests, and Class A Limited Partnership Interests, as provided for in this Plan and the Claimant Trust Agreement, and make Trust Distributions to the Claimant Trust Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

The purpose of the Reorganized Debtor is discussed at greater length in ARTICLE IV.C.

4. Purpose of the Litigation Sub-Trust.

The Litigation Sub-Trust shall be established for the purpose of investigating, prosecuting, settling, or otherwise resolving the Estate Claims. Any proceeds therefrom shall be distributed by the Litigation Sub-Trust to the Claimant Trust for distribution to the Claimant Trust Beneficiaries pursuant to the terms of the Claimant Trust Agreement.

5. Claimant Trust Agreement and Litigation Sub-Trust Agreement.

The Claimant Trust Agreement generally will provide for, among other things:

- (i) the payment of the Claimant Trust Expenses;
- (ii) the payment of other reasonable expenses of the Claimant Trust;
- (iii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation;
- (iv) the investment of Cash by the Claimant Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly monetization of the Claimant Trust Assets;
- (vi) litigation of any Causes of Action, which may include the prosecution, settlement, abandonment, or dismissal of any such Causes of Action, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (vii) the resolution of Claims and Equity Interests in Class 8 through Class 11, subject to reporting and oversight by the Claimant Trust Oversight Committee;
- (viii) the administration of the Disputed Claims Reserve and distributions to be made therefrom; and
- (ix) the management of the Reorganized Debtor, including the utilization of a Sub-Servicer, with the Claimant Trust serving as the managing member of New GP LLC.

Except as otherwise ordered by the Bankruptcy Court, the Claimant Trust Expenses shall be paid from the Claimant Trust Assets in accordance with the Plan and Claimant Trust Agreement. The Claimant Trustee may establish a reserve for the payment of Claimant Trust Expenses and shall periodically replenish such reserve, as necessary.

In furtherance of, and consistent with the purpose of, the Claimant Trust and the Plan, the Trustees, for the benefit of the Claimant Trust, shall, subject to reporting and oversight by the Claimant Trust Oversight Committee as set forth in the Claimant Trust Agreement: (i) hold the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries, (ii) make Distributions to the Claimant Trust Beneficiaries as provided herein and in the Claimant Trust Agreement, and (iii) have the sole power and authority to prosecute and resolve any Causes of Action and objections to Claims and Equity Interests (other than those assigned to the Litigation Sub-Trust), without approval of the Bankruptcy Court. Except as otherwise provided in the Claimant Trust Agreement, the Claimant Trustee shall be responsible for all decisions and duties with respect to the Claimant Trust and the Claimant Trust Assets; *provided, however*, that the prosecution and resolution of any Estate Claims included in the Claimant Trust Assets shall be the responsibility of the Litigation Trustee. In all circumstances, the Claimant Trustee shall act in the best interests of the Claimant Trust Beneficiaries and with the same fiduciary duties as a chapter 7 trustee.

The Litigation Sub-Trust Agreement generally will provide for, among other things:

- (i) the payment of other reasonable expenses of the Litigation Sub-Trust;
- (ii) the retention of employees, counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; and
- (iii) the investigation and prosecution of Estate Claims, which may include the prosecution, settlement, abandonment, or dismissal of any such Estate Claims, subject to reporting and oversight as set forth in the Litigation Sub-Trust Agreement.

The Trustees, on behalf of the Claimant Trust and Litigation Sub-Trust, as applicable, may each employ, without further order of the Bankruptcy Court, employees and other professionals (including those previously retained by the Debtor and the Committee) to assist in carrying out the Trustees' duties hereunder and may compensate and reimburse the reasonable expenses of these professionals without further Order of the Bankruptcy Court from the Claimant Trust Assets in accordance with the Plan and the Claimant Trust Agreement.

The Claimant Trust Agreement and Litigation Sub-Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Claimant Trust in favor of the Claimant Trustee, Litigation Trustee, and the Claimant Trust Oversight Committee. Any such indemnification shall be the sole responsibility of the Claimant Trust and payable solely from the Claimant Trust Assets.

6. Compensation and Duties of Trustees.

The salient terms of each Trustee's employment, including such Trustee's duties and compensation shall be set forth in the Claimant Trust Agreement and the Litigation Sub-Trust Agreement, as appropriate. The Trustees shall each be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

7. Cooperation of Debtor and Reorganized Debtor.

To effectively investigate, prosecute, compromise and/or settle the Claims and/or Causes of Action that constitute Claimant Trust Assets (including Estate Claims), the Claimant Trustee, Litigation Trustee, and each of their professionals may require reasonable access to the Debtor's and Reorganized Debtor's documents, information, and work product relating to the Claimant Trust Assets. Accordingly, the Debtor and the Reorganized Debtor, as applicable, shall reasonably cooperate with the Claimant Trustee and Litigation Trustee, as applicable, in their prosecution of Causes of Action and in providing the Claimant Trustee and Litigation Trustee with copies of documents and information in the Debtor's possession, custody, or control on the Effective Date that either Trustee indicates relates to the Estate Claims or other Causes of Action.

The Debtor and Reorganized Debtor shall preserve all records, documents or work product (including all electronic records, documents, or work product) related to the Claims and Causes of Action, including Estate Claims, until the earlier of (a) the dissolution of the Reorganized Debtor or (b) termination of the Claimant Trust and Litigation Sub-Trust.

8. United States Federal Income Tax Treatment of the Claimant Trust.

Unless the IRS requires otherwise, for all United States federal income tax purposes, the parties shall treat the transfer of the Claimant Trust Assets to the Claimant Trust as: (a) a transfer of the Claimant Trust Assets (other than the amounts set aside in the Disputed Claims Reserve, if the Claimant Trustee makes the election described in Section 7 below) directly to the applicable Claimant Trust Beneficiaries followed by (b) the transfer by the such Claimant Trust Beneficiaries to the Claimant Trust of such Claimant Trust Assets in exchange for the Claimant Trust Interests. Accordingly, the applicable Claimant Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Claimant Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

9. Tax Reporting.

(a) The Claimant Trustee shall file tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a). The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claims Reserve as a separate taxable entity.

(b) The Claimant Trustee shall be responsible for payment, out of the Claimant Trust Assets, of any taxes imposed on the Claimant Trust or its assets.

(c) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Claimant Trust Beneficiaries of such valuation, and such valuation shall be used consistently for all federal income tax purposes.

(d) The Claimant Trustee shall distribute such tax information to the applicable Claimant Trust Beneficiaries as the Claimant Trustee determines is required by applicable law.

10. Claimant Trust Assets.

The Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Causes of Action included in the Claimant Trust Assets (except for the Estate Claims) without any further order of the Bankruptcy Court, and the Claimant Trustee shall have the exclusive right, on behalf of the Claimant Trust, to sell, liquidate, or otherwise monetize all Claimant Trust Assets, except as otherwise provided in this Plan or in the Claimant Trust Agreement, without any further order of the Bankruptcy Court. Notwithstanding anything herein to the contrary, the Litigation Trustee shall have the exclusive right to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Estate Claims included in the Claimant Trust Assets without any further order of the Bankruptcy Court.

From and after the Effective Date, the Trustees, in accordance with section 1123(b)(3) and (4) of the Bankruptcy Code, and on behalf of the Claimant Trust, shall each serve as a representative of the Estate with respect to any and all Claimant Trust Assets, including the

Causes of Action and Estate Claims, as appropriate, and shall retain and possess the right to (a) commence, pursue, settle, compromise, or abandon, as appropriate, any and all Causes of Action in any court or other tribunal and (b) sell, liquidate, or otherwise monetize all Claimant Trust Assets.

11. Claimant Trust Expenses.

From and after the Effective Date, the Claimant Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the Claimant Trust, the Litigation Sub-Trust, and any professionals retained by such parties and entities from the Claimant Trust Assets, except as otherwise provided in the Claimant Trust Agreement.

12. Trust Distributions to Claimant Trust Beneficiaries.

The Claimant Trustee, in its discretion, may make Trust Distributions to the Claimant Trust Beneficiaries at any time and/or use the Claimant Trust Assets or proceeds thereof, *provided* that such Trust Distributions or use is otherwise permitted under the terms of the Plan, the Claimant Trust Agreement, and applicable law.

13. Cash Investments.

With the consent of the Claimant Trust Oversight Committee, the Claimant Trustee may invest Cash (including any earnings thereon or proceeds therefrom) in a manner consistent with the terms of the Claimant Trust Agreement; *provided, however*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

14. Dissolution of the Claimant Trust and Litigation Sub-Trust.

The Trustees and the Claimant Trust and Litigation Sub-Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Claimant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the

Claimant Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets; *provided, however*, that each extension must be approved, upon a finding that the extension is necessary to facilitate or complete the recovery on, and liquidation of the Claimant Trust Assets, by the Bankruptcy Court within 6 months of the beginning of the extended term and no extension, together with any prior extensions, shall exceed three years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that any further extension would not adversely affect the status of the Claimant Trust as a liquidating trust for federal income tax purposes.

Upon dissolution of the Claimant Trust, and pursuant to the Claimant Trust Agreement, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

**C. The Reorganized Debtor**

1. Corporate Existence

The Debtor will continue to exist after the Effective Date, with all of the powers of partnerships pursuant to the law of the State of Delaware and as set forth in the Reorganized Limited Partnership Agreement.

2. Cancellation of Equity Interests and Release

On the Effective Date, (i) all prepetition Equity Interests, including the Class A Limited Partnership Interests and the Class B/C Limited Partnership Interests, in the Debtor shall be canceled, and (ii) all obligations or debts owed by, or Claims against, the Debtor on account of, or based upon, the Interests shall be deemed as cancelled, released, and discharged, including all obligations or duties by the Debtor relating to the Equity Interests in any of the Debtor's formation documents, including the Limited Partnership Agreement.

3. Issuance of New Partnership Interests

On the Effective Date, the Debtor or the Reorganized Debtor, as applicable, will issue new Class A Limited Partnership Interests to (i) the Claimant Trust, as limited partner, and (ii) New GP LLC, as general partner, and will admit (a) the Claimant Trust as the limited partner of the Reorganized Debtor, and (b) New GP LLC as the general partner of the Reorganized Debtor. The Claimant Trust, as limited partner, will ratify New GP LLC's appointment as general partner of the Reorganized Debtor. Also, on the Effective Date, the Claimant Trust, as limited partner, and New GP LLC, as general partner, will execute the Reorganized Limited Partnership Agreement and receive partnership interests in the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement.

4. Management of the Reorganized Debtor

Subject to and consistent with the terms of the Reorganized Limited Partnership Agreement, the Reorganized Debtor shall be managed by its general partner, New GP LLC. The initial officers and employees of the Reorganized Debtor shall be selected by the Claimant

Trustee. The Reorganized Debtor may, in its discretion, also utilize a Sub-Servicer in addition to or in lieu of the retention of officers and employees.

As set forth in the Reorganized Limited Partnership Agreement, New GP LLC will receive a fee for managing the Reorganized Debtor. Although New GP LLC will be a limited liability company, it will elect to be treated as a C-Corporation for tax purposes. Therefore, New GP LLC (and any taxable income attributable to it) will be subject to corporate income taxation on a standalone basis, which may reduce the return to Claimants.

5. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all Reorganized Debtor Assets will vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.

The Reorganized Debtor shall be the exclusive trustee of the Reorganized Debtor Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code with respect to the Reorganized Debtor Assets.

6. *Purpose of the Reorganized Debtor*

Except as may be otherwise provided in this Plan or the Confirmation Order, the Reorganized Debtor will continue to manage the Reorganized Debtor Assets (which shall include, for the avoidance of doubt, serving as the investment manager of the Managed Funds) and may use, acquire or dispose of the Reorganized Debtor Assets and compromise or settle any Claims with respect to the Reorganized Debtor Assets without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. The Reorganized Debtor shall oversee the resolution of Claims in Class 1 through Class 7.

Without limiting the foregoing, the Reorganized Debtor will pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

7. *Distribution of Proceeds from the Reorganized Debtor Assets; Transfer of Reorganized Debtor Assets*

Any proceeds received by the Reorganized Debtor will be distributed to the Claimant Trust, as limited partner, and New GP LLC, as general partner, in the manner set forth in the Reorganized Limited Partnership Agreement. As set forth in the Reorganized Limited Partnership Agreement, the Reorganized Debtor may, from time to time distribute Reorganized Debtor Assets to the Claimant Trust either in Cash or in-kind, including to institute the wind-down and dissolution of the Reorganized Debtor. Any assets distributed to the Claimant Trust

will be (i) deemed transferred in all respects as forth in ARTICLE IV.B.1, (ii) deemed Claimant Trust Assets, and (iii) administered as Claimant Trust Assets.

**D. Company Action**

Each of the Debtor, the Reorganized Debtor, and the Trustees, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, the Claimant Trust Agreement, the Reorganized Limited Partnership Agreement, or the New GP LLC Documents, as applicable, in the name of and on behalf of the Debtor, the Reorganized Debtor, or the Trustees, as applicable, and in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers, or directors of the Debtor or the Reorganized Debtor, as applicable, or by any other Person.

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, partners, directors, managers, or members of the Debtor, any Related Entity, or any Affiliate thereof (as of prior to the Effective Date) will be deemed to have been so approved and will be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, partners, directors, managers or members of such Persons, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, in connection with this Plan, will be deemed to have occurred and will be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, partners, directors, managers, or members of the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor and the Reorganized Debtor, as applicable, as well as the Trustees, are authorized to issue, execute, deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor and the Reorganized Debtor, as well as the Trustees, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The appropriate officer of the Debtor, the Reorganized Debtor, as well as the Trustees, will be authorized to certify or attest to any of the foregoing actions.

**E. Release of Liens, Claims and Equity Interests**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, from and after the

Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or Equity Interests extinguished pursuant to the prior sentence will, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**F. Cancellation of Notes, Certificates and Instruments**

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, Securities and other documents evidencing any prepetition Claim or Equity Interest and any rights of any Holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. The holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan, and the obligations of the Debtor thereunder or in any way related thereto will be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. For the avoidance of doubt, this section is in addition to, and shall not be read to limit in any respects, ARTICLE IV.C.2.

**G. Cancellation of Existing Instruments Governing Security Interests**

Upon payment or other satisfaction of an Allowed Class 1 or Allowed Class 2 Claim, or promptly thereafter, the Holder of such Allowed Class 1 or Allowed Class 2 Claim shall deliver to the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, any collateral or other property of the Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Class 1 or Allowed Class 2 Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents.

**H. Control Provisions**

To the extent that there is any inconsistency between this Plan as it relates to the Claimant Trust, the Claimant Trust Agreement, the Reorganized Debtor, or the Reorganized Limited Partnership Agreement, this Plan shall control.

**I. Treatment of Vacant Classes**

Any Claim or Equity Interest in a Class considered vacant under ARTICLE III.C of this Plan shall receive no Plan Distributions.

**J. Plan Documents**

The documents, if any, to be Filed as part of the Plan Documents, including any documents filed with the Plan Supplement, and any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference (including to the applicable definitions in ARTICLE I hereof) and fully enforceable as if stated in full herein.

The Debtor and the Committee are currently working to finalize the forms of certain of the Plan Documents to be filed with the Plan Supplement. To the extent that the Debtor and the Committee cannot agree as to the form and content of such Plan Documents, they intend to submit the issue to non-binding mediation pursuant to the *Order Directing Mediation* entered on August 3, 2020 [D.I. 912].

**K. Highland Capital Management, L.P. Retirement Plan and Trust**

The Highland Capital Management, L.P. Retirement Plan And Trust (“Pension Plan”) is a single-employer defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). 29 U.S.C. §§ 1301-1461. The Debtor is the contributing sponsor and, as such, the PBGC asserts that the Debtor is liable along with any members of the contributing sponsor’s controlled-group within the meaning of 29 U.S.C. §§ 1301(a)(13), (14) with respect to the Pension Plan.

Upon the Effective Date, the Reorganized Debtor shall be deemed to have assumed the Pension Plan and shall comply with all applicable statutory provisions of ERISA and the Internal Revenue Code (the “IRC”), including, but not limited to, satisfying the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083; paying the PBGC premiums in accordance with 29 U.S.C. §§ 1306 and 1307; and administering the Pension Plan in accordance with its terms and the provisions of ERISA and the IRC. In the event that the Pension Plan terminates after the Plan of Reorganization Effective Date, the PBGC asserts that the Reorganized Debtor and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.

Notwithstanding any provision of the Plan, the Confirmation Order, or the Bankruptcy Code (including section 1141 thereof) to the contrary, neither the Plan, the Confirmation Order, or the Bankruptcy Code shall be construed as discharging, releasing, exculpating or relieving the Debtor, the Reorganized Debtor, or any person or entity in any capacity, from any liability or responsibility, if any, with respect to the Pension Plan under any law, governmental policy, or regulatory provision. PBGC and the Pension Plan shall not be enjoined or precluded from enforcing such liability or responsibility against any person or entity as a result of any of the provisions of the Plan, the Confirmation Order, or the Bankruptcy Code. The Debtor reserves the right to contest any such liability or responsibility.

## ARTICLE V.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. Assumption, Assignment, or Rejection of Executory Contracts and Unexpired Leases

Unless an Executory Contract or Unexpired Lease: (i) was previously assumed or rejected by the Debtor pursuant to a Final Order of the Bankruptcy Court entered prior to the Effective Date; (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto; (iii) is the subject of a motion to assume filed by the Debtor on or before the Confirmation Date; (iv) contains a change of control or similar provision that would be triggered by the Chapter 11 Case (unless such provision has been irrevocably waived); or (v) is specifically designated as a contract or lease to be assumed in the Plan Supplement, on the Effective Date, each Executory Contract and Unexpired Lease shall be deemed rejected pursuant to section 365 of the Bankruptcy Code, without the need for any further notice to or action, order, or approval of the Bankruptcy Court, unless such Executory Contract or Unexpired Lease is listed in the Plan Supplement.

At any time on or prior to the Effective Date, the Debtor may (i) amend the Plan Supplement in order to add or remove a contract or lease from the list of contracts to be assumed or (ii) assign (subject to applicable law) any Executory Contract or Unexpired Lease, as determined by the Debtor in consultation with the Committee, or the Reorganized Debtor, as applicable.

The Confirmation Order will constitute an order of the Bankruptcy Court approving the above-described assumptions, rejections, and assumptions and assignments. Except as otherwise provided herein or agreed to by the Debtor and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith. To the extent applicable, no change of control (or similar provision) will be deemed to occur under any such Executory Contract or Unexpired Lease.

If certain, but not all, of a contract counterparty's Executory Contracts and/or Unexpired Leases are rejected pursuant to the Plan, the Confirmation Order shall be a determination that such counterparty's Executory Contracts and/or Unexpired Leases that are being assumed pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and/or Unexpired Leases that are being rejected pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection to the Plan on the grounds that their agreements are integrated and not severable, and any such dispute shall be resolved by the Bankruptcy Court at the Confirmation Hearing (to the extent not resolved by the parties prior to the Confirmation Hearing).

Notwithstanding anything herein to the contrary, the Debtor shall assume or reject that certain real property lease with Crescent TC Investors L.P. (“Landlord”) for the Debtor’s headquarters located at 200/300 Crescent Ct., Suite #700, Dallas, Texas 75201 (the “Lease”) in accordance with the notice to Landlord, procedures and timing required by 11 U.S.C. §365(d)(4), as modified by that certain *Agreed Order Granting Motion to Extend Time to Assume or Reject Unexpired Nonresidential Real Property Lease* [Docket No. 1122].

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Any Executory Contract or Unexpired Lease not assumed or rejected on or before the Effective Date shall be deemed rejected, pursuant to the Confirmation Order. Any Person asserting a Rejection Claim shall File a proof of claim within thirty days of the Effective Date. Any Rejection Claims that are not timely Filed pursuant to this Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed, the Claimant Trustee may File an objection to any Rejection Claim.

Rejection Claims shall be classified as General Unsecured Claims and shall be treated in accordance with ARTICLE III of this Plan.

**C. Cure of Defaults for Assumed or Assigned Executory Contracts and Unexpired Leases**

Any monetary amounts by which any Executory Contract or Unexpired Lease to be assumed or assigned hereunder is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, by the Debtor upon assumption or assignment thereof, by payment of the default amount in Cash as and when due in the ordinary course or on such other terms as the parties to such Executory Contracts may otherwise agree. The Debtor may serve a notice on the Committee and parties to Executory Contracts or Unexpired Leases to be assumed or assigned reflecting the Debtor’s or Reorganized Debtor’s intention to assume or assign the Executory Contract or Unexpired Lease in connection with this Plan and setting forth the proposed cure amount (if any).

If a dispute regarding (1) the amount of any payments to cure a default, (2) the ability of the Debtor, the Reorganized Debtor, or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assigned or (3) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code will be made following the entry of a Final Order or orders resolving the dispute and approving the assumption or assignment.

Assumption or assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise and full payment of any applicable cure amounts pursuant to this ARTICLE V.C shall result in the full release and satisfaction of any cure amounts, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assigned Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assignment. Any and all Proofs of Claim based upon Executory Contracts

or Unexpired Leases that have been assumed or assigned in the Chapter 11 Case, including pursuant to the Confirmation Order, and for which any cure amounts have been fully paid pursuant to this ARTICLE V.C, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**ARTICLE VI.**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Dates of Distributions**

Except as otherwise provided in this Plan, on the Effective Date or as soon as reasonably practicable thereafter (or if a Claim is not an Allowed Claim or Equity Interest on the Effective Date, on the date that such Claim or Equity Interest becomes an Allowed Claim or Equity Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Equity Interest against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims or Allowed Equity Interests in the applicable Class and in the manner provided herein. If any payment or act under this Plan is required to be made or performed on a date that is not on a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent there are Disputed Claims or Equity Interests, distributions on account of any such Disputed Claims or Equity Interests shall be made pursuant to the provisions provided in this Plan. Except as otherwise provided in this Plan, Holders of Claims and Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for therein, regardless of whether distributions are delivered on or at any time after the Effective Date.

Upon the Effective Date, all Claims and Equity Interests against the Debtor shall be deemed fixed and adjusted pursuant to this Plan and none of the Debtor, the Reorganized Debtor, or the Claimant Trust will have liability on account of any Claims or Equity Interests except as set forth in this Plan and in the Confirmation Order. All payments and all distributions made by the Distribution Agent under this Plan shall be in full and final satisfaction, settlement and release of all Claims and Equity Interests against the Debtor and the Reorganized Debtor.

At the close of business on the Distribution Record Date, the transfer ledgers for the Claims against the Debtor and the Equity Interests in the Debtor shall be closed, and there shall be no further changes in the record holders of such Claims and Equity Interests. The Debtor, the Reorganized Debtor, the Trustees, and the Distribution Agent, and each of their respective agents, successors, and assigns shall have no obligation to recognize the transfer of any Claims against the Debtor or Equity Interests in the Debtor occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the transfer ledgers as of the close of business on the Distribution Record Date irrespective of the number of distributions to be made under this Plan to such Persons or the date of such distributions.

**B. Distribution Agent**

Except as provided herein, all distributions under this Plan shall be made by the Claimant Trustee, as Distribution Agent, or by such other Entity designated by the Claimant Trustee, as a Distribution Agent on the Effective Date or thereafter. The Reorganized Debtor will be the Distribution Agent with respect to Claims in Class 1 through Class 7.

The Claimant Trustee, or such other Entity designated by the Claimant Trustee to be the Distribution Agent, shall not be required to give any bond or surety or other security for the performance of such Distribution Agent's duties unless otherwise ordered by the Bankruptcy Court.

The Distribution Agent shall be empowered to (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Distribution Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Distribution Agent to be necessary and proper to implement the provisions hereof.

The Distribution Agent shall not have any obligation to make a particular distribution to a specific Holder of an Allowed Claim if such Holder is also the Holder of a Disputed Claim.

**C. Cash Distributions**

Distributions of Cash may be made by wire transfer from a domestic bank, except that Cash payments made to foreign creditors may be made in such funds and by such means as the Distribution Agent determines are necessary or customary in a particular foreign jurisdiction.

**D. Disputed Claims Reserve**

On or prior to the Initial Distribution Date, the Claimant Trustee shall establish, fund and maintain the Disputed Claims Reserve(s) in the appropriate Disputed Claims Reserve Amounts on account of any Disputed Claims.

**E. Distributions from the Disputed Claims Reserve**

The Disputed Claims Reserve shall at all times hold Cash in an amount no less than the Disputed Claims Reserve Amount. To the extent a Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, within 30 days of the date on which such Disputed Claim becomes an Allowed Claim pursuant to the terms of this Plan, the Claimant Trustee shall distribute from the Disputed Claims Reserve to the Holder thereof any prior distributions, in Cash, that would have been made to such Allowed Claim if it had been Allowed as of the Effective Date. For the avoidance of doubt, each Holder of a Disputed Claim that subsequently becomes an Allowed Claim will also receive its Pro Rata share of the Claimant Trust Interests. If, upon the resolution of all Disputed Claims any Cash remains in the Disputed Claims Reserve, such Cash shall be transferred to the Claimant Trust and be deemed a Claimant Trust Asset.

**F. Rounding of Payments**

Whenever this Plan would otherwise call for, with respect to a particular Person, payment of a fraction of a dollar, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash to be distributed under this Plan remains undistributed as a result of the aforementioned rounding, such Cash or stock shall be treated as “Unclaimed Property” under this Plan.

**G. De Minimis Distribution**

Except as to any Allowed Claim that is Unimpaired under this Plan, none of the Debtor, the Reorganized Debtor, or the Distribution Agent shall have any obligation to make any Plan Distributions with a value of less than \$100, unless a written request therefor is received by the Distribution Agent from the relevant recipient at the addresses set forth in ARTICLE VI.J hereof within 120 days after the later of the (i) Effective Date and (ii) the date such Claim becomes an Allowed Claim. *De minimis* distributions for which no such request is timely received shall revert to the Claimant Trust. Upon such reversion, the relevant Allowed Claim (and any Claim on account of missed distributions) shall be automatically deemed satisfied, discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**H. Distributions on Account of Allowed Claims**

Except as otherwise agreed by the Holder of a particular Claim or as provided in this Plan, all distributions shall be made pursuant to the terms of this Plan and the Confirmation Order. Except as otherwise provided in this Plan, distributions to any Holder of an Allowed Claim shall, to the extent applicable, be allocated first to the principal amount of any such Allowed Claim, as determined for U.S. federal income tax purposes and then, to the extent the consideration exceeds such amount, to the remainder of such Claim comprising accrued but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

**I. General Distribution Procedures**

The Distribution Agent shall make all distributions of Cash or other property required under this Plan, unless this Plan specifically provides otherwise. All Cash and other property held by the Debtor, the Reorganized Debtor, or the Claimant Trust, as applicable, for ultimate distribution under this Plan shall not be subject to any claim by any Person.

**J. Address for Delivery of Distributions**

Distributions to Holders of Allowed Claims, to the extent provided for under this Plan, shall be made (1) at the addresses set forth in any written notices of address change delivered to the Debtor and the Distribution Agent; (2) at the address set forth on any Proofs of Claim Filed by such Holders (to the extent such Proofs of Claim are Filed in the Chapter 11 Case), (2), or (3) at the addresses in the Debtor’s books and records.

If there is any conflict or discrepancy between the addresses set forth in (1) through (3) in the foregoing sentence, then (i) the address in Section (2) shall control; (ii) if (2) does not apply, the address in (1) shall control, and (iii) if (1) does not apply, the address in (3) shall control.

**K. Undeliverable Distributions and Unclaimed Property**

If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor or the Claimant Trust as undeliverable, no further distribution shall be made to such Holder, and Distribution Agent shall not have any obligation to make any further distribution to the Holder, unless and until the Distribution Agent is notified in writing of such Holder's then current address.

Any Entity that fails to claim any Cash within six months from the date upon which a distribution is first made to such Entity shall forfeit all rights to any distribution under this Plan and such Cash shall thereafter be deemed an Claimant Trust Asset in all respects and for all purposes. Entities that fail to claim Cash shall forfeit their rights thereto and shall have no claim whatsoever against the Debtor's Estate, the Reorganized Debtor, the Claimant Trust, or against any Holder of an Allowed Claim to whom distributions are made by the Distribution Agent.

**L. Withholding Taxes**

In connection with this Plan, to the extent applicable, the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to this Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. As a condition to receiving any distribution under this Plan, the Distribution Agent may require that the Holder of an Allowed Claim entitled to receive a distribution pursuant to this Plan provide such Holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Distribution Agent to comply with applicable tax reporting and withholding laws. If a Holder fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

**M. Setoffs**

The Distribution Agent may, to the extent permitted under applicable law, set off against any Allowed Claim and any distributions to be made pursuant to this Plan on account of such Allowed Claim, the claims, rights and causes of action of any nature that the Debtor, the Reorganized Debtor, or the Distribution Agent may hold against the Holder of such Allowed Claim that are not otherwise waived, released or compromised in accordance with this Plan; *provided, however*, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Reorganized Debtor, or the Claimant Trustee of any such claims, rights and causes of action that the Debtor, the Reorganized Debtor, or Claimant Trustee possesses against such Holder. Any Holder of an Allowed Claim subject to

such setoff reserves the right to challenge any such setoff in the Bankruptcy Court or any other court with jurisdiction with respect to such challenge.

**N. Surrender of Cancelled Instruments or Securities**

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by negotiable instruments, securities, or notes canceled pursuant to ARTICLE IV of this Plan, the Holder of such Claim will tender the applicable negotiable instruments, securities, or notes evidencing such Claim (or a sworn affidavit identifying the negotiable instruments, securities, or notes formerly held by such Holder and certifying that they have been lost), to the Distribution Agent unless waived in writing by the Distribution Agent.

**O. Lost, Stolen, Mutilated or Destroyed Securities**

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim or Equity Interest evidenced by a security or note that has been lost, stolen, mutilated, or destroyed will, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Distribution Agent: (i) evidence reasonably satisfactory to the Distribution Agent of such loss, theft, mutilation, or destruction; and (ii) such security or indemnity as may be required by the Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim or Equity Interest. Upon compliance with ARTICLE VI.O of this Plan as determined by the Distribution Agent, by a Holder of a Claim evidenced by a security or note, such Holder will, for all purposes under this Plan, be deemed to have surrendered such security or note to the Distribution Agent.

**ARTICLE VII.  
PROCEDURES FOR RESOLVING CONTINGENT,  
UNLIQUIDATED AND DISPUTED CLAIMS**

**A. Filing of Proofs of Claim**

Unless such Claim appeared in the Schedules and is not listed as disputed, contingent, or unliquidated, or such Claim has otherwise been Allowed or paid, each Holder of a Claim was required to file a Proof of Claim on or prior to the Bar Date.

**B. Disputed Claims**

Following the Effective Date, each of the Reorganized Debtor or the Claimant Trustee, as applicable, may File with the Bankruptcy Court an objection to the allowance of any Disputed Claim or Disputed Equity Interest or any other appropriate motion or adversary proceeding with respect thereto, which shall be litigated to Final Order or, at the discretion of the Reorganized Debtor or Claimant Trustee, as applicable, compromised, settled, withdrew or resolved without further order of the Bankruptcy Court, and (ii) unless otherwise provided in the Confirmation Order, the Reorganized Debtor or the Claimant Trust, as applicable, are authorized to settle, or withdraw any objections to, any Disputed Claim or Disputed Equity Interests following the Effective Date without further notice to creditors (other than the Entity holding such Disputed Claim or Disputed Equity Interest) or authorization of the Bankruptcy Court, in which event such

Claim or Equity Interest shall be deemed to be an Allowed Claim or Equity Interest in the amount compromised for purposes of this Plan.

**C. Procedures Regarding Disputed Claims or Disputed Equity Interests**

No payment or other distribution or treatment shall be made on account of a Disputed Claim or Disputed Equity Interest unless and until such Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interests and the amount of such Allowed Claim or Equity Interest, as applicable, is determined by order of the Bankruptcy Court or by stipulation between the Reorganized Debtor or Claimant Trust, as applicable, and the Holder of the Claim or Equity Interest.

**D. Allowance of Claims and Equity Interests**

Following the date on which a Disputed Claim or Disputed Equity Interest becomes an Allowed Claim or Equity Interest after the Distribution Date, the Distribution Agent shall make a distribution to the Holder of such Allowed Claim or Equity Interest in accordance with the Plan.

*1. Allowance of Claims*

After the Effective Date and subject to the other provisions of this Plan, the Reorganized Debtor or the Claimant Trust, as applicable, will have and will retain any and all rights and defenses under bankruptcy or nonbankruptcy law that the Debtor had with respect to any Claim. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim or Equity Interest will become an Allowed Claim or Equity Interest unless and until such Claim or Equity Interest is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered an order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim or Equity Interest.

*2. Estimation*

Subject to the other provisions of this Plan, the Debtor, prior to the Effective Date, and the Reorganized Debtor or the Claimant Trustee, as applicable, after the Effective Date, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim or Disputed Equity Interest pursuant to applicable law and in accordance with this Plan and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court will retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim or Disputed Equity Interest, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or Equity Interest or during the pendency of any appeal relating to any such objection. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims or Equity Interests may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

3. Disallowance of Claims

Any Claims or Equity Interests held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code, or that are a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and holders of such Claims or Interests may not receive any distributions on account of such Claims or Interests until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court Order with respect thereto has been entered and all sums due, if any, to the Reorganized Debtor or the Claimant Trust, as applicable, by that Entity have been turned over or paid to the Reorganized Debtor or the Claimant Trust, as applicable.

**EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE DEBTOR, REORGANIZED DEBTOR, OR CLAIMANT TRUSTEE, AS APPLICABLE, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

**ARTICLE VIII.  
EFFECTIVENESS OF THIS PLAN**

**A. Conditions Precedent to the Effective Date**

The Effective Date of this Plan will be conditioned upon the satisfaction or waiver by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee with such consent not to be unreasonably withheld), pursuant to the provisions of ARTICLE VIII.B of this Plan of the following:

- This Plan and the Plan Documents, including the Claimant Trust Agreement and the Reorganized Limited Partnership Agreement, and all schedules, documents, supplements and exhibits to this Plan shall have been Filed in form and substance reasonably acceptable to the Debtor and the Committee.
- The Confirmation Order shall have been entered, not subject to stay pending appeal, and shall be in form and substance reasonably acceptable to the Debtor and the Committee. The Confirmation Order shall provide that, among other things, (i) the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee are authorized to take all actions necessary or appropriate to effectuate and consummate this Plan, including, without limitation, (a) entering into, implementing, effectuating, and consummating the contracts, instruments, releases, and other agreements or documents created in connection with or described in this Plan, (b) assuming the Executory Contracts and Unexpired Leases set forth in the Plan Supplement, (c) making all distributions and issuances as required under this Plan; and (d) entering

- into any transactions as set forth in the Plan Documents; (ii) the provisions of the Confirmation Order and this Plan are nonseverable and mutually dependent; (iii) the implementation of this Plan in accordance with its terms is authorized; (iv) pursuant to section 1146 of the Bankruptcy Code, the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with this Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of Assets contemplated under this Plan, shall not be subject to any Stamp or Similar Tax; and (v) the vesting of the Claimant Trust Assets in the Claimant Trust and the Reorganized Debtor Assets in the Reorganized Debtor, in each case as of the Effective Date free and clear of liens and claims to the fullest extent permissible under applicable law pursuant to section 1141(c) of the Bankruptcy Code except with respect to such Liens, Claims, charges and other encumbrances that are specifically preserved under this Plan upon the Effective Date.
- All documents and agreements necessary to implement this Plan, including without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, in each case in form and substance reasonably acceptable to the Debtor and the Committee, shall have (a) been tendered for delivery, and (b) been effected by, executed by, or otherwise deemed binding upon, all Entities party thereto and shall be in full force and effect. All conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.
  - All authorizations, consents, actions, documents, approvals (including any governmental approvals), certificates and agreements necessary to implement this Plan, including, without limitation, the Reorganized Limited Partnership Agreement, the Claimant Trust Agreement, and the New GP LLC Documents, shall have been obtained, effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws and any applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain or prevent effectiveness or consummation of the Restructuring.
  - The Professional Fee Reserve shall be funded pursuant to this Plan in an amount determined by the Debtor in good faith.

**B. Waiver of Conditions**

The conditions to effectiveness of this Plan set forth in this ARTICLE VIII (other than that the Confirmation Order shall have been entered) may be waived in whole or in part by the Debtor (and, to the extent such condition requires the consent of the Committee, the consent of the Committee), without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or effectuate this Plan. The failure to satisfy or waive a condition to the Effective Date may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each right will be deemed an ongoing right that may be asserted at any time by the Debtor, the Reorganized

Debtor, or the Claimant Trust, as applicable.

**C. Effect of Non-Occurrence of Conditions to Effectiveness**

Unless waived as set forth in ARTICLE VIII.B, if the Effective Date of this Plan does not occur within twenty calendar days of entry of the Confirmation Order, the Debtor may withdraw this Plan and, if withdrawn, the Plan shall be of no further force or effect.

**D. Dissolution of the Committee**

On the Effective Date, the Committee will dissolve, and the members of the Committee and the Committee's Professionals will cease to have any role arising from or relating to the Chapter 11 Case, except in connection with final fee applications of Professionals for services rendered prior to the Effective Date (including the right to object thereto). The Professionals retained by the Committee and the members thereof will not be entitled to assert any fee claims for any services rendered to the Committee or expenses incurred in the service of the Committee after the Effective Date, except for reasonable fees for services rendered, and actual and necessary costs incurred, in connection with any applications for allowance of Professional Fees pending on the Effective Date or filed and served after the Effective Date pursuant to the Plan. Nothing in the Plan shall prohibit or limit the ability of the Debtor's or Committee's Professionals to represent either of the Trustees or to be compensated or reimbursed per the Plan and the Claimant Trust Agreement in connection with such representation.

**ARTICLE IX.**

**EXCULPATION, INJUNCTION AND RELATED PROVISIONS**

**A. General**

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and Equity Interests and their respective distributions and treatments under the Plan shall take into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise.

**B. Discharge of Claims**

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its Assets or properties, and regardless of whether any property will have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose

before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

**C. Exculpation**

Subject in all respects to ARTICLE XII.D of this Plan, to the maximum extent permitted by applicable law, no Exculpated Party will have or incur, and each Exculpated Party is hereby exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, remedy, loss, and liability for conduct occurring on or after the Petition Date in connection with or arising out of (i) the filing and administration of the Chapter 11 Case; (ii) the negotiation and pursuit of the Disclosure Statement, the Plan, or the solicitation of votes for, or confirmation of, the Plan; (iii) the funding or consummation of the Plan (including the Plan Supplement) or any related agreements, instruments, or other documents, the solicitation of votes on the Plan, the offer, issuance, and Plan Distribution of any securities issued or to be issued pursuant to the Plan, including the Claimant Trust Interests, whether or not such Plan Distributions occur following the Effective Date; (iv) the implementation of the Plan; and (v) any negotiations, transactions, and documentation in connection with the foregoing clauses (i)-(v); *provided, however*, the foregoing will not apply to (a) any acts or omissions of an Exculpated Party arising out of or related to acts or omissions that constitute bad faith, fraud, gross negligence, criminal misconduct, or willful misconduct or (b) Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, any other applicable law or rules, or any other provisions of this Plan, including ARTICLE IV.C.2, protecting such Exculpated Parties from liability.

**D. Releases by the Debtor**

On and after the Effective Date, each Released Party is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor and the Estate, in each case on behalf of themselves and their respective successors, assigns, and representatives, including, but not limited to, the Claimant Trust and the Litigation Sub-Trust from any and all Causes of Action, including any derivative claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or other Person.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release: (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) the rights or obligations of any current employee of the Debtor under any employment agreement or plan, (iii) the rights of the Debtor with respect to any confidentiality provisions or covenants restricting competition in favor of the Debtor under any employment agreement with a current or former employee of the Debtor, (iv) any Avoidance Actions, or (v) any Causes of Action arising from willful misconduct, criminal

misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction.

Notwithstanding anything herein to the contrary, any release provided pursuant to this ARTICLE IX.D (i) with respect to a Senior Employee, is conditioned in all respects on (a) such Senior Employee executing a Senior Employee Stipulation on or prior to the Effective Date and (b) the reduction of such Senior Employee's Allowed Claim as set forth in the Senior Employee Stipulation (such amount, the "Reduced Employee Claim"), and (ii) with respect to any Employee, including a Senior Employee, shall be deemed null and void and of no force and effect (1) if there is more than one member of the Claimant Trust Oversight Committee who does not represent entities holding a Disputed or Allowed Claim (the "Independent Members"), the Claimant Trustee and the Independent Members by majority vote determine or (2) if there is only one Independent Member, the Independent Member after discussion with the Claimant Trustee, determines (in each case after discussing with the full Claimant Trust Oversight Committee) that such Employee (regardless of whether the Employee is then currently employed by the Debtor, the Reorganized Debtor, or the Claimant Trustee):

- sues, attempts to sue, or threatens or works with or assists any entity or person to sue, attempt to sue, or threaten the Reorganized Debtor, the Claimant Trust, the Litigation Sub-Trust, or any of their respective employees or agents, or any Released Party on or in connection with any claim or cause of action arising prior to the Effective Date,
- has taken any action that, impairs or harms the value of the Claimant Trust Assets or the Reorganized Debtor Assets, or
- (x) upon the request of the Claimant Trustee, has failed to provide reasonable assistance in good faith to the Claimant Trustee or the Reorganized Debtor with respect to (1) the monetization of the Claimant Trust Assets or Reorganized Debtor Assets, as applicable, or (2) the resolution of Claims, or (y) has taken any action that impedes or frustrates the Claimant Trustee or the Reorganized Debtor with respect to any of the foregoing.

*Provided, however,* that the release provided pursuant to this ARTICLE IX.D will vest and the Employee will be indefeasibly released pursuant to this ARTICLE IX.D if such Employee's release has not been deemed null and void and of no force and effect on or prior to the date that is the date of dissolution of the Claimant Trust pursuant to the Claimant Trust Agreement.

By executing the Senior Employee Stipulation embodying this release, each Senior Employee acknowledges and agrees, without limitation, to the terms of this release and the tolling agreement contained in the Senior Employee Stipulation.

The provisions of this release and the execution of a Senior Employee Stipulation will not in any way prevent or limit any Employee from (i) prosecuting its Claims, if any, against the Debtor's Estate, (ii) defending him or herself against any claims or causes of action brought against the Employee by a third party, or (iii) assisting other persons in defending themselves from any Estate Claims brought by the Litigation Trustee (but only with respect to Estate Claims

brought by the Litigation Trustee and not collection or other actions brought by the Claimant Trustee).

**E. Preservation of Rights of Action**

*1. Maintenance of Causes of Action*

Except as otherwise provided in this Plan, after the Effective Date, the Reorganized Debtor or the Claimant Trust will retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action included in the Reorganized Debtor Assets or Claimant Trust Assets, as applicable, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case and, as the successors in interest to the Debtor and the Estate, may, and will have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Causes of Action without notice to or approval from the Bankruptcy Court.

*2. Preservation of All Causes of Action Not Expressly Settled or Released*

Unless a Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), such Cause of Action is expressly reserved for later adjudication by the Reorganized Debtor or Claimant Trust, as applicable (including, without limitation, Causes of Action not specifically identified or of which the Debtor may presently be unaware or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches will apply to such Causes of Action as a consequence of the confirmation, effectiveness, or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action have been expressly released in this Plan or any other Final Order (including, without limitation, the Confirmation Order). In addition, the right of the Reorganized Debtor or the Claimant Trust to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, is expressly reserved.

**F. Injunction**

Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective Related Persons, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

Except as expressly provided in the Plan, the Confirmation Order, or a separate order of the Bankruptcy Court, all Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor (whether proof of such Claims or Equity Interests has been filed or not and whether or not such Entities vote in favor of, against or abstain from voting on the Plan or are presumed to have accepted or deemed to have rejected the Plan) and other parties in interest,

along with their respective Related Persons, are permanently enjoined, on and after the Effective Date, with respect to such Claims and Equity Interests, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (ii) enforcing, levying, attaching (including any prejudgment attachment), collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or the property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust, (iv) asserting any right of setoff, directly or indirectly, against any obligation due from the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust or against property or interests in property of any of the Debtor, the Independent Directors, the Reorganized Debtor, or the Claimant Trust; and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

The injunctions set forth herein shall extend to any successors of the Debtor, the Reorganized Debtor, and the Claimant Trust and their respective property and interests in property.

**Subject in all respects to ARTICLE XII.D, no Entity may commence or pursue a claim or cause of action of any kind against any Protected Party that arose from or is related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, the administration of the Claimant Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice, that such claim or cause of action represents a colorable claim of bad faith, criminal misconduct, willful misconduct, fraud, or gross negligence against a Protected Party and (ii) specifically authorizing such Entity to bring such claim against any such Protected Party; *provided, however,* the foregoing will not apply to Strand or any Employee other than with respect to actions taken by such Entities from the date of appointment of the Independent Directors through the Effective Date. As set forth in ARTICLE XI, the Bankruptcy Court will have sole jurisdiction to adjudicate any such claim for which approval of the Bankruptcy Court to commence or pursue has been granted.**

**G. Term of Injunctions or Stays**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

**H. Continuance of January 9 Order**

Unless otherwise provided in this Plan, the Confirmation Order, or in a Final Order of the Bankruptcy Court, the restrictions set forth in paragraphs 9 and 10 of the *Order Approving Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course*, entered by the Bankruptcy Court on January 9, 2020 [D.I. 339] shall remain in full force and effect following the Effective Date until the dissolution of each of the Claimant Trust and the Litigation Trust.

**ARTICLE X.**  
**BINDING NATURE OF PLAN**

On the Effective Date, and effective as of the Effective Date, the Plan, including, without limitation, the provisions in ARTICLE IX, will bind, and will be deemed binding upon, all Holders of Claims against and Equity Interests in the Debtor and such Holder's respective successors and assigns, to the maximum extent permitted by applicable law, notwithstanding whether or not such Holder will receive or retain any property or interest in property under the Plan. All Claims and Debts shall be fixed and adjusted pursuant to this Plan. The Plan shall also bind any taxing authority, recorder of deeds, or similar official for any county, state, Governmental Unit or parish in which any instrument related to the Plan or related to any transaction contemplated thereby is to be recorded with respect to pay taxes of the kind specified in Bankruptcy Code section 1146(a).

**ARTICLE XI.**  
**RETENTION OF JURISDICTION**

Pursuant to sections 105 and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Reorganized Debtor, the Claimant Trust, and this Plan as legally permissible, including, without limitation, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured, unsecured, or subordinated status of any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the allowance or priority of any Claim or Equity Interest;
- grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date subject to the terms of this Plan and the Confirmation Order, and such payment shall not be subject to the approval of the Bankruptcy Court;

- resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor, Reorganized Debtor, or Claimant Trust may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, any dispute regarding whether a contract or lease is or was executory or expired;
- make any determination with respect to a claim or cause of action against a Protected Party as set forth in ARTICLE IX;
- resolve any claim or cause of action against an Exculpated Party or Protected Party arising from or related to the Chapter 11 Case, the negotiation of this Plan, the administration of the Plan or property to be distributed under the Plan, the wind down of the business of the Debtor or Reorganized Debtor, or the transactions in furtherance of the foregoing;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any sale, disposition, assignment or other transfer of the Reorganized Debtor Assets or Claimant Trust Assets, including any break-up compensation or expense reimbursement that may be requested by a purchaser thereof; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- if requested by the Reorganized Debtor or the Claimant Trustee, authorize, approve, and allow any borrowing or the incurrence of indebtedness, whether secured or unsecured by the Reorganized Debtor or Claimant Trust; *provided, however*, that neither the Reorganized Debtor nor the Claimant Trustee shall be required to seek such authority or approval from the Bankruptcy Court unless otherwise specifically required by this Plan or the Confirmation Order;
- resolve any issues related to any matters adjudicated in the Chapter 11 Case;
- ensure that distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of this Plan;
- decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action (including Estate Claims) that are pending as of the Effective Date or that may be commenced in the future, including approval of any settlements, compromises, or other resolutions as may be requested by the Debtor, the Reorganized Debtor, the Claimant Trustee, or the Litigation Trustee whether under Bankruptcy Rule 9019 or otherwise, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor, the Claimant Trustee, or Litigation Trustee after the Effective Date, provided that the Reorganized Debtor, the Claimant Trustee, and the Litigation Trustee shall reserve the right to commence actions in all appropriate forums and jurisdictions;

- enter such orders as may be necessary or appropriate to implement, effectuate, or consummate the provisions of this Plan, the Plan Documents, and all other contracts, instruments, releases, and other agreements or documents adopted in connection with this Plan, the Plan Documents, or the Disclosure Statement;
- resolve any cases, controversies, suits or disputes that may arise in connection with the implementation, effectiveness, consummation, interpretation, or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
- issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with implementation, effectiveness, consummation, or enforcement of this Plan, except as otherwise provided in this Plan;
- enforce the terms and conditions of this Plan and the Confirmation Order;
- resolve any cases, controversies, suits or disputes with respect to the release, exculpation, indemnification, and other provisions contained herein and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
- enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;
- resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, the Plan Documents, or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; and
- enter an order concluding or closing the Chapter 11 Case after the Effective Date.

**ARTICLE XII.**  
**MISCELLANEOUS PROVISIONS**

**A. Payment of Statutory Fees and Filing of Reports**

All outstanding Statutory Fees shall be paid on the Effective Date. All such fees payable, and all such fees that become due and payable, after the Effective Date shall be paid by the Reorganized Debtor when due or as soon thereafter as practicable until the Chapter 11 Case is closed, converted, or dismissed. The Claimant Trustee shall File all quarterly reports due prior to the Effective Date when they become due, in a form reasonably acceptable to the U.S. Trustee. After the Effective Date, the Claimant Trustee shall File with the Bankruptcy Court quarterly reports when they become due, in a form reasonably acceptable to the U.S. Trustee. The Reorganized Debtor shall remain obligated to pay Statutory Fees to the Office of the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**B. Modification of Plan**

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order with the consent of the Committee, such consent not to be unreasonably withheld; and (b) after the entry of the Confirmation Order, the Debtor may, after notice and hearing and entry of an order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

**C. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File a subsequent chapter 11 plan with the consent of the Committee. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (iii) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

**D. Obligations Not Changed**

Notwithstanding anything in this Plan to the contrary, nothing herein will affect or otherwise limit or release any non-Debtor Entity's (including any Exculpated Party's) duties or obligations, including any contractual and indemnification obligations, to the Debtor, the Reorganized Debtor, or any other Entity whether arising under contract, statute, or otherwise.

**E. Entire Agreement**

Except as otherwise described herein, this Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**F. Closing of Chapter 11 Case**

The Claimant Trustee shall, after the Effective Date and promptly after the full administration of the Chapter 11 Case, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

**G. Successors and Assigns**

This Plan shall be binding upon and inure to the benefit of the Debtor and its successors and assigns, including, without limitation, the Reorganized Debtor and the Claimant Trustee. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

**H. Reservation of Rights**

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date occurs. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor, the Reorganized Debtor, the Claimant Trustee, or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor, the Reorganized Debtor, or the Claimant Trustee with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

Neither the exclusion or inclusion by the Debtor of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Documents, nor anything contained in this Plan, will constitute an admission by the Debtor that any such contract or lease is or is not an executory contract or lease or that the Debtor, the Reorganized Debtor, the Claimant Trustee, or their respective Affiliates has any liability thereunder.

Except as explicitly provided in this Plan, nothing herein shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtor, the Reorganized Debtor, or the Claimant Trustee under any executory or non-executory contract.

Nothing in this Plan will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, under any executory or non-executory contract or lease.

If there is a dispute regarding whether a contract or lease is or was executory at the time of its assumption under this Plan, the Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract.

**I. Further Assurances**

The Debtor, the Reorganized Debtor, or the Claimant Trustee, as applicable, all Holders of Claims and Equity Interests receiving distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**J. Severability**

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**K. Service of Documents**

All notices, requests, and demands to or upon the Debtor, the Reorganized Debtor, or the Claimant Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered addressed as follows:

**If to the Claimant Trust:**

Highland Claimant Trust  
c/o Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**If to the Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone: (310) 277-6910  
Facsimile: (310) 201-0760  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**If to the Reorganized Debtor:**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.

**with copies to:**

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Attn: Jeffrey N. Pomerantz, Esq.  
Ira D. Kharasch, Esq.  
Gregory V. Demo, Esq.

**L. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code**

To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents or taxing authority to forego the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan; (ii) the maintenance or creation of security or any Lien as contemplated by this Plan; and (iii) assignments, sales, or transfers executed in connection with any transaction occurring under this Plan.

**M. Governing Law**

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Texas, without giving effect to the principles of conflicts of law of such jurisdiction; *provided, however*, that corporate governance matters relating to the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trust, as applicable, shall be governed by the laws of the state of organization of the Debtor, the Reorganized Debtor, New GP LLC, or the Claimant Trustee, as applicable.

**N. Tax Reporting and Compliance**

The Debtor is hereby authorized to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor is for all taxable periods ending after the Petition Date through, and including, the Effective Date.

**O. Exhibits and Schedules**

All exhibits and schedules to this Plan, if any, including the Exhibits and the Plan Documents, are incorporated and are a part of this Plan as if set forth in full herein.

**P. Controlling Document**

In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and of the Confirmation Order, on the other hand, shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided, however*, that if there is determined to be any inconsistency between any provision of this Plan, the Disclosure Statement, and any Plan Document, on the one hand, and any provision of the Confirmation Order, on the other hand, that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan, the Disclosure Statement, and the Plan Documents, as applicable.

*[Remainder of Page Intentionally Blank]*

Dated: November 24, 2020

Respectfully submitted,

**HIGHLAND CAPITAL MANAGEMENT, L.P.**

By: 

James P. Seery, Jr.  
Chief Executive Officer and Chief  
Restructuring Officer

Prepared by:

**PACHULSKI STANG ZIEHL & JONES LLP**

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and

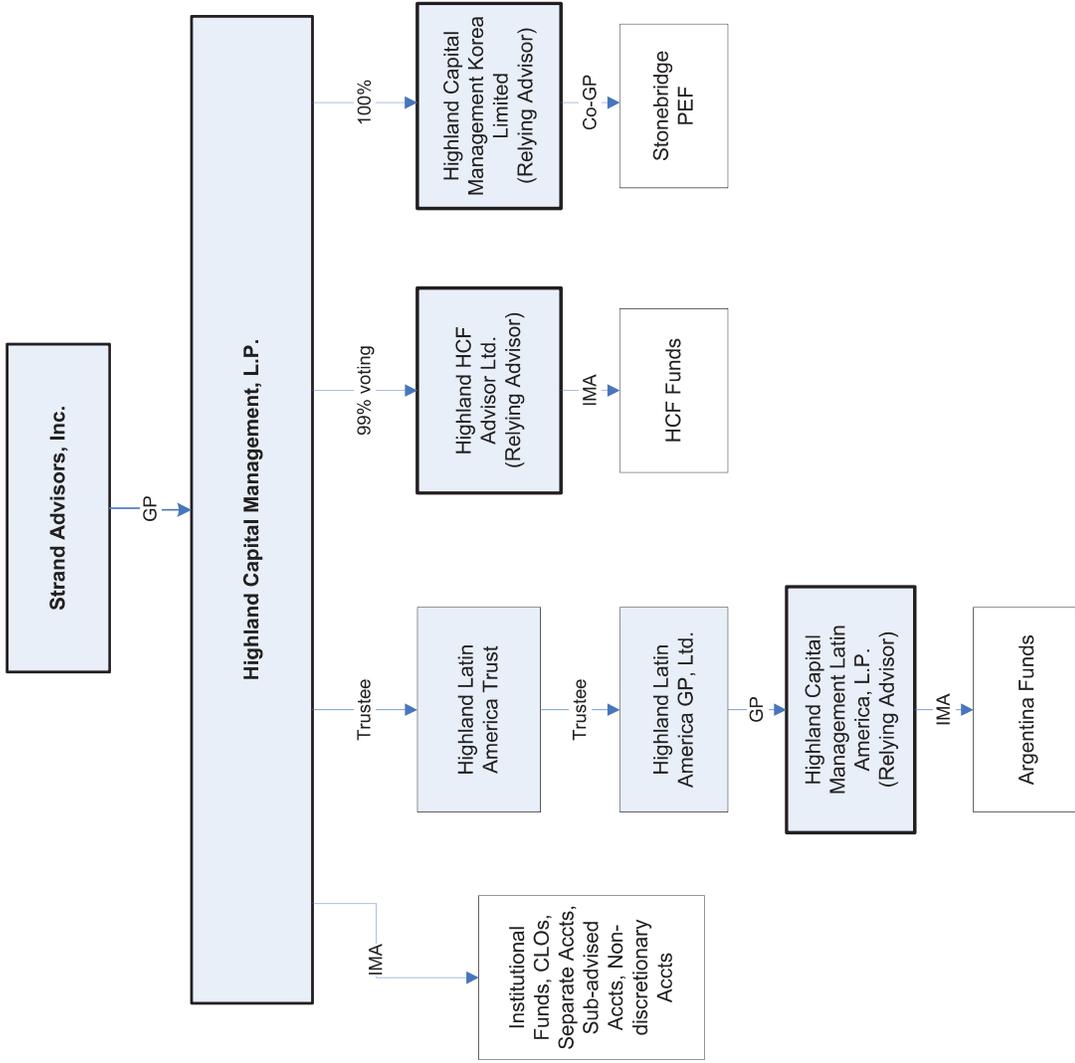
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*Counsel for the Debtor and Debtor-in-Possession*

**EXHIBIT B**

**ORGANIZATIONAL CHART OF THE DEBTOR**



**EXHIBIT C**

**LIQUIDATION ANALYSIS/FINANCIAL PROJECTIONS**

***Highland Capital Management, L.P.  
Disclaimer For Financial Projections***

This document includes financial projections for July 2020 through December 2022 (the “Projections”) for Highland Capital Management, L.P. (“Company”). These Projections have been prepared by DSI with input from management at the Company. The historical information utilized in these Projections has not been audited or reviewed for accuracy by DSI.

This Memorandum includes certain statements, estimates and forecasts provided by the Company with respect to the Company’s anticipated future performance. These estimates and forecasts contain significant elements of subjective judgment and analysis that may or may not prove to be accurate or correct. There can be no assurance that these statements, estimates and forecasts will be attained and actual outcomes and results may differ materially from what is estimated or forecast herein.

These Projections should not be regarded as a representation of DSI that the projected results will be achieved.

Management may update or supplement these Projections in the future, however, DSI expressly disclaims any obligation to update its report.

These Projections were not prepared with a view toward compliance with published guidelines of the Securities and Exchange Commission or the American Institute of Certified Public Accountants regarding historical financial statements, projections or forecasts.

**Highland Capital Management, L.P.**  
**Statement of Assumptions**

- A. Plan effective date is January 31, 2021.
- B. All investment assets are sold by December 31, 2022.
- C. All demand notes are collected in the year 2021.
- D. All notes receivable with maturity dates beyond 12/31/2022 are sold in Q4 2022; in the interim interest income and principal payments are collected as they become due.
- E. Fixed assets used in daily business operations are sold in February 2021.
- F. Accrual for employee bonuses as of January 2021 are reversed and not paid.
- G. All Management advisory or shared service contracts are terminated on their terms by the effective date or shortly thereafter
- H. Post-effective date, the reorganized Debtor would retain three HCMLP employees as contractors to help monetize the remaining assets.
- I. Litigation Trustee budget is \$6,500,000.
- J. Unrealized gains or losses are not recorded on a monthly basis; all gains or losses are recorded as realized gains or losses upon sale of asset.
- K. Plan does not provide for payment of interest to Class 8 holders of general unsecured claims, as set forth in the Plan. If holders of general unsecured claims receive 100% of their allowed claims, they would then be entitled to receive interest at the federal judgement rate, prior to any funds being available for claims or interest of junior priority.
- L. Plan assumes zero allowed claims for UBS, IFA, the HarbourVest entities (collectively "HV") and Hunter Mountain Investment Trust ("HM").
- M. Claim amounts listed in Plan vs. Liquidation schedule are subject to change; claim amounts in Class 8 assume \$0 for UBS, IFA, HM and HV.  
Assumes RCP claims will offset against HCMLP's interest in fund and will not be paid from Debtor assets
- N. With the exception of Class 2 - Frontier, Classes 1-7 will be paid in full within 30 days of effective date.
- O. Class 7 payout limited to 85% of each individual creditor claim or in the aggregate \$13.15 million. Plan currently projects Class 7 payout of \$9.96 million.
- P. See below for Class 8 estimated payout schedule; payout is subject to certain assets being monetized by payout date:
  - o By September 30, 2021 - \$50,000,000
  - o By March 31, 2022 – additional \$50,000,000
  - o By June 30, 2022 – additional \$25,000,000
  - o All remaining proceeds are assumed to be paid out on or soon after all remaining assets are monetized.

**Highland Capital Management, L.P.  
Plan Analysis Vs. Liquidation Analysis  
(US \$000's)**

	Plan Analysis	Liquidation Analysis
Estimated cash on hand at 1/31/2020	25,076	25,076
Estimated proceeds from monetization of assets [1][2]	190,445	149,197
Estimated expenses through final distribution[1][3]	(33,642)	(36,232)
<b>Total estimated \$ available for distribution</b>	<b>181,879</b>	<b>138,042</b>
Less: Claims paid in full		
Unclassified [4]		
Administrative claims [5]	(1,078)	(1,078)
Class 1 - Jefferies Secured Claim	(10,574)	(10,574)
Class 2 - Frontier Secured Claim [6]	-	-
Class 3 - Other Secured Claims	(5,463)	(5,463)
Class 4 - Priority Non-Tax Claims	(551)	(551)
Class 5 - Retained Employee Claims	(16)	(16)
Class 6 - PTO Claims	-	-
Class 7 - Convenience Claims [7][8][9]	-	-
Subtotal	(10,255)	-
Estimated amount remaining for distribution to general unsecured claims	(27,937)	(17,682)
Class 8 - General Unsecured Claims [8][10]	153,942	120,359
Subtotal	176,049	192,258
% Distribution to general unsecured claims	87.44%	62.60%
Estimated amount remaining for distribution	-	-
Class 9 - Subordinated Claims	no distribution	no distribution
Class 10 - Class B/C Limited Partnership Interests	no distribution	no distribution
Class 11 - Class A Limited Partnership Interest	no distribution	no distribution

**Footnotes:**

- [1] Assumes chapter 7 Trustee will not be able to achieve same sales proceeds as Claimant Trustee Assumes Chapter 7 Trustee engages new professionals to help liquidate assets
- [2] Sale of investment assets, sale of fixed assets, collection of accounts receivable and interest receivable
- [3] Estimated expenses through final distribution exclude non-cash expenses:  
Depreciation of \$462 thousand in 2021
- [4] Unclassified claims include payments for priority tax claims and settlements with previously approved by the Bankruptcy Court
- [5] Represents \$4.7 million in unpaid professional fees and \$4.5 million in timing of payments to vendors
- [6] Debtor will pay all unpaid interest estimated at \$253 thousand of Frontier on effective date and continue to pay interest quarterly at 5.25% until Frontier's collateral is sold
- [7] Claims payout limited to 85% of each individual creditor claim or limited to a total class payout of \$13.15 million
- [8] Class 7 includes \$1.1 million estimate for aggregate contract rejections damage and Class 8 includes \$1.4 million for contract rejection damages
- [9] Assumes 3 claimants with allowed claims less than \$2.5 million opt into Class 7 along with claims of Senior Employees
- [10] Class estimates \$0 allowed claim for the following creditors: IFA, HV, HM and UBS; assumes RCP claims offset against HCMLP interest in RCP fund

**Notes:**

All claim amounts are estimated as of November 20, 2020 and subject to change

**Highland Capital Management, L.P.**  
**Balance Sheet**  
**(US \$000's)**

	Actual Jun-20	Actual Sep-20	Forecast ---> Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
<b>Assets</b>											
Cash and Cash Equivalents	\$ 14,994	\$ 5,888	\$ 28,342	\$ 4,934	\$ 96,913	\$ 90,428	\$ 106,803	\$ 52,322	\$ 23,641	\$ 21,344	\$ -
Other Current Assets	13,182	13,651	10,559	9,629	7,746	7,329	5,396	6,054	6,723	7,406	-
Investment Assets	320,912	305,961	261,333	258,042	133,026	81,793	54,159	54,159	54,159	54,159	-
Net Fixed Assets	3,055	2,823	2,592	1,348	-	-	-	-	-	-	-
<b>TOTAL ASSETS</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>
<b>Liabilities</b>											
Post-petition Liabilities	\$ 26,226	\$ 19,138	\$ 19,280	\$ 2,891	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-petition Liabilities	126,365	126,343	121,950	-	-	-	-	-	-	-	-
Claims											
Unclassified	-	-	-	-	-	-	-	-	-	-	-
Class 1 – Jefferies Secured Claim	-	-	-	-	-	-	-	-	-	-	-
Class 2 – Frontier Secured Claim	-	-	-	5,210	-	-	-	-	-	-	-
Class 3 – Other Secured Claims	-	-	-	-	-	-	-	-	-	-	-
Class 4 – Priority Non-Tax Claims	-	-	-	-	-	-	-	-	-	-	-
Class 5 – Retained Employee Claims	-	-	-	-	-	-	-	-	-	-	-
Class 6 – PTO Claims	-	-	-	-	-	-	-	-	-	-	-
Class 7 – Convenience Claims	-	-	-	-	-	-	-	-	-	-	-
Class 8 – General Unsecured Claims	-	-	-	176,049	176,049	126,049	126,049	76,049	51,049	51,049	22,107
Class 9 – Subordinated Claims	-	-	-	-	-	-	-	-	-	-	-
Class 10 – Class B/C Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Class 11 – Class A Limited Partnership Interests	-	-	-	-	-	-	-	-	-	-	-
Claim Payable	126,365	126,343	121,950	181,259	176,049	126,049	126,049	76,049	51,049	51,049	22,107
<b>TOTAL LIABILITIES</b>	<b>\$ 152,591</b>	<b>\$ 145,481</b>	<b>\$ 141,230</b>	<b>\$ 184,150</b>	<b>\$ 176,049</b>	<b>\$ 126,049</b>	<b>\$ 126,049</b>	<b>\$ 76,049</b>	<b>\$ 51,049</b>	<b>\$ 51,049</b>	<b>\$ 22,107</b>
Partners' Capital	199,551	182,842	161,596	89,802	61,635	53,501	40,309	36,486	33,473	31,860	(22,107)
<b>TOTAL LIABILITIES AND PARTNERS' CAPITAL</b>	<b>\$ 352,142</b>	<b>\$ 328,323</b>	<b>\$ 302,826</b>	<b>\$ 273,952</b>	<b>\$ 237,684</b>	<b>\$ 179,550</b>	<b>\$ 166,358</b>	<b>\$ 112,535</b>	<b>\$ 84,523</b>	<b>\$ 82,910</b>	<b>\$ -</b>

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$'000's)**

	Actual		Actual		Forecast -->		Total 2020		3 month ended		3 month ended		3 month ended		Total 2021	
	Jan 2020 to June 2020 Total	3 month ended Sept 2020	3 month ended Sept 2020	3 month ended Dec 2020	3 month ended Dec 2020	3 month ended Jun 2021	3 month ended Sept 2021	3 month ended Dec 2021	Mar 2021	Jun 2021	Sept 2021	Dec 2021	Mar 2021	Jun 2021	Sept 2021	Dec 2021
Revenue																
Management Fees	\$ 6,572	\$ 1,949	\$ 2,651	\$ 11,173	\$ 779	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Shared Service Fees	7,672	3,765	3,788	15,225	1,263	-	-	-	-	-	-	-	-	-	-	1,263
Other Income	3,126	538	340	4,004	113	-	-	-	-	-	-	-	-	-	-	113
Total revenue	\$ 17,370	\$ 6,252	\$ 6,779	\$ 30,401	\$ 2,154	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,154
Operating Expenses [1]	13,328	9,171	9,079	31,579	8,428	1,646	1,807	2,655	14,538							
Income/(loss) From Operations	\$ 4,042	\$ (2,918)	\$ (2,301)	\$ (1,177)	\$ (6,274)	\$ (1,646)	\$ (1,807)	\$ (2,655)	\$ (12,380)							
Professional Fees	17,522	7,707	7,741	32,971	5,450	5,058	2,048	1,605	14,160							
Other Income/(Expenses) [2]	2,302	1,518	1,057	4,878	(59,016)	573	423	423	(57,598)							
Operating Gain/(Loss)	\$ (11,178)	\$ (9,107)	\$ (8,985)	\$ (29,270)	\$ (70,741)	\$ (6,130)	\$ (3,432)	\$ (3,837)	\$ (84,139)							
Realized and Unrealized Gain/(Loss)																
Other Realized Gains/(Loss)	-	-	-	-	(763)	522	-	-	(241)							
Net Realized Gain/(Loss) on Sale of Investment	(28,418)	1,549	(12,167)	(39,036)	(290)	19	(4,702)	(8,006)	(12,979)							
Net Change in Unrealized Gain/(Loss) of Investments	(29,929)	(7,450)	-	(37,380)	-	-	-	-	-							
Net Realized Gain/(Loss) from Equity Method Investees	-	-	(94)	(94)	-	(22,578)	-	(1,349)	(23,927)							
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	(80,782)	(1,700)	-	(82,482)	-	-	-	-	-							
Total Realized and Unrealized Gain/(Loss)	\$ (139,129)	\$ (7,601)	\$ (12,262)	\$ (158,992)	\$ (1,053)	\$ (22,037)	\$ (4,702)	\$ (9,355)	\$ (37,147)							
Net Income	\$ (150,307)	\$ (16,708)	\$ (21,247)	\$ (188,262)	\$ (71,794)	\$ (28,167)	\$ (8,134)	\$ (13,192)	\$ (121,287)							

**Footnotes:**

- [1] Operating expenses include an adjustment in January 2021 to account for expenses that have not been accrued or paid prior to effective date.
- [2] Other income and expenses of \$61.2 million in January 2021 includes:
  - [a] \$77.7 million was expensed to record for the increase of allowed claims.
  - [b] Income of \$15.8 million for the accrued, but unpaid payroll liability related to the Debtor's deferred bonus programs amount written-off.

**Highland Capital Management, L.P.**  
**Profit/Loss**  
**(US \$000's)**

Forecast ---->					
	3 month ended Mar 2022	3 month ended Jun 2022	3 month ended Sept 2022	3 month ended Dec 2022	Plan
Revenue					
Management Fees	\$ -	\$ -	\$ -	\$ -	\$ 779
Shared Service Fees	-	-	-	-	1,263
Other Income	-	-	-	-	113
Total revenue	\$ -	\$ -	\$ -	\$ -	\$ 2,154
Operating Expenses	1,443	643	758	1,088	18,468
Income/(loss) From Operations	\$ (1,443)	\$ (643)	\$ (758)	\$ (1,088)	\$ (16,314)
Professional Fees	2,788	2,788	1,288	1,288	22,313
Other Income/(Expenses)	408	419	434	184	(56,154)
Operating Gain/(Loss)	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (2,193)	\$ (94,780)
Realized and Unrealized Gain/(Loss)					
Other Realized Gains/(Loss)	-	-	-	(51,775)	(52,016)
Net Realized Gain/(Loss) on Sale of Investment	-	-	-	-	(12,979)
Net Change in Unrealized Gain/(Loss) of Investments	-	-	-	-	-
Net Realized Gain/(Loss) from Equity Method Investees	-	-	-	-	(23,927)
Net Change in Unrealized Gain/(Loss) from Equity Method Investees	-	-	-	-	-
Total Realized and Unrealized Gain/(Loss)	\$ -	\$ -	\$ -	\$ (51,775)	\$ (88,922)
Net Income	\$ (3,823)	\$ (3,013)	\$ (1,613)	\$ (53,967)	\$ (183,702)

**Highland Capital Management, L.P.**  
**Cash Flow Indirect**  
*(US \$000's)*

	Forecast ---->									
	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Net (Loss) Income	(16,708)	(21,247)	(71,794)	(28,167)	(8,134)	(13,192)	(3,823)	(3,013)	(1,613)	(53,967)
Cash Flow from Operating Activity										
(Increase) / Decrease in Cash	231	231	231	231	-	-	-	-	-	-
Depreciation and amortization	-	-	763	(522)	-	-	-	-	-	-
Other realized (gain)/ loss	(1,549)	12,262	290	22,559	4,702	9,355	-	-	-	51,775
Investment realized (gain)/ loss	(9,150)	-	-	-	-	-	-	-	-	-
Unrealized (gain) / loss	(470)	3,092	930	1,884	417	1,933	(658)	(669)	(684)	2,000
(Increase) Decrease in Current Assets	(7,110)	(4,251)	(54,172)	(2,891)	-	-	-	-	-	-
Increase (Decrease) in Current Liabilities	(34,757)	(9,913)	(123,752)	(6,907)	(3,015)	(1,904)	(4,481)	(3,681)	(2,297)	(182)
Net Cash Increase / (Decrease) - Operating Activities										
Cash Flow From Investing Activities										
Proceeds from Sale of Fixed Assets	-	-	250	1,639	-	-	-	-	-	-
Proceeds from Investment Assets	25,650	32,366	3,002	102,457	46,531	18,278	-	-	-	7,780
Net Cash Increase / (Decrease) - Investing Activities	25,650	32,366	3,252	104,096	46,531	18,278	-	-	-	7,780
Cash Flow from Financing Activities										
Claims payable	-	-	(73,997)	-	-	-	-	-	-	-
Claim reclasses/(paid)	-	-	181,259	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,900)
Maple Avenue Holdings	-	-	(4,975)	-	-	-	-	-	-	-
Frontier Note	-	-	(5,195)	-	-	-	-	-	-	-
Net Cash Increase / (Decrease) - Financing Activities	-	-	97,092	(5,210)	(50,000)	-	(50,000)	(25,000)	-	(28,900)
Net Change in Cash	(9,107)	22,454	(23,408)	91,979	(6,484)	16,374	(54,481)	(28,681)	(2,297)	(21,304)
Beginning Cash	14,994	5,888	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344
Ending Cash	5,887	28,342	4,934	96,913	90,428	106,803	52,322	23,641	21,344	-



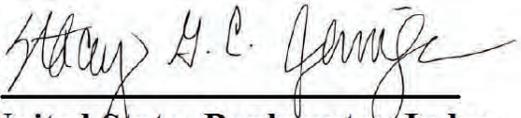
CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed April 13, 2018

  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-7  
§  
Alleged Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-7  
L.L.C., §  
§  
Alleged Debtor. §

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF  
ORDERS FOR RELIEF ISSUED AFTER TRIAL ON  
CONTESTED INVOLUNTARY BANKRUPTCY PETITIONS**

Joshua N. Terry (the "Petitioning Creditor" or "Mr. Terry") filed involuntary bankruptcy petitions (the "Involuntary Petitions") against each of the two above-referenced related

companies (the “Alleged Debtors”) on January 30, 2018.<sup>1</sup> The Involuntary Petitions were contested, and the court held a multi-day trial (the “Trial”) spanning March 21, 22, 23, 27, and March 29, 2018.<sup>2</sup> This constitutes the court’s findings of fact, conclusions of law and ruling, pursuant to Fed. Rs. Bankr. Proc. 7052 and 9014.<sup>3</sup> As explained below, the court has decided that Orders for Relief are legally required and appropriate as to each of the Alleged Debtors.

## **I. FINDINGS OF FACT**

### **A. Introduction.**

1. The Alleged Debtors—Acis Capital Management, L.P. (“Acis LP”), a Delaware limited partnership, and ACIS Capital Management GP, L.L.C. (“Acis GP/LLC”), a Delaware limited liability company—are two entities in the mega-organizational structure of a company that is known as Highland Capital Management, L.P. (“Highland”).

2. Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 (changing its original name from “Protective Asset Management” to Highland in 1997) by James D. Dondero (“Mr. Dondero”), originally with a

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<sup>1</sup> Exhs. 50 & 51.

<sup>2</sup> Shortly after the Involuntary Petitions were filed, the court held hearings on February 6-7, 2018, on the Petitioning Creditor’s Emergency Motion to Abrogate or Modify 11 U.S.C. § 303(f), Prohibit Transfer of Assets, and Import, Inter Alia, 11 U.S.C. § 363 [DE # 3] (the “303(f) Motion”) and the Alleged Debtors’ Emergency Motion to Seek Emergency Hearing on the Alleged Debtors’ Motion to Dismiss Involuntary Petitions and Request for Award of Fees, Costs, and Damages [DE # 9] (the “Emergency Motion to Set Hearing on Motion to Dismiss”). The court ultimately granted the 303(f) Motion and denied the Emergency Motion to Set Hearing on Motion to Dismiss. Both the Petitioning Creditor and the Alleged Debtors have proposed that the court should consider the evidence it heard at the hearings held on February 6-7, 2018, in determining whether it should enter orders for relief. The court has, accordingly, considered such evidence in this ruling.

<sup>3</sup> Bankruptcy subject matter jurisdiction exists in this contested matter, pursuant to 28 U.S.C. § 1334(b). This is a core proceeding over which the bankruptcy court may exercise subject matter jurisdiction, pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O) and the Standing Order of Reference of Bankruptcy Cases and Proceedings (Misc. Rule No. 33), for the Northern District of Texas, dated August 3, 1984. This bankruptcy court has Constitutional authority to issue a final order or judgment in this matter, as it arises under a bankruptcy statute—11 U.S.C. § 303. Venue is proper in this district, pursuant to 28 U.S.C. § 1409(a), as the Alleged Debtors have their business headquarters in this district.

75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest.<sup>4</sup>

3. Both Mr. Dondero and Mr. Akada provided witness testimony at the Trial on the Involuntary Petitions, and their names are mentioned numerous times herein—since they were generally the subject of significant evidence and argument presented at the Trial. Mr. Dondero is the chief executive officer for Highland and Mr. Akada is the chief investment officer. Mr. Dondero is also the president of each of the two Alleged Debtors.

4. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles ranging from: collateral loan obligation funds (“CLOs”); private equity funds; and mutual funds.

5. Highland’s CLO business was front-and-center at the Trial on the Involuntary Petitions. The Alleged Debtor, Acis LP, for approximately the past seven years, has been the vehicle through which Highland’s CLO business has been managed.

6. The Petitioning Creditor, Mr. Terry, became an employee of Highland in the year 2005, starting as a portfolio analyst, promoting to a loan trader, then ultimately becoming the portfolio manager for (and 25% limited partner in) Highland’s CLO business—specifically, Mr. Terry was the human being who was acting for the CLO manager, Acis LP.

7. Mr. Terry was highly successful in his role in the CLO business, managing billions of dollars of assets during his tenure, but Mr. Terry and Mr. Dondero had a bitter parting of ways on June 9, 2016. Specifically, Mr. Terry’s employment was terminated on that date (for

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<sup>4</sup> Mr. Dondero testified at the Trial that, three years ago, Messrs. Dondero and Akada sold their interests in Highland to a charitable remainder trust in exchange for a 15 year note receivable.

reasons that have been highly disputed) and his 25% limited partnership interest in Acis LP was deemed forfeited without any payment of consideration to him.

8. In September 2016, Highland sued Mr. Terry in the 162<sup>nd</sup> Judicial District Court of Dallas County, Texas (“State Court 1”) for breach of fiduciary duty/self-dealing, disparagement, breach of contract, and various other causes of action and theories. Mr. Terry asserted his own claims against Highland, and also claims against the two Alleged Debtors, Mr. Dondero, and others and demanded arbitration. On September 28, 2016, State Court 1 stayed the litigation and ordered the parties to arbitrate. The parties participated in ten days of arbitration in September 2017 before JAMS. On October 20, 2017, Mr. Terry obtained an Arbitration Award (herein so called),<sup>5</sup> jointly and severally against both of the Alleged Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate, which was based on theories of breach of contract and breach of fiduciary duties.

9. There are still claims pending between and among the Petitioning Creditor, Highland, and others (not including the Alleged Debtors) in State Court 1.

10. A Final Judgment (herein so called) confirming the Arbitration Award was entered by the 44<sup>th</sup> Judicial District Court of Dallas County, Texas (“State Court 2”) on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.<sup>6</sup>

11. Mr. Terry began pursuing post-judgment discovery soon after obtaining his Arbitration Award and even more so after entry of the Final Judgment. Mr. Terry undertook a UCC search on November 8, 2017, to investigate whether there were any liens on the Alleged

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<sup>5</sup> Exh. 1.

<sup>6</sup> Exh. 105.

Debtors' assets (none appeared).<sup>7</sup> Mr. Terry also pursued a garnishment of an Acis LP bank account (at a time when there was only around \$2,000 in the account). Mr. Terry's counsel deposed Highland's General Counsel Scott Ellington (who sat for the deposition as a representative of Acis, LP) on January 26, 2018, and asked numerous questions about: (a) how many creditors the Alleged Debtors had,<sup>8</sup> and (b) whether Acis LP was able to pay its debts as they became due,<sup>9</sup> but did not receive meaningful answers.

12. Mr. Terry requested a temporary restraining order ("TRO") from State Court 2, on January 24, 2018, after discovering certain transactions and transfers involving Acis LP's interests, that he believed were pursued without any legitimate business purpose and with the purpose of denuding Acis LP of its assets and to make it judgment proof. Most particularly, it appeared as though Highland was engaged in a scheme to transfer certain fee-generating CLO management contracts of Acis LP away from it and into a Cayman Island affiliate of Highland.<sup>10</sup> At a January 24, 2018 hearing on the request for a TRO, Acis LP agreed and State Court 2 ordered that, between that hearing and a later hearing on a request for a temporary injunction, no CLO management contracts would be transferred away from Acis LP and that no monies would be diverted from it.<sup>11</sup>

13. Then, on January 29, 2018, the Controller of and CPA for Highland (David Klos) submitted a Declaration to State Court 2 concerning the net worth of the Alleged Debtors, stating

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<sup>7</sup> Exh. 84.

<sup>8</sup> Exh. 25, pp. 7-9.

<sup>9</sup> *Id.* at pp. 102-04.

<sup>10</sup> Exh. 27.

<sup>11</sup> Exh. 28.

that Acis GP/LLC had a net worth of \$0 and that Acis LP might have a net worth, at best, of \$990,141.<sup>12</sup> Mr. Terry thought this was preposterous—given the management fees that Acis LP was entitled to and the receivables that should be owing to it. Mr. Terry believes that the collateral management agreements on which Acis LP receives management fees have a present value of \$30 million (about \$6 million for each of the five CLOs which Acis LP has been managing).

14. On January 29, 2018, the Alleged Debtors filed a motion for leave to post a supersedeas bond in the amount of \$495,070.50 with State Court 2 (purportedly half of the net worth of the two Alleged Debtors—as stated in the David Klos Declaration), so that they could suspend enforcement of the Final Judgment while they appealed it.<sup>13</sup> Although there is a very stringent standard for appealing an Arbitration Award, the Alleged Debtors apparently believe they have an argument that State Court 2 lacked the subject matter jurisdiction to confirm the Arbitration Award (a motion to vacate the Final Judgment based on this argument has previously been denied by State Court 2).<sup>14</sup>

15. Meanwhile, Mr. Terry was learning of more transactions and transfers involving Acis LP's assets and interests. On January 29, 2018, Mr. Terry filed supplemental pleadings with State Court 2, alleging that further shenanigans (*i.e.*, transfers and transactions that would amount to fraudulent transfers) were underway at Acis LP and seeking a receiver.<sup>15</sup> Also, at

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<sup>12</sup> Exh. 26.

<sup>13</sup> Exh. 73.

<sup>14</sup> See DE # 35, in Case No. 18-30264 and DE # 34 in Case No. 18-30265. Unless otherwise noted, references to “DE #” herein refer to the docket entry number at which a pleading appears in the docket maintained with the Bankruptcy Clerk in the Acis Capital Management L.P. bankruptcy case (Case No. 18-30264).

<sup>15</sup> Exhs. 28-31.

some point, in the weeks leading up to this, an Acis LP lawyer represented to Mr. Terry's counsel that the Alleged Debtors were "judgment proof."<sup>16</sup>

16. At approximately 11:57 p.m. on January 30, 2018 (on the evening before a scheduled temporary injunction hearing in State Court 2—at which time State Court 2 presumably might have considered the Alleged Debtors' request to post the \$495,070.50 supersedeas bond to stay enforcement of the Final Judgment), Mr. Terry filed the Involuntary Petitions, as a sole petitioning creditor, against both Acis LP and Acis GP/LLC.

17. For purposes of this Trial (and this Trial only), the Alleged Debtors do not dispute that Mr. Terry has standing to be a petitioning creditor pursuant to Bankruptcy Code section 303(b)—in other words, they do not dispute that Mr. Terry is a holder of a claim against the Alleged Debtors that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount and that aggregates at least \$15,775 in unsecured amount. However, the Alleged Debtors argue that: (a) the Alleged Debtors have *12 or more creditors* and, thus, three or more petitioning creditors were required to prosecute the Involuntary Petitions pursuant to Bankruptcy Code section 303(b)(1); (b) the Petitioning Creditor did not establish, pursuant to Bankruptcy Code section 303(h)(1), that the Alleged Debtors are not *generally paying their debts as such debts become due* unless such debts are the subject of a bona fide dispute as to liability or amount; (c) regardless of whether the Petitioning Creditor has met the statutory tests in sections 303(b)(1) and (h)(1), the Petitioning Creditor has acted in *bad faith*—which serves as an equitable basis for dismissal of the Involuntary Petitions; and (d) if the court disagrees with the Alleged Debtors and determines that the section 303(b) and (h) statutory tests are met, and also determines that the Petitioning Creditor has not acted in bad faith, the court should

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<sup>16</sup> Exh. 27 (exhibit 3 thereto).

nevertheless *abstain* in this matter, pursuant to Bankruptcy Code *section 305*, since this is essentially a two-party dispute and the interests of creditors and the debtor would be better served by dismissal.

18. The Petitioning Creditor argues that he has met the statutory tests of sections 303(b) and (h) but, even if he has not, there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor—which “special circumstances,” Mr. Terry alleges, have been established here. Moreover, the Petitioning Creditor argues that the facts here *do not warrant section 305 abstention* because the interests of creditors and the Alleged Debtors would not be better served by dismissal.

19. As further explained below, the court finds and concludes that the Petitioning Creditor has met his burden of proving by a preponderance of the evidence that the statutory tests of sections 303(b) and (h) are met here. Thus, the court does not need to reach the question of whether there is a “*special circumstances*” exception to the section 303 statutory requirements, whenever a petitioning creditor establishes fraud, trick, scheme, artifice or the like on the part of an alleged debtor, and—if so—whether the exception is applicable here.<sup>17</sup>

20. Moreover, the Alleged Debtors have not shown by a preponderance of the evidence that the Petitioning Creditor acted in bad faith, such that the Involuntary Petitions should be dismissed.

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<sup>17</sup> See e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

21. Finally, the Alleged Debtors also have *not shown facts here that warrant section 305 abstention* because they have not shown that the interests of creditors and the Alleged Debtors would be better served by dismissal.

**B. The CLO Business: Understanding the Alleged Debtors' Business Operations, Structure, and What Creditors and Interest Holders They Actually Have.**

22. Highland set up its first CLO in the year 1996. Highland was one of the early participants in the CLO industry.

23. The Alleged Debtors were formed in 2011 to be the new “brand” or face of the Highland CLO business, after Highland’s name had suffered some negative publicity in the marketplace.

24. Acis LP has acted as the portfolio manager of Highland’s CLOs since 2011. Acis LP currently has a contractual right to CLO portfolio management fees on five CLOs<sup>18</sup> which were referred to at the Trial as CLO 2013-1; CLO 2014-3; CLO 2014-4; CLO 2014-5; and CLO 2016-6. CLOs typically have an 8-12 year life. Thus, there are still several years of life left on these CLOs (since the oldest one was established in the year 2013).

25. The key “players” in and features with regard to the Highland CLOs, during the time period relevant to the issues adjudicated at the Trial, have been:

- (a) The CLO manager. As mentioned earlier, the CLO manager is the Alleged Debtor, Acis LP. Acis LP, has collateral management agreements (hereinafter, the “CLO Collateral Management Agreements”) with the CLOs (which CLOs were set up as special purpose entities) and, pursuant thereto, receives

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<sup>18</sup> There is still another Highland CLO (CLO 2017-7), set up in April 2017, as to which Acis LP’s contractual right to manage was terminated shortly before the Petition Date, as will be further described herein.

management fees<sup>19</sup> from the CLOs in exchange for managing the pool of assets within the CLOs and communicating with investors in the CLOs.<sup>20</sup> As mentioned earlier, Mr. Terry was the human being that performed the management function at Acis LP until Highland fired him on June 9, 2016 and also terminated his limited partnership interest in Acis LP. Mr. Terry, and all employees who have ever provided services to the CLO manager, are Highland employees—which were provided to Acis LP through shared and sub-advisory services agreements—as further explained below. Thus, to be clear, Acis LP has always essentially subcontracted its CLO managerial function out to Highland.

- (b) The pool of assets. Within each CLO that the CLO manager manages is a basket of loans that the CLO manager purchases. The basket of loans typically consists of approximately 200 loans-payable (or portions of loans payable), on which large well-known companies typically are the makers/obligors (and which loans, collectively, provide a variable rate of interest).<sup>21</sup> The CLO manager can typically decide to buy and sell different loans to go into the pool of assets, with certain restrictions, during a four or five year reinvestment time period.

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<sup>19</sup> These fees typically include “senior fees” (*e.g.*, 15 basis points); additional “subordinate fees” (*e.g.*, 25 basis points) if the CLOs are passing certain tests; and perhaps even an “incentive fee” beyond a certain hurdle rate (*e.g.*, after the equity in the CLO received an internal rate of return of 10%, the CLO manager would get 15% of the excess). Exh. 82, p. 59, lines 14-25.

<sup>20</sup> *See*, as an example, Exh. 3 (the collateral management agreement between Acis LP and CLO 2014-3). Note that the document is entitled “Portfolio Management Agreement” but, to avoid confusion with other similarly titled documents and to highlight the true nature of the agreement, the court uses the defined term “CLO Collateral Management Agreement,” which terminology the lawyers also sometimes used at the Trial.

<sup>21</sup> Exh. 8.

- (c) The CLO investors (*i.e.*, CLO note holders). These may be any number of persons or entities, including pension funds, life insurance companies, or others who decide to invest in the CLOs and contribute capital to fund the purchase of a CLO's loan pool, and, in return, receive fixed rate notes payable—the ratings on which can range anywhere from Triple-A to Single-B, depending upon the risk option the investor chooses. There are typically five or six tranches of notes issued by the CLO (with the top AAA-rated tranche being the least risky and the bottom tranche being the most risky) and—to be clear—the CLO itself (again, in each case, the CLO is a special purpose vehicle) is the obligor. As the CLO manager receives income from the pool of loans in the CLO, he distributes that income to the CLO investors, in accordance with their note indentures,<sup>22</sup> starting with the top tranche of notes and then down to the other tranches. The top tranche of notes (AAA-rated) is considered the “controlling” class and a majority of holders in this class can terminate the CLO manager (*i.e.*, Acis LP) for cause on 45 days' notice, although all parties seem to agree this would be a rare event.
- (d) The CLO equity holder. The CLO equity holder actually is a holder of subordinated notes issued by the CLOs (*i.e.*, the bottom tranche of notes on which the CLO special purpose entity is obligated), and has voting rights and is itself a capital provider, but it takes the most risk and receives the very last cash

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<sup>22</sup> The indenture trustee on the CLO notes may actually operate as a payment agent in some cases, for purposes of making the quarterly note payments to holders.

flow from the CLOs. It, in certain ways, controls the CLO vehicle<sup>23</sup>—for example, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s). Note that, until recently, a separate entity known as Acis Loan Funding, Ltd. (“ALF”), which was incorporated under the laws of the island nation of Guernsey,<sup>24</sup> was the CLO equity holder. To be clear, *ALF was essentially the equity owner in the CLO special purpose entities—not the equity owner of Acis LP*. Acis LP was a party to a separate portfolio management agreement with ALF (hereinafter, the “ALF Portfolio Management Agreement”—not to be confused with the CLO Collateral Management Agreements that Acis LP separately has with the special purpose CLOs). No fees were paid from ALF to Acis LP pursuant to the ALF Portfolio Management Agreement (rather, fees are only paid to Acis LP on the CLO Collateral Management Agreements). The complicated structure of the CLO business—all parties seemed to agree—has been developed, among other reasons, to comply with “risk-retention requirements” imposed by the U.S. Congress’s massive Dodd-Frank financial reform legislation<sup>25</sup> enacted in year 2010, in response to the financial crisis and recession that first began in 2008.

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<sup>23</sup> The top tranche of AAA notes also has certain control—such as the ability to terminate the portfolio manager for cause, on notice.

<sup>24</sup> Guernsey is located in the English Channel. ALF was created in August 2015.

<sup>25</sup> Simply put, one of the results of the Dodd-Frank legislation (*i.e.*, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Congress, effective July 21, 2010), which was implemented over a period of several years, was that, *subsequent to December 2016*, managers of securitizations needed to retain at least a 5% interest in that securitization. Thus, if a \$400 million CLO were to be

(e) The Equity Owners of ALF. Until recently (*i.e.*, until October 24, 2017—four days after the Arbitration Award), Acis LP itself, as required for a CLO manager, had a 15% indirect ownership in ALF, in order to be regulatory compliant.<sup>26</sup> The parties sometimes refer to ALF (and the web of ownership between it and Acis LP) as the “risk retention structure.”<sup>27</sup> The evidence at the Trial revealed that ALF (which has recently been renamed), now, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from Highland, is managed/advised by Highland, and whose independent trustee is a long-time friend of Highland’s chief executive officer, Mr. Dondero; (ii) 2% is owned by Highland employees; and (iii) finally, ALF *may* be 49% owned by a third-party institutional investor based in Boston that Highland believed it was required to keep anonymous at the Trial. Not only is the court unaware of who this independent third-party is, but the evidence seems to suggest that it may have acquired its interest fairly recently or may have simply committed to invest recently.<sup>28</sup>

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issued, the CLO manager would need to retain at least 5% or \$20 million of the assets in the CLO (which 5% could be either all at the equity level or vertically, up and down the note tranches). There are multiple ways to accomplish this 5% retention (*i.e.*, with either the CLO manager directly investing in at least 5% of the CLO or doing it through a controlled subsidiary). This particular rule was announced in **December 2014** and the SEC thereafter issued a no action letter stating that *if a CLO was issued prior to December 2014*, then any refinancing of such CLO that happens within four years can be done without risk retention in place. Resets of any CLO (*i.e.*, changes in terms and maturity—as opposed to mere changes in interest rates), on the other hand, must have risk retention in place. **Four of Acis LP’s current CLOs were issued prior to December 2014**. Thus, these four CLOs are still technically able to do a refinancing without a risk retention structure in place. In any event, by early-to-middle 2017, Acis LP was risk retention compliant. Exh. 82, pp. 65-69 & 75. That was recently changed—on October 24, 2017—four days after the Arbitration Award—as later explained herein.

<sup>26</sup> See n.23, *supra*.

<sup>27</sup> See Demonstrative Aid No. 3.

<sup>28</sup> See Exh. 173, which seems to suggest that the only equity owners of ALF just prior to October 24, 2017 were Acis LP and the DAF, until Acis LP’s interest in ALF was sold back to ALF on October 24, 2017. See also Exh. 82, p. 162, lines 2-7.

- (f) The underwriter for the CLO notes. As with any publicly traded notes, there is an underwriter for the CLO notes which solicits investors for the CLO notes (examples given at the Trial: Mizuho Securities USA, LLC; Merrill Lynch; JP Morgan Chase).<sup>29</sup> The CLO notes are traded on the Over-the-Counter Market.
- (g) The independent indenture trustee for the CLO notes. As also with any issuance of publicly traded notes, there is an indenture trustee (example given at the Trial: U.S. Bank).<sup>30</sup>

26. Mr. Terry, the Petitioning Creditor, as earlier mentioned, began working for Highland in 2005 until his employment was terminated on June 9, 2016.

27. Acis LP and Acis GP/LLC have never had any employees. Rather, all employees that work for any of the Highland family of companies (including Mr. Terry) have, almost without exception, been employees of Highland itself. Highland has approximately 150 employees in the United States. Highland provides employees to entities in the organizational structure, such as Acis LP and Acis GP/LLC, through both the mechanism of: (a) a Shared Services Agreement (herein so called),<sup>31</sup> which provides “back office” personnel—such as human resources, accounting, legal and information technology to the Highland family of companies; and (b) a Sub-Advisory Agreement (herein so called),<sup>32</sup> which provides “front office” personnel to entities—such as the managers of investments like Mr. Terry. The evidence indicated that this is typical in the CLO industry to have such agreements. The court notes that

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<sup>29</sup> See Exh. 193.

<sup>30</sup> See Exh. 7.

<sup>31</sup> Exhs. 17, 99, 179 & 5.

<sup>32</sup> Exhs. 18, 178 & 4.

all iterations of the Shared Services Agreements and Sub-Advisory Agreements between Acis LP and Highland were signed by Mr. Dondero both as President of Acis LP and as President of the General Partner of Highland.

28. Because Acis LP essentially subcontracts out all of its functions to Highland pursuant to the Shared Services Agreement and the Sub-Advisory Agreement, Acis LP has very few vendors or creditors. Rather Highland incurs expenses and essentially bills them to Acis LP through these two agreements.<sup>33</sup> In other words, Highland is one of Acis LP's largest and most frequent creditor.

29. The evidence reflected that at all times Mr. Dondero has been the President of both of the Alleged Debtors, and there have been, at all times, very few, if any, other officers. It appears that the only other officer of Acis GP/LLC that ever existed was Frank Waterhouse, Treasurer.<sup>34</sup> It also appears that the only other officer of Acis LP that ever existed was Frank Waterhouse, Treasurer, Mr. Terry as Portfolio Manager, and someone named Patrick Boyce as Secretary at one time.<sup>35</sup>

30. Mr. Dondero testified that he has decision making authority for the Alleged Debtors but usually delegates that authority to Highland's in-house lawyers, Scott Ellington (General Counsel, Chief Legal Officer, and Partner of Highland) and Isaac Leventon (Assistant General Counsel of Highland) and is rarely involved in "nitty gritty negotiations." Sometimes instructions will come to him from the compliance group headed up by Chief Compliance Officer Thomas Surgent. Additionally, he testified that he signs hundreds of documents per

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<sup>33</sup> Exh. 83, pp. 228 (line 8)-230 (line 14).

<sup>34</sup> See, e.g., Exh. 10 & Exh. 173, p.3

<sup>35</sup> Exhs. 14 & 15.

week, and much of what he signs is on advice of counsel and he sometimes even delegates to his assistant the authority to sign his name. As set forth above, Mr. Ellington (who *did not* testify at the Trial)<sup>36</sup> and Mr. Leventon (who *did* testify at the Trial) are not officers, directors, or employees of the Alleged Debtors. Mr. Leventon is designated to be the representative for the Alleged Debtors (and testified as a Rule 30(b)(6) witness during pre-Trial discovery)—he explained that this representative-authority derives from the Shared Services Agreement. Mr. Leventon testified that he takes his instructions generally through his direct supervisor, Mr. Ellington, although Highland partners can ask him to perform legal services for any of Highland’s 2,000 entities.

**C. Transfers and Transactions Involving the Alleged Debtors Since the Litigation with Mr. Terry Commenced—and Especially After the Arbitration Award.**

31. Below is a listing of some (but not necessarily all) of the transfers and transactions that the Alleged Debtors, Highland, and related parties undertook *after* the litigation with Mr. Terry commenced.

- (a) Acis LP’s Sale to Highland of a “Participation Interest” in its CLO Cash Flow Stream. On October 7, 2016 (approximately one month after the litigation arose among Mr. Terry, Highland, and the Alleged Debtors), Acis LP sold to Highland a participation interest in its expected future cash flow from the CLO Collateral Management Agreements—specifically, it sold a portion of the cash flow it expected to earn from November 2016 to August 2019 (not the full life of the CLOs), for \$666,655 cash, plus a \$12,666,446 note payable from Highland to

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<sup>36</sup> Mr. Ellington did testify at a hearing in the bankruptcy court on February 6, 2018—which the parties asked this court to take judicial notice of—and also provided deposition testimony that was submitted into evidence. *See* Exh. 25.

Acis LP (hereinafter, the “Acis LP Note Receivable from Highland”). Mr. Dondero signed the purchase and sale agreement for both purchaser and seller.<sup>37</sup> Mr. Dondero signed the Acis LP Note Receivable from Highland, which accrued interest at 3% per annum. It appears that the \$666,665 cash down payment was actually paid, and a payment required on the Acis LP Note Receivable from Highland of \$3,370,694 on May 31, 2017, was actually made. The Acis LP Note Receivable from Highland was payable in three installments, with a \$5,286,243 payment required on May 31, 2018, and a \$4,677,690 payment required on May 31, 2019. When viewed in complete isolation, this transaction does not necessarily appear problematic. Although there was evidence that Acis LP had been managing the five CLOs for about \$10 million per year of fees, some of the recitals in the purchase and sale agreement suggest that there may have been a sound business reason for the transaction and the arbitration panel,<sup>38</sup> viewing this transaction in isolation, did not think it was necessarily problematic or actionable. In any event, Highland is adamant it was a net neutral transaction.

- (b) Transfer of Acis LP’s interest in ALF. Recall that ALF was the entity that held equity (*i.e.*, the subordinated notes) in the CLO special purpose vehicles, and held voting rights and was a capital provider to the overall risk retention structure supporting the CLOs. And Acis LP, in turn, held a 15% indirect interest in ALF. On October 24, 2017 (*four days after the Arbitration Award*), Acis, LP entered into an agreement with ALF whereby ALF acquired back the shares that Acis LP

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<sup>37</sup> Exhs. 14 & 15.

<sup>38</sup> Exh. 1, p. 18.

indirectly held in ALF (966,679 shares) for the sum of \$991,180.13.<sup>39</sup> No credible business justification was offered for this transaction, other than mostly uncorroborated (and self-serving) statements from Highland witnesses that Acis LP was “toxic” in the market place (due to the litigation with Mr. Terry) and this was a step in the process of extricating Acis LP from the CLO business.<sup>40</sup> The court finds the testimony about Acis LP’s toxicity in the marketplace to not be credible or at all convincing. For one thing, a new CLO (Acis CLO 2017-7, Ltd.) was closed on April 10, 2017 with Acis LP as the portfolio manager. Moreover, Acis LP subcontracts all of its CLO management function to Highland—and there was no evidence to suggest that anyone in the marketplace at this juncture differentiates between Acis LP (whose president is Mr. Dondero) and Highland (whose president is Mr. Dondero). *In any event, the October 24, 2017 transaction had the highly consequential effect of making Acis LP “noncompliant” or unable to continue serving as a CLO manager for regulatory purposes for any new CLOs or reset CLOs (or for a refinancing of any of the Highland CLOs that had been created after December 2014)*<sup>41</sup> *because aspects of the federal Dodd Frank legislation require CLO managers to have “skin in the game” with regard to the CLOs they manage (i.e., they must retain at least 5% of CLOs they manage).* Mr. Akada, who testified that he had been involved with the CLO business from the beginning and that the CLO team

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<sup>39</sup> Exh. 173.

<sup>40</sup> There were also a few hearsay-laden emails offered, that the court did not find probative. Exhs, 19-22.

<sup>41</sup> See n.23 *supra*.

reported to him (including Mr. Terry before his termination), testified that he had no knowledge of this particular transaction. The document effectuating this transaction was signed by Frank Waterhouse, Treasurer for and on behalf of Acis LP, acting by its general partner, Acis GP/LLC.<sup>42</sup>

- (c) ALF Next Decides to Jettison Acis, LP as its Portfolio Manager and Replace it with a new Highland Cayman Island Entity. On October 27, 2017 (seven days after the Arbitration Award), ALF—having purchased back the ownership interest that Acis LP had in it, just three days earlier—decided that it would no longer use Acis LP as its portfolio manager and entered into a new portfolio management agreement to supersede and replace the ALF Portfolio Management Agreement. Specifically, on October 27, 2017, ALF entered into a new Portfolio Management Agreement with a Cayman Island entity called Highland HCF Advisor, Ltd., replacing Acis LP in its role with ALF.<sup>43</sup> This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017.<sup>44</sup>
- (d) The Acis LP Note Receivable from Highland is Transferred from Acis LP to Yet Another Highland Cayman Island Entity. On November 3, 2017 (10 days after the Arbitration Award), Acis LP assigned and transferred its interests in the Acis LP Note Receivable from Highland—which at that point had a balance owing of over \$9.5 million—to a Highland Cayman Island entity known as Highland CLO

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<sup>42</sup> Exh. 173, p. 3.

<sup>43</sup> Exh. 43.

<sup>44</sup> Exh. 168.

Management Ltd. which apparently was created sometime recently to be the new collateral manager of the CLOs (in other words, the new Acis LP).<sup>45</sup> The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for Acis LP and Mr. Dondero for Highland and some undecipherable name for Highland CLO Management Ltd.<sup>46</sup> The document recites that (i) Highland is no longer willing to continue providing support services to Acis LP, (ii) Acis LP, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland CLO Management Ltd. agrees to step into the collateral manager role if Acis LP will assign to it the Acis LP Note Receivable from Highland. One more thing: since Acis LP was expected to potentially incur future legal and accounting/administrative fees, and might not have the ability to pay them when due, *Highland CLO Management Ltd.* agreed to reimburse Acis LP (or pays its vendors directly) up to \$2 million of future legal expenses and up to \$1 million of future accounting/administrative expenses.<sup>47</sup>

- (e) Various Additional Transactions that further Transitioned CLO Management and Fees Away from Acis LP to Highland Cayman Island Entity. On December 19, 2017—just one day after the Arbitration Award was confirmed with the entry of the Final Judgment—the vehicle that can most easily be described as the Acis LP “risk retention structure” (necessitated by federal Dodd Frank law) was transferred away from Acis LP and into the ownership of Highland CLO

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<sup>45</sup> Exh. 16.

<sup>46</sup> *Id.* at p.6.

<sup>47</sup> *Id.* at pp. 1 & 2.

Holdings, Ltd. (yet another Cayman Island entity, incorporated on October 27, 2017<sup>48</sup>).

- (f) In addition to transferring Acis LP's interest in the Acis LP risk retention structure on December 19, 2017, Acis LP also transferred its contractual right to receive management fees for Acis CLO 2017-7, Ltd. (which had just closed April 10, 2017), which Mr. Terry credibly testified had a combined value of \$5 million, to Highland CLO Holdings, Ltd., another Cayman entity, purportedly in exchange for forgiveness of a \$2.8 million receivable that was owed to Highland under the most recent iteration of the Shared Services Agreement and Sub-Advisory Agreement for CLO-7.<sup>49</sup> In conjunction with this transfer, Highland CLO Holdings, Ltd. then entered into new Shared Services and Sub-Advisory Agreements with Highland.<sup>50</sup>
- (g) Change of Equity Owners of the Alleged Debtors. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the Trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed

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<sup>48</sup> Exh. 157.

<sup>49</sup> See Ex. 45 (the Transfer Document); see also Ex. 4 (the March 17, 2017 Third Amended and Restated Sub-Advisory Agreement between Acis LP and Highland); Ex. 5 (the March 17, 2017 4th Amended & Restated Shared Services Agreement between Acis LP and Highland); Ex. 165 (March 17, 2017 Staff and Services Agreement between Acis CLO Management, LLC and Acis LP); Ex. 166 (March 17, 2017 Master Sub-Advisory Agreement between Acis CLO Management, LLC and Acis LP).

<sup>50</sup> See Exhs. 161 & 162.

(*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, more importantly, on the day after entry of Mr. Terry's Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to a Cayman Island entity called Neutra, Ltd., a Cayman Islands exempted company. Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra, Ltd. Mr. Akada testified that he did this on advice of counsel. He also did not dispute that he had made millions of dollars of equity dividends from his equity investment in Acis LP in recent years<sup>51</sup>—which he conveyed away for no consideration on December 18, 2017.

- (h) The Intended Reset of Acis CLO 2014-3. With all of the above maneuverings having been accomplished, Highland was posed to do a reset on Acis CLO 2014-3 in February 2018 (until Mr. Terry filed the Involuntary Petitions). The investment bank Mizuho Securities USA, LLC was engaged November 15, 2017<sup>52</sup> and a final offering circular was issued in January 2018<sup>53</sup>—contemplating a reset of Acis CLO 20-14-3 with the recently created Highland CLO Management Ltd.

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<sup>51</sup> Exh. 23, p.3.

<sup>52</sup> Exh. 104.

<sup>53</sup> Exh. 31.

Identified as the new portfolio manager, rather than Acis LP. The act of implementing a reset on the CLO was not in itself suspect. However, the reset would, of course, have the effect of depriving Acis LP from a valuable asset—an agreement that could realistically be expected to provide millions of dollars of future collateral management fees—coincidentally (or not) just after Mr. Terry obtained his large judgment.

**D. Findings Regarding Credibility of Witnesses.**

32. The court found the testimony of Mr. Terry to be very credible. He was very familiar with the financial condition of the Alleged Debtors, since he presided over the business of the Alleged Debtors from their inception until June 9, 2016, and has also closely followed publicly available information regarding the companies since his termination. Mr. Terry credibly testified that the Alleged Debtors have never had a significant number of creditors, since most of the Alleged Debtors' vendors are engaged by and send their invoices to Highland, and Highland simply obtains reimbursement from the Alleged Debtors (and other entities in the Highland family), as its in-house lawyers determine is appropriate, through the Shared Services Agreement and Sub-Advisory Agreement. Thus, Highland should at all times be the Alleged Debtors' main creditor. The court finds that Mr. Terry had a good faith belief that the Alleged Debtors had only a handful of creditors (maybe four or so) besides him and Highland. The court also finds that Mr. Terry—at the time he filed the Involuntary Petitions—had a good faith belief that the Alleged Debtors and those controlling them were engaged in an orchestrated, sophisticated effort to denude the Alleged Debtors of their assets and value (*i.e.*, transferring assets and rights for

less than reasonably equivalent value), which started with intensity after issuance of the Arbitration Award (if not sooner).<sup>54</sup>

33. The court found the testimony of almost all of the witnesses for the Alleged Debtors to be of questionable reliability and, oftentimes, there seemed to be an effort to convey plausible deniability. For example, sometimes business decisions concerning the Alleged Debtors were said to have been made by a “collective,” and other times the in-house Highland lawyers (who, of course, are not themselves officers or employees of Acis LP and Acis GP/LLC) stressed that Mr. Dondero (the president and manager of the two entities) had ultimate decision making authority for them. Meanwhile, Mr. Dondero testified that, while he has decision making authority at Acis LP, he usually delegates to Highland’s in-house lawyers Scott Ellington and Isaac Leventon. He testified that he signs hundreds of documents per week and often must rely on information of others when signing. Additionally, Mr. Dondero (again, the President of each of the Alleged Debtors) testified that he had never even read the Arbitration Award. While Mr. Dondero is the chief executive of a multi-billion dollar international investment company, and naturally has widespread responsibilities and must delegate to and rely upon others including lawyers, this court simply does not believe that he never read the Arbitration Award. The court perceived the animosity between Mr. Dondero and Mr. Terry to be rather enormous and Mr. Dondero even testified (as did others) that the litigation with Mr. Terry was hurting Acis LP and Highland in the CLO marketplace (*i.e.*, no investors or underwriters wanting to be associated

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<sup>54</sup> The court also found that the deposition testimony of Brian Shaw and Rahkee Patel (counsel for Mr. Terry) was also credible and did not demonstrate any bad faith on their parts in filing the Involuntary Petitions on behalf of Mr. Terry.

with the Acis brand).<sup>55</sup> If that were the case, it strains credulity to suggest Mr. Dondero never even read the Arbitration Award.

34. As mentioned earlier, in December 2017, Acis GP/LLC became 100% owned by a Cayman Island entity known as Neutra, Ltd. (whose beneficial owner is a Dondero family trust) and Acis LP became 99.9% owned by Neutra, Ltd. The directors of Acis GP/LLC and Acis LP are provided to it now by an entity known as “Maples Fiduciary Services”—another Cayman Island entity, but the Highland Assistant General Counsel could not remember the names of those directors provided to Acis GP/LLC and Acis LP, except for perhaps one. Mr. Dondero, when questioned about some of the recent transactions pertaining to Acis LP, testified that there were tax reasons—tax lawyers recommended the recent transactions and transfers. No tax lawyers testified. Mr. Dondero also testified that certain transactions were at the directive of the Thomas Surgent group (the Highland chief compliance officer). Neither Mr. Surgent nor anyone else from the compliance group testified.

35. Meanwhile, Mr. Akada, who, while testifying, seemed like a generally lovely person and seemed as knowledgeable as a human being could possibly be on the topic of CLOs generally, had no idea if he was an officer or director of the Alleged Debtors, nor did he know whom its officers were. He could not testify as to the meaning of certain transactions in which Acis LP had engaged in during recent weeks and said that he signed certain documents on advice of counsel. He also could not even testify as to whether Highland was opposing the Involuntary Petitions.

36. Again, there was a lot of plausible deniability at Trial as to the “whos” and “whys” for the recent maneuverings involving the Alleged Debtors assets and rights in the weeks

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<sup>55</sup> No such investors or underwriters provided testimony.

since the Arbitration Award. The one thing that the court was wholly convinced of was that conflicts of interest among Highland and the Alleged Debtors abound, and no one is looking out for the interests of the Alleged Debtors as a fiduciary should.

**E. Evidence Regarding the Number of Creditors of the Alleged Debtors.<sup>56</sup>**

37. The Alleged Debtors do not dispute Mr. Terry's claim for the purposes of counting creditors under section 303(b) of the Bankruptcy Code. However, Mr. Terry asserts that the Alleged Debtors have fewer than 12 creditors, and the Alleged Debtors dispute this fact. Specifically, the Alleged Debtors initially filed on January 31, 2018, a Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Dondero listing 18 creditors (the "Original Notice of Creditors").<sup>57</sup> The Alleged Debtors subsequently filed on February 5, 2018, a First Amended Notice of List of Creditors Pursuant to Fed. R. Bankr. P. 1003(b) signed by Mr. Leventon listing 19 creditors (the "First Amended Notice of Creditors").<sup>58</sup> Finally, the Alleged Debtors filed on March 6, 2018, a Second Amended Notice of List of Creditors Pursuant to Fed. R. Bank. P. 1003(b) signed by Mr. Leventon listing 20 creditors (the "Second Amended List of Creditors").<sup>59</sup> The following chart summarizes the name, amount, and nature of the 20 creditors listed by the Alleged Debtors in their Second Amended List of Creditors.

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<sup>56</sup> The court notes that neither Mr. Terry nor the Alleged Debtors attempted to differentiate between the creditors of Acis GP/LLC versus the creditors of Acis LP, but rather presented evidence regarding the collective number of creditors for both of the Alleged Debtors. This seems legally appropriate, since Acis LP is the entity that incurred most of the debt, and ACIS GP/LLC would be liable on such debt as the general partner of Acis LP.

<sup>57</sup> See DE # 7 in Case No. 18-30264 & DE # 7 in Case No. 18-30265.

<sup>58</sup> See DE # 17 in Case No. 18-30264 & DE # 16 in Case No. 18-30265.

<sup>59</sup> See DE # 39 in Case No. 18-30264 & DE # 38 in Case No. 18-30265.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness <sup>60</sup>
1	Andrews Kurth	Legal Fees	\$211,088.13
2	Case Anywhere, LLC	Law Firm Vendor	\$417.20
3	CSI Global Deposition Services	Law Firm Vendor	\$38,452.56
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	Elite Document Technology	Data Hosting/Law Firm Vendor	\$199.72
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	\$1,352.27
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group, Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

38. First, the court believes it necessary to remove certain insider creditor claims, which are required not to be counted pursuant to section 303(b)(2) of the Bankruptcy Code.<sup>61</sup> This would clearly include Highland (the Alleged Debtors do not dispute this).

<sup>60</sup> The dollar amounts listed here are based upon the amounts listed in the Second Amended List of Creditors.

<sup>61</sup> *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000).

39. Additionally, there were certain creditors that filed sworn statements saying they were not creditors of the Alleged Debtors or were subsequently removed from the creditor list by agreement of the Alleged Debtors. These creditors would include Case Anywhere, CSI Global Deposition Services,<sup>62</sup> Elite Document Technology, JAMS, Inc.,<sup>63</sup> Stanton Advisors LLC,<sup>64</sup> and the TASA Group, Inc..<sup>65</sup> Thus, the updated chart now shows 13 creditors of the Alleged Debtors.

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	David Langford	Court Reporter/Law Firm Vendor	\$550
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	<del>Highland Capital Management, L.P.</del>	<del>Advisory and Participation Fees</del>	<del>\$2,770,731.00</del>
9	<del>JAMS, Inc.</del>	<del>Law Firm Vendor</del>	<del>\$1,352.27</del>
10	Jones Day	Legal Fees	\$368.75
11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75

<sup>62</sup> CSI Global Deposition Services was removed as a creditor by the agreement of the Alleged Debtors.

<sup>63</sup> JAMS, Inc. was removed as a creditor by agreement of the Alleged Debtors.

<sup>64</sup> Stanton Advisors LLC was removed as a creditor by agreement of the Alleged Debtors.

<sup>65</sup> See Exh. 40B, Exh. 186, Exh. 92, and Exh. 94.

16	<del>Stanton Advisors LLC</del>	<del>Testifying Expert Fees/Law Firm Vendor</del>	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	<del>The TASA Group, Inc.</del>	<del>Testifying Expert Fees/Law Firm Vendor</del>	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

40. Next, the court finds that there are certain creditors included in the “Law Firm Vendor” category (*e.g.*, experts, data hosting, document managers, court reporters) that are really creditors of the individual law firms and/or Highland, and that these law firm vendor creditors should not be considered creditors of the Alleged Debtors. For these, there was no evidence of a direct contractual obligation on the part of either the Alleged Debtors or Highland—although the court certainly understands that, when the law firms would retain vendors, they would bill these to either the Alleged Debtors or Highland as an expense to be reimbursed. Most of these were already eliminated with agreement of the Alleged Debtors but, from the remaining list of creditors, this would include David Langford (a Dallas County court reporter).<sup>66</sup> To be clear, while the individual law firm creditors may ultimately have a right to reimbursement for these vendor expenses from Highland (who may then potentially have a right to reimbursement from the Alleged Debtors via the Shared Services and Sub-Advisory Agreements), the court does not find this vendor to have a claim *directly* against the Alleged Debtors for purposes of section 303(b) of the Bankruptcy Code.

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<sup>66</sup> See Exh. 40D, Exh. 187, Exh. 400.

41. Next, as to the Stanton Law Firm, the court finds that this creditor should also be removed from the pool of creditors that “count,” for section 303(b) purposes, since this claim appears to be the subject of a “bona fide dispute as to liability or amount,”<sup>67</sup> based on the evidence presented at the Trial. First, there was no engagement letter between either of the Alleged Debtors and the Stanton Law Firm produced.<sup>68</sup> Second, the heavily redacted invoice of the Stanton Law Firm dated October 18, 2016 shows only that it was relating to the “Joshua Terry Matter” and that it was billed to Highland.<sup>69</sup> Third, the Responses and Objections to Mr. Terry’s Notice of Intention to Take Depositions by Written Questions sent to the Stanton Law Firm<sup>70</sup> provides the following responses:

**Question No. 11:** What is the total amount of debt Acis Capital Management L.P. to the Firm. is liable to the Firm.

**Answer:** Acis Capital Management L.P.’s debt to the Firm is unknown at this time.

**Question No. 12:** What is the total amount of debt Acis Capital Management GP, LLC is liable for to the firm?

**Answer:** Acis Capital Management GP, LLC to the Firm is unknown at this time.

**Question No. 13:** Is any other party also liable for the debt of Acis Capital Management L.P. to the Firm? If so, please state the liable party and portion of Acis Capital Management L.P. debt the other party is liable for to the Firm.

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<sup>67</sup> See *Credit Union Liquidity Servs., L.L.C. v. Green Hills Dev. Co., L.L.C. (In re Green Hills Dev. Co., L.L.C.)*, 741 F.3d 651, 655 (5th Cir. 2014) (a claimholder does not have standing to file a petition under section 303(b) if its claim is “the subject of a bona fide dispute as to liability or amount”); *In re Smith*, 415 B.R. 222, 237 (Bankr. N.D. Tex. 2009) (only “a holder of a claim ... that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount” is counted in determining the number of creditors necessary to file an involuntary petition).

<sup>68</sup> Rather, there is only an engagement letter between Lackey Hershman LLP (acting on behalf of its client, Highland) and Stanton Advisors LLC to act as an expert in the Terry litigation. See Exh. 144. As previously noted, the claim of Stanton Advisors LLC was removed from the creditor list by agreement of the Alleged Debtors.

<sup>69</sup> See Exh. 40R.

<sup>70</sup> The court notes that these responses were actually signed by James Michael Stanton, attorney for Stanton LLP. See Exh. 139.

**Answer:** Whether any other party is also liable to the firm for the debt of Acis Capital Management, L.P. is unknown at this time.

**Question No. 14:** Is any other party also liable for the debt of Acis Capital Management GP, LLC to Firm? If so, please state the liable party and portion of Acis Capital Management GP, LLC debt the other party is liable for to the Firm.

**Answer:** Whether any other party is also liable for the debt of Acis Capital Management GP, LLC is unknown at this time. . . .

**Question No. 21:** Does the Firm currently represent Acis Capital Management, L.P.? If so, please state the representation.

**Answer:** Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time.

**Question No. 22:** Does the Firm currently represent Acis Capital Management GP, LLC? If so, please state the representation?

**Answer:** Based on Acis's assertion that this question calls for information protected by the attorney-client privilege, the Firm cannot answer this question at this time. . . .<sup>71</sup>

The court finds that this evidence demonstrates that the claim of the Stanton Law Firm is the subject of a bona fide dispute as to either liability or amount and should not be counted since there is no real way of even knowing who the Stanton Law Firm was engaged by and, thus, whether the Alleged Debtors are even responsible for these alleged legal fees. The court would also specifically refer to the testimony of Mr. Leventon, the in-house lawyer employed by Highland who was in charge of allocating all of the bills that came into Highland's legal invoicing system, where he described a process in which all legal bills relating to the "Terry Matter" would automatically be assigned to the Alleged Debtors, without any real regard to whether the particular law firm had even been engaged by the Alleged Debtors or if whether the

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<sup>71</sup> See Exhibit 139.

representation was actually relating to one of the other parties in the Terry litigation (*e.g.*, Highland, Mr. Dondero, etc.). Accordingly, the court finds that there is a bona fide dispute as to whether the Alleged Debtors are actually liable for the Stanton Law Firm legal fees and that they should not be counted as a creditor for purposes of section 303(b) of the Bankruptcy Code.<sup>72</sup>

42. Thus, it appears, at most, that there are 11 creditors<sup>73</sup> of the Alleged Debtors as set forth in the chart below:

Creditor No.	Creditor Name	Nature of Claim	Total Indebtedness
1	Andrews Kurth	Legal Fees	\$211,088.13
2	<del>Case Anywhere, LLC</del>	<del>Law Firm Vendor</del>	<del>\$417.20</del>
3	<del>CSI Global Deposition Services</del>	<del>Law Firm Vendor</del>	<del>\$38,452.56</del>
4	<del>David Langford</del>	<del>Court Reporter/Law Firm Vendor</del>	<del>\$550</del>
5	Drexel Limited	Fee Rebate	\$6,359.96
6	<del>Elite Document Technology</del>	<del>Data Hosting/Law Firm Vendor</del>	<del>\$199.72</del>
7	Highfield Equities, Inc.	Fee Rebate	\$2,510.04
8	Highland Capital Management, L.P.	Advisory and Participation Fees	\$2,770,731.00
9	JAMS, Inc.	Law Firm Vendor	\$1,352.27
10	Jones Day	Legal Fees	\$368.75

<sup>72</sup> See also *In re CorrLine Int'l, LLC*, 516 B.R. 106, 152 (Bankr. S.D. Tex. 2014) (bankruptcy court found that creditors contained in the alleged debtor's list of creditors with uncertain or unknown amounts could not be counted towards the numerosity requirement of section 303(b)).

<sup>73</sup> The court notes that, in all likelihood, the list of creditors that should be tallied for purposes of section 303(b) may actually be less than 11, because certain of the remaining creditors (*i.e.*, Drexel Limited, Highfield Equities, Inc., Lackey Hershman LLP, and David Simek) received payments during the 90 days preceding the Petition Date—and, thus, arguably should not be counted as creditors pursuant to section 303(b) of the Bankruptcy Code (which instructs that transferees of voidable transfers should not be counted). See, *e.g.*, Exh. 124 & Exh. 131. Additionally, certain of the remaining law firm creditors that are owed legal fees are also creditors of Highland and Highland-affiliates, not just the Alleged Debtors. To elaborate, many of these law firm creditors were employed to represent not only the Alleged Debtors, but also Highland and Highland-affiliates, so there may be an actual dispute as to the allocation of these legal fees among Highland and the Alleged Debtors (thus there could be bona fide disputes as to the amounts allocated by Highland's in-house lawyers to the Alleged Debtors). See, *e.g.*, Ex. 123 (McKool Smith, P.C. engagement letter referencing representation of numerous parties) & Exhibit 90 (Reid Collins & Tsai's Answers and Objections to Mr. Terry's Deposition by Written Questions, questions 13 & 14, stating that based upon allocation determinations to be made by Highland, other individuals may be liable for the full amount of the debt including Acis LP, Highland, Mr. Dondero, and Mr. Okada).

11	Joshua Terry	Judgment Creditor	\$8,060,827.84
12	KPMG LLP	Auditor Fees	\$34,000
13	Lackey Hershman LLP	Legal Fees <sup>74</sup>	\$236,977.54
14	McKool Smith, P.C.	Legal Fees	\$70,082.18
15	Reid Collins & Tsai LLP	Legal Fees	\$17,383.75
16	Stanton Advisors LLC	Testifying Expert Fees/Law Firm Vendor	\$10,000
17	Stanton Law Firm	Legal Fees	\$88,133.99
18	The TASA Group, Inc.	Testifying Expert Fees/Law Firm Vendor	\$14,530.54
19	CT Corporation	Report Filing Representation	\$517.12
20	David Simek	Expense Reimbursement	\$1,233.19

43. Finally, on the topic of creditor numerosity, the court further finds that the evidence strongly suggested hurried manufacturing of creditors on the part of the Alleged Debtors and Highland, in order to bolster an argument that having a sole petitioning creditor was legally inadequate in this case.<sup>75</sup> For example, the Klos Declaration and other information, that was provided to State Court 2 and in discovery, only days before the Involuntary Petitions were filed,

<sup>74</sup> Mr. Terry has also argued that certain of the law firm creditors (McKool Smith, P.C., Lackey Hershman, LLP, and Reid Collins & Tsai) are “insiders” that must be excluded from the creditor list pursuant to section 303(b) of the Bankruptcy Code. While there may be some support in case law for such an argument, Mr. Terry would ultimately need to show by a preponderance of the evidence that the law firms exercised such control or influence over the Alleged Debtors as to render their transactions not at arm’s length. *See In re CorrLine Intern., LLC*, 516 B.R. 106, 157-58 (Bankr. S.D. Tex. 2014) (citing to *Kepler v. Schmalbach (In re Lemanski)*, 56 B.R. 981, 983 (Bankr.W.D.Wis.1986)). *See also In re Holloway*, 955 F.2d 1008, 1011 (5th Cir. 1992) (in evaluating whether insider status existed for purposes of evaluating alleged fraudulent conveyance court considered (1) the closeness of the relationship between the transferee and the debtor; and (2) whether the transactions between the transferee and the debtor were conducted at arm’s length). Because there was no evidence suggesting abuse or control by these law firm creditors, nor was there any evidence that would suggest that their dealings with the Alleged Debtors were anything but arm’s length, the court finds that these law firm creditors should not be excluded from the creditor list as “insiders” pursuant to section 303(b) of the Bankruptcy Code.

<sup>75</sup> *See* the Original Notice of Creditors, the First Amended Notice of Creditors, and the Second Amended Notice of Creditors.

seemed to show only a small number of creditors of Acis LP—Mr. Terry credibly testified that he thought there were less than 12 creditors based on his review of such information, as well as his understanding of the Alleged Debtors’ business. Yet, only a few days later, the Alleged Debtors filed their Original Notice of Creditors, which showed 18 creditors, which was amended twice to add another creditor and then yet another. This simply does not jive in the court’s mind and supports this court’s belief that the Alleged Debtors were scurrying to determine which Highland creditors might cogently be painted as Acis LP creditors—so as to preclude Mr. Terry from being able to file the Involuntary Petitions as the single, petitioning creditor.

**F. Evidence Regarding Whether the Alleged Debtors are Generally Not Paying Debts as They Become Due (Unless Such Debts are the Subject of a Bona Fide Dispute as to Liability or Amount).**

44. The evidence submitted reflects that, for the 11 creditors identified above, 9 out of 11 have unpaid invoices that were more than 90 days old. The remaining 2 of the 11 were McKool Smith, P.C. (current counsel for the Alleged Debtors) and the Petitioning Creditor.<sup>76</sup> The court makes findings with regard to each of the 11 creditors below—focusing specifically on whether the Alleged Debtors have been paying these creditors as their debts have become due.

45. First, with regard to Andrews Kurth & Kenyon (“AKK”), the evidence reflected that out of the \$211,088.13 allegedly owed by Acis LP to AKK, the great majority of it—\$173,448.42—was invoiced on November 16, 2016<sup>77</sup> (more than 14 months before the Petition Date). Other, smaller amounts were invoiced on a monthly basis in each of the months August 2017, September 2017, October 2017, November 2017, and December 2017. Although requested in discovery, no engagement letter for AKK was produced and AKK represented in

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<sup>76</sup> Exhs. 40 & 54.

<sup>77</sup> Exh. 40.

written discovery that, to its knowledge, none existed.<sup>78</sup> The court notes anecdotally that AKK's invoices (although allegedly related to Acis LP legal matters) were addressed to Highland.<sup>79</sup> In any event, AKK represented that both the Alleged Debtors and Highland are jointly and severally liable for the fees owed to it.<sup>80</sup> AKK also represented that, to its knowledge, the amounts owing to it by Acis LP and Highland are not disputed.<sup>81</sup> AKK also represented that it has not provided legal work on a contingency basis for the Alleged Debtors or Highland.<sup>82</sup> The court makes a logical inference that AKK expected timely payment of its invoices—the largest of which was dated more than 14 months prior to the Petition Date—and, thus, it has generally not been paid timely.

46. Next, with regard to Drexel Limited, the Petitioning Creditor concedes that its \$6,359.96 indebtedness (which is a fee rebate owing to it) is not past-due.

47. Next, with regard to Highfield Equities, Inc., the Petitioning Creditor concedes that its \$2,510.04 indebtedness (which is also a fee rebate owing to it) is not past-due.

48. Next, with regard to the Jones Day law firm, the \$368.75 indebtedness owed to it is well more than 90 days old. Specifically, there is a six-and-a-half-month old invoice dated July 19, 2017 invoice in the amount of \$118.75, and two five-month old invoices dated August 30, 2017 (both in the amount of \$150).<sup>83</sup> The court makes a logical inference that Jones Day

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<sup>78</sup> Exh. 98, Requests 1-2.

<sup>79</sup> Exh. 98, pp. AKK000061-AKK000060.

<sup>80</sup> Exh. 98, Question 13.

<sup>81</sup> Exh. 98, Questions 52-55.

<sup>82</sup> Exh. 98, Questions 73-75.

<sup>83</sup> Exh. 40K.

expected timely payment of its invoices prior to the Petition Date and, thus, it has generally not been paid timely.

49. Next with regard to the Petitioning Creditor, Mr. Terry, the court notes that his liquidated claim in the amount of \$8,060,827.84 first arose with the final Arbitration Award on October 20, 2017 (although such award was not confirmed by State Court 2 until December 18, 2017). The judgment was unstayed as of the January 30, 2018 Petition Date, although the Alleged Debtors state that they still desire to appeal it—as difficult as that is in the situation of an arbitration award. The court makes a logical inference that the Alleged Debtors had, on the Petition Date, no intention of paying this claim any time soon based on their conduct after the Arbitration Award—although the Arbitration Award had only been in existence for three-and-a-half months as of the Petition Date. The cash in the Alleged Debtors’ bank accounts is wholly insufficient to cover the Arbitration Award and, meanwhile, corporate transactions have been ongoing to ensure that no cash streams will be coming into Acis LP in the future in the same way that they have in the past. Thus, this court finds that this large claim, as of the Petition Date, was not being paid timely.

50. Next with regard to KPMG LLP, the \$34,000 indebtedness owed to it was for the service of auditing Acis LP’s financial statements, pursuant to an engagement letter with it dated March 1, 2017.<sup>84</sup> KPMG’s engagement letter reflected a \$40,000 flat fee was agreed to by Acis LP for the service, of which 40% was due October 2017 (*i.e.*, \$16,000), with another 45% was due in January 2018 (\$18,000), and the remaining 15% would be due at the time that a final bill was sent. Acis LP has only paid \$6,000 of the agreed upon amount—meaning \$28,000 was overdue as of the January 30, 2018 Petition Date (with \$10,000 of that being four months past

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<sup>84</sup> Exh. 40M.

due). The court makes a logical inference that KPMG LLP expected payment of its audit fees in accordance with its engagement letter and, thus, it has generally not been paid timely.

51. Next with regard to Lackey Hershman LLP, the \$236,977.54 indebtedness owed to it was for legal services provided to the Alleged Debtors and Highland in connection with the arbitration and litigation with Mr. Terry. No engagement letter was provided, but the invoices for their services are all directed to Highland.<sup>85</sup> The evidence reflected that three invoices had not been paid as of the Petition Date: an October 31, 2017 invoice in the amount of \$56,909.53; a November 30, 2017 invoice setting forth new fees in the amount of \$84,789.83; and a December 31, 2017 invoice setting forth new fees in the amount of \$95,278.18.<sup>86</sup> The court makes a logical inference that Lackey Hershman LLP expected prompt payment on its invoices (if nothing else, the statement on its invoice indicating “Total now due”)<sup>87</sup> and, thus, it has generally not been paid timely.

52. Next with regard to Reid Collins & Tsai LLP, the \$17,383.75 indebtedness owed to it was billed in an invoice dated August 31, 2017, indicating an August 31, 2017 “Due Date” (five months before the Petition Date).<sup>88</sup> Although requested in discovery, no engagement letter for this firm was produced and Reid Collins & Tsai LLP in fact represented in written discovery that none existed.<sup>89</sup> Moreover, written discovery propounded on the law firm indicated that, while Acis LP was liable on this debt, other parties including Acis GP/LLC, Highland, Mr.

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<sup>85</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>86</sup> Exh. 40, p. 3.

<sup>87</sup> Demonstrative Aid No. 1 (Lackey Hershman tab).

<sup>88</sup> Exh. 40P; Exh. 130, pp. 7-8.

<sup>89</sup> Exh. 90, Requests 1 & 2; Ex. 130, Requests 1 & 2.

Dondero, the Dugaboy Trust, and Mr. Akada might also be liable for the full amount of the debt—subject to Highland’s allocation determinations.<sup>90</sup> Based on this evidence, the court makes a logical inference that Reid Collins & Tsai LLP generally has not been paid timely.

53. Next with regard to CT Corporation and the \$517.12 indebtedness that the Alleged Debtors represent is owed, CT Corporation asserts that \$4,074.84 is, in fact, owed to it by Acis LP and Acis GP/LLC.<sup>91</sup> CT Corporation also believes Highland has liability for the Alleged Debtors’ indebtedness.<sup>92</sup> CT Corporation also believes the amount owed to it is undisputed.<sup>93</sup> CT Corporation further represents that its invoices are due upon receipt.<sup>94</sup> CT Corporation produced several invoices in discovery, all showing due upon receipt, and one was dated as far back as December 31, 2016 (in the amount of \$932).<sup>95</sup> Based on this evidence, the court makes a logical inference that CT Corporation expected prompt payment on its invoices and, thus, has not been paid timely.

54. Next with regard to David Simek, the Petitioning Creditor concedes that his \$1,233.19 indebtedness (which is apparently an expense reimbursement relating to some consulting) is not past-due.

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<sup>90</sup> Exh. 90, Questions 13 & 14; Exh. 130, Questions 13-14.

<sup>91</sup> Exh. 143, Questions 12 & 13.

<sup>92</sup> *Id.* at Question 14.

<sup>93</sup> *Id.* at Questions 22 & 23.

<sup>94</sup> *Id.* at Question 30.

<sup>95</sup> *Id.* at p. 8; Exh. 40T.

55. In summary, the evidence reflects that the creditors of the Alleged Debtors are generally not being paid timely (except for perhaps four that are relatively insignificant and which may also be able to look to Highland for payment).<sup>96</sup>

56. Further on the topic of timeliness, Mr. Leventon (Highland's in-house Assistant General Counsel) testified that 96% of bills submitted get paid more than 90 days after they are submitted, that approximately 70% of bills are later than 120 days after they are submitted, and some are even later than 150 days. Mr. Leventon testified that this was a result of Acis LP receiving cash on a quarterly basis from the CLOs. He further elaborated and testified that, for example, if Acis LP got cash on say February 1st, and it received a legal bill on that same day, that he would probably not approve it and allocate it until say February 8th. By that time, Acis LP would have already used up all its cash, and that particular creditor would need to wait until the next quarterly payment was received in order to be paid. He further testified that he explained this to law firms before their engagements and that, if they wanted the business, they would need to understand the process. There are several things the court finds problematic about this testimony. First, no testimony was offered showing that this was, in fact, the understanding of the law firms or other creditors, and, moreover, none of the engagement letters or invoices submitted into evidence reflect such payment terms. Without this additional evidence, the court believes that the Alleged Debtors' testimony regarding how it paid invoices was mostly self-serving and did not support a finding that the Alleged Debtors were generally paying their debts

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<sup>96</sup> Courts have also held that a debtor is generally not paying its debts as they become due when a debtor is found to have been transferring assets so as to avoid paying creditors. *See, e.g., In re Moss*, 249 B.R. 411, 423 (Bankr. N.D. Tex. 2000) (bankruptcy court determined that an alleged debtor was not paying its debts as they came due when the alleged debtor "attempted to delay creditors through the transfers of assets she has made," concluding that "[the alleged debtor's] overall conduct of her financial affairs has been poor"). This court has also found that there may have been significant transfers of the Alleged Debtors' assets prior to the filing of the Involuntary Petitions to potentially avoid paying creditors (*i.e.*, Mr. Terry) and this may provide further support for the court's finding that the Alleged Debtors are generally not paying their debts as they become due under section 303(h).

as they became due.<sup>97</sup> Second, to the extent Mr. Leventon's testimony demonstrates that creditors of the Alleged Debtors expected to be paid on a quarterly basis (at the latest), certain of the remaining 11 creditors have debts that are significantly older than four months (*i.e.*, CT Corporation, Jones Day, AKK, and possibly even Reid Collins & Tsai LLP). Third, the Financial Statements of Acis LP submitted into evidence do not support the notion that the cash balances at Acis LP were only sufficient enough to pay vendors once every quarter.<sup>98</sup> For example, the balance sheet for January 31, 2017 shows a cash balance in Acis LP bank accounts of \$1,061,663.19; the balance sheet for February 28, 2017 shows a cash balance in Acis LP bank accounts of \$905,212.36; the balance sheet for March 31, 2017 shows a cash balance in Acis LP bank accounts of \$525,626.59; the balance sheet for April 30, 2017 shows a cash balance in Acis LP bank accounts of \$117,885.96; the balance sheet for May 31, 2017 shows a cash balance in Acis LP bank accounts of \$62,733.31; the balance sheet for June 30, 2017 shows a cash balance in Acis LP bank accounts of \$10,329.15; the balance sheet for July 31, 2017 shows a cash balance in Acis LP bank accounts of \$701,904.39; the balance sheet for August 31, 2017 shows a cash balance in Acis LP bank accounts of \$332,847.05.<sup>99</sup> In summary, while there may be cash fluctuations with Acis LP, there is not a clear pattern of Acis LP being only able to pay vendors once every quarter.

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<sup>97</sup> See *In re Trans-High Corp.*, 3 B.R. 1, 2-3 (Bankr. S.D.N.Y. 1980) (bankruptcy court found that evidence showing that the petitioning creditor gave the debtor generous terms of payment (90 days) which were substantially better than the terms set forth in the actual writings between the parties supported finding that the alleged debtors were generally paying debts as they became due and that the involuntary petition must be dismissed).

<sup>98</sup> Exh. 147.

<sup>99</sup> *Id.*

## **II. Conclusions of Law**

Section 303 of the Bankruptcy Code sets forth the various requirements for initiating an involuntary bankruptcy case. First, pursuant to section 303(b) of the Bankruptcy Code, an involuntary case may be filed against a person by the filing with the bankruptcy court of a petition under Chapter 7—

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount ... [that] aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$15,775 of such claims . . .<sup>100</sup>

Thus, if there are twelve or more eligible creditors holding qualified claims on the Petition Date, three or more entities must participate in the involuntary filing and must hold unsecured claims aggregating \$15,775.00. If there are less than twelve creditors, a single creditor with an unsecured claim of \$15,775.00 may file the involuntary petition. To the extent a bankruptcy court finds that the requisite number of petitioning creditors have commenced the involuntary case, the court shall order relief against the debtor under the chapter under which the petition was filed only if “the debtor is generally not paying such debtor’s debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount.”<sup>101</sup>

Here, as noted earlier, the Alleged Debtors have made four arguments as to why an order for relief should not be entered against the Alleged Debtors: (1) the Alleged Debtors have 12 or

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<sup>100</sup> 11 U.S.C.A § 303(b) (West 2018).

<sup>101</sup> 11 U.S.C.A § 303(h) (West 2018).

more creditors, and, thus, with Mr. Terry being the sole petitioning creditor, the Involuntary Petitions were not commenced by the requisite number of creditors; (2) the Alleged Debtors are generally paying their debts as they become due; (3) the Involuntary Petitions were filed in bad faith by Mr. Terry; (4) the interests of creditors and the debtors would be better served by dismissal and the court should abstain pursuant to section 305 of the Bankruptcy Code.

**A. *Have the Requisite Number of Creditors Commenced the Involuntary Proceedings?***

Pursuant to section 303(b)(2) of the Bankruptcy Code, a sole petitioning creditor holding at least \$15,775 in claims can initiate an involuntary bankruptcy case so long as the alleged debtors have fewer than 12 creditors. After the Second Amended List of Creditors was filed, Mr. Terry had the burden, by a preponderance of the evidence, of showing that the Alleged Debtors actually had less than 12 qualified creditors.<sup>102</sup> Here, the court has found that the Alleged Debtors have, *at most*, 11 qualified creditors.<sup>103</sup> Accordingly, Mr. Terry has met his burden of showing that the Alleged Debtors have less than 12 creditors for section 303(b) purposes, and that he, as the sole petitioning creditor, was permitted to file the Involuntary Petitions. While Mr. Terry has made additional arguments as to why certain of these 11 creditors should not be counted as creditors for purposes of section 303(b) of the Bankruptcy Code, the court does not believe it necessary to address these arguments at this time.<sup>104</sup>

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<sup>102</sup> See *In re Moss*, 249 B.R. 411, 419 n. 6 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222, 229 (Bankr. N.D. Tex. 2009).

<sup>103</sup> To be clear, the court believes that even on these 11, there are likely bona fide disputes as to the liability or amount that *Acis LP* has—as opposed to the liability or amount that Highland or other insiders bear responsibility.

<sup>104</sup> Moreover, as previously stated, since the court has determined there are fewer than 12 creditors, the court need not address whether there is a “special circumstances” exception to the statutory requirements of section 303, in situations where an alleged debtor may have engaged in fraud, schemes, or artifice to thwart a creditor or creditors. See, e.g., *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991); *In re Moss*, 249 B.R. 411 (Bankr. N.D. Tex. 2000); *In re Smith*, 415 B.R. 222 (Bankr. N.D. Tex. 2009).

***B. Are the Alleged Debtors Generally Paying Their Debts as They Become Due?***

Section 303(h) of the Bankruptcy Code requires that a court shall enter order for relief in an involuntary case “if ... (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount . . . .”<sup>105</sup> Again, the burden is on the Petitioning Creditor to prove this element by a preponderance of the evidence.<sup>106</sup> The determination is made as of the filing date of the Involuntary Petitions.<sup>107</sup> In determining whether an alleged debtor is generally paying its debts as they come due, courts typically look to four factors: (i) the number of unpaid claims; (ii) the amount of such claims; (iii) the materiality of the non-payments; and (iv) the nature of the debtor's overall conduct in its financial affairs.<sup>108</sup> No one factor is more meritorious than another; what is most relevant depends on the facts of each case.<sup>109</sup> Courts typically hold that “generally not paying debts” includes regularly missing a significant number of payments *or* regularly missing payments which are significant in amount in relation to the size of the debtor's operation.<sup>110</sup>

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<sup>105</sup> 11 U.S.C.A § 303(h) (West 2018).

<sup>106</sup> *See Norris v. Johnson (In re Norris)*, No. 96-30146, 1997 WL 256808, at \*3-\*4 (5th Cir. Apr. 11, 1997) (unpublished).

<sup>107</sup> *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993).

<sup>108</sup> *See, e.g., In re Moss*, 249 B.R. 411, 422 (Bankr. N.D. Tex. 2000) (citing *In re Norris*, 183 B.R. 437, 456-57 (Bankr. W.D. La. 1995)).

<sup>109</sup> *In re Bates*, 545 B.R. 183, 186 (Bankr. W.D. Tex. 2016) (also noting that petitioning creditors' counsel consistently argued that the final prong—overall conduct in financial affairs—should be afforded more weight than the other factors, and the court found no authority to support this assertion).

<sup>110</sup> *See, e.g., In re All Media Props., Inc.*, 5 B.R. 126, 143 (Bankr. S.D. Tex. 1980). *See also Concrete Pumping Serv., Inc. v. King Constr. Co. (In re Concrete Pumping Serv., Inc.)*, 943 F.2d 627, 630 (6th Cir.1991) (a debtor was not paying his debts as they became due where the debtor was in default on 100% of its debt to only one creditor); *Knighthead Master Fund, L.P. v. Vitro Packaging, LLC (In re Vitro Asset Corp.)*, No. 3:11-CV-2603-D (N.D.Tex. Aug. 28, 2012) (district court found error in bankruptcy court ruling that the debtors were generally paying their debts as they became due, where bankruptcy court had relied on the fact that the alleged debtors had a significant number of third-party creditors/trade vendors, which had been continually paid, even though the unpaid debts to the petitioning creditors far exceeded the paid debts in terms of dollar amount; petitioning creditors were holders of promissory notes that were guaranteed by the alleged debtors, as to which the primary obligor and alleged

Furthermore, any debt which the alleged debtor is not current on as of the petition date should be considered as a debt not being paid as it became due.<sup>111</sup>

Here, the court concludes that the creditors of the Alleged Debtors—what few there are—are generally not being paid as their debts have become due (except for perhaps four<sup>112</sup> that are relatively insignificant and which may also be able to look to Highland for payment). Mr. Terry has met his burden by a preponderance of the evidence as to section 303(h) of the Bankruptcy Code.

***C. With the Section 303 Statutory Requirements Being Met by the Petitioning Creditor, Should the Court, Nonetheless, Dismiss the Involuntary Petitions Because They Were Filed in Bad Faith?***

Despite Mr. Terry meeting the necessary statutory requirements for this court to enter orders for relief as to the Alleged Debtors pursuant to section 303 of the Bankruptcy Code, the Alleged Debtors have argued that the Involuntary Petitions must, nonetheless, be dismissed because they were filed in “bad faith” by Mr. Terry. As support for this argument, the Alleged Debtors rely primarily on the Third Circuit’s decision in *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328 (3d Cir. 2015). While the court certainly acknowledges that authority exists in other circuits that suggests that dismissal of an involuntary bankruptcy case may be appropriate—even when section 303’s statutory requirements have been met—based upon an

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debtors had ceased making interest payments; the unpaid debts represented 99.9% of the total dollar amount of debt of each of the alleged debtors); *Crown Heights Jewish Cmty. Council, Inc. v. Fischer (In re Fischer)*, 202 B.R. 341, 350–51 (E.D.N.Y. 1996) (even though the debtor only had two outstanding debts, the total dollar amount failed to establish that, in terms of dollar amounts, the debtor was paying anywhere close to 50% of his liabilities, so he was not generally paying his debts as they became due); *In re Smith*, 415 B.R. 222, 231 (Bankr. N.D. Tex. 2009) (while the debtor was paying small recurring debts, he was not paying 99 percent of his debts in the aggregate amount and thus was not generally paying his debts as they became due).

<sup>111</sup> *In re Bates*, 545 B.R. 183, 188 (Bankr. W.D. Tex. 2016).

<sup>112</sup> Those four are: Drexel Limited (\$6,359.96); Highfield Equities (\$2,510.04); David Simek (\$1,233.19); and McKool Smith (\$70,082.18).

independent finding of “bad faith,” the court need not ultimately decide the efficacy or applicability of such authority, because the court does not believe that the evidence demonstrated any “bad faith” on the part of Mr. Terry (or his counsel) in filing the Involuntary Petitions. Indeed, the evidence suggested that Mr. Terry and his counsel filed the Involuntary Petitions out of a legitimate concern that Highland was dismantling and denuding Acis LP of all of its assets and value and that a bankruptcy filing was the most effective and efficient way to preserve value for the Acis LP creditors. The court concludes that Mr. Terry was wholly justified in pursuing the Involuntary Petitions.

***D. Should This Court, Nonetheless, Abstain and Dismiss the Involuntary Petitions Pursuant to Section 305 of the Bankruptcy Code?***

Section 305(a)(1) of the Bankruptcy Code provides that:

- (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; . . .<sup>113</sup>

Courts construing section 305(a)(1) of the Bankruptcy Code have found that abstention in a properly filed bankruptcy case is an *extraordinary remedy*.<sup>114</sup> Moreover, granting an abstention motion pursuant to section 305(a)(1) of the Bankruptcy Code requires more than a simple balancing of harm to the debtor and creditors; rather, the interests of *both* the *debtor* and its *creditors* must be served by granting the request to abstain.<sup>115</sup> The moving party bears the

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<sup>113</sup> 11 U.S.C.A. § 305(a)(1) (West 2018).

<sup>114</sup> *In re AMC Investors, LLC*, 406 B.R. 478, 487 (Bankr. D. Del. 2009); *see also In re Compania de Alimentos Fargo, S.A.*, 376 B.R. 427, 434 (Bankr. S.D.N.Y. 2007); *In re 801 S. Wells St. Ltd. P’ship*, 192 B.R. 718, 726 (Bankr. N.D. Ill. 1996).

<sup>115</sup> *In re Smith*, 415 B.R. 222, 238-39 (Bankr. N.D. Tex. 2009) (citing to *AMC Investors, LLC*, 406 B.R. at 488).

burden to demonstrate that dismissal benefits the debtor and its creditors.<sup>116</sup> Courts must look to the individual facts of each case to determine whether abstention is appropriate.<sup>117</sup>

Case law has set forth a litany of factors to be considered by the court to gauge the overall best interests of the creditors and the debtor for section 305(a)(1) purposes:

- (1) the economy and efficiency of administration;
- (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court;
- (3) whether federal proceedings are necessary to reach a just and equitable solution;
- (4) whether there is an alternative means of achieving an equitable distribution of assets;
- (5) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves all interests in the case;
- (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and
- (7) the purpose for which bankruptcy jurisdiction has been sought.<sup>118</sup>

While all factors are considered, not all are given equal weight in every case and the court should not conduct a strict balancing.<sup>119</sup>

*i. Factor 1: The Economy and Efficiency of Administration.*

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<sup>116</sup> *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462-63 (Bankr. S.D.N.Y. 2008).

<sup>117</sup> *In re Spade*, 258 B.R. 221, 231 (Bankr. D. Colo. 2001).

<sup>118</sup> *Monitor Single Lift I, Ltd.*, 381 B.R. at 464-65 (citing to *In re Paper I Partners, L.P.*, 283 B.R. 661, 679 (Bankr. S.D.N.Y. 2002)); see also *Smith*, 415 B.R. at 239; *AMC Investors, LLC*, 406 B.R. at 488; *In re Euro-American Lodging Corp.*, 357 B.R. 700, 729 (Bankr. S.D.N.Y. 2007); but see *Spade*, 258 B.R. at 231-32 (Bankr. D. Colo. 2001) (applied a four criteria test in evaluating section 305 abstention which included: (1) the motivation of the parties who sought bankruptcy jurisdiction; (2) whether another forum was available to protect the interests of both parties or there was already a pending proceeding in state court; (3) the economy and efficiency of administration; and (4) the prejudice to the parties). The Alleged Debtors cite to the case of *In re Murray*, 543 B.R. 484 (Bankr. S.D.N.Y. 2016), in particular, as support for why this court should abstain under section 305(a) of the Bankruptcy Code and dismiss the Involuntary Petitions. However, in *Murray*, Judge Gerber was analyzing dismissal of an involuntary proceeding pursuant to section 707 of the Bankruptcy Code, more specifically for “cause,” and not based upon abstention under section 305(a) of the Bankruptcy Code. Thus, the court is not convinced *Murray* is relevant to this court’s section 305 abstention analysis.

<sup>119</sup> *In re TPG Troy, LLC*, 492 B.R. 150, 160 (Bankr. S.D.N.Y. 2013) (citing *Monitor Single Lift*, 381 B.R. at 464).

The economy and efficiency of administering a case in the bankruptcy court is routinely evaluated in considering abstention under section 305 of the Bankruptcy Code. Here, the evidence suggests that the most economical and efficient forum for these parties to resolve their disputes is the bankruptcy court. The court heard ample evidence that the Alleged Debtors are already, essentially, in the process of being liquidated by Highland. This is not a situation where an ably-functioning, going-concern business is being foisted in disruptive fashion into a bankruptcy.<sup>120</sup> Because of the fact that the Alleged Debtors are already in the process of being liquidated, the bankruptcy court (and not a state court) is the most efficient and economical forum to complete this liquidation and distribute whatever assets remain to creditors in accordance with the distribution scheme set forth in the Bankruptcy Code and with the oversight of a neutral third-party trustee. Thus, with the bankruptcy court being the more economic and efficient forum for administering this case, this factor goes against abstention.

- ii. *Factors 2, 3, 4, 5, and 6: Whether Another Forum is Available to Protect the Interests of Both Parties or There is Already a Pending Proceeding in State Court; Whether Federal Proceedings are Necessary to Reach a Just and Equitable Solution; Whether There is an Alternative Means of Achieving an Equitable Distribution of Assets; Whether the Debtor and the Creditors are Able to Work Out a Less Expensive Out-of-Court Arrangement Which Better Serves All Interests in the Case; and Whether a Non-Federal Insolvency Has Proceeded so Far in Those Proceedings That it Would Be Costly and Time Consuming to Start Afresh With the Federal Bankruptcy Process.*

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<sup>120</sup> See, e.g., *In re The Ceiling Fan Distrib., Inc.*, 37 B.R. 701 (Bankr. M.D. La. 1983) (noting that while the dissection of a living business may not properly be the business of a bankruptcy court, the division of a “carcass” and the reclamation of pre-petition gouging may well be); *In re Bos*, 561 B.R. 868, 898-99 (Bankr. N.D. Fla. 2016) (citing as one of the reasons to abstain under section 305 of the Bankruptcy Code the fact that entities and subsidiaries under the alleged debtor’s umbrella were still operating successful businesses and had employed more than 500 people); but see *Remex Elecs. Ltd. v. Axl Indus., Inc. (In re Axl Indus., Inc.)*, 127 B.R. 482, 484-86 (S.D. Fla. 1991) (in affirming the bankruptcy court’s decision to dismiss an involuntary bankruptcy case, the district court also found that “the interests of a defunct business enterprise would be little affected by the pendency of a bankruptcy proceeding,” which the district court believed favored abstention).

The court believes that factors 2-6 should be grouped together for purposes of its abstention analysis, since all of these factors specifically touch on the availability of an alternative forum to achieve an *equitable* distribution.<sup>121</sup> By way of example, where bringing a case into the bankruptcy court would simply add an additional layer of expense to the resolution of a two-party dispute and another forum already provides a suitable place to resolve the dispute, some courts have found that abstention is the more appropriate choice since keeping the case would transform the bankruptcy process into a collection device.<sup>122</sup> Here, the Alleged Debtors have repeatedly argued that, because there is already pending state court litigation involving Mr. Terry, Highland, and the Alleged Debtors, these cases should be dismissed and the parties should go back to state court to resolve their issues. The court does not agree for several reasons.

First, it is worth noting that this court has already heard multiple days of evidence in this case (including almost five days just for the Trial) and would certainly not be “starting afresh” by any means if things go forward in the bankruptcy court. Additionally, while the Alleged Debtors have argued that a significant amount of attorney’s fees have already been spent litigating this case in state court (which they believe supports abstention), the court surmises that these fees have not been wasted dollars, as the money expended by the parties developed discovery of facts that could assist a bankruptcy trustee in pursuing avoidance actions that may be viable and might lead to value that could pay creditors’ claims.<sup>123</sup>

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<sup>121</sup> See, e.g., *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 460-70 (Bankr. S.D.N.Y. 2008).

<sup>122</sup> *AMC Investors, LLC*, 406 B.R. at 488; see also *Axl Indus., Inc.*, 127 B.R. at 484-86.

<sup>123</sup> See, e.g., *The Ceiling Fan Distributor, Inc.*, 37 B.R. at 703 (the court noted that, despite there being significant legal expenses in the state court, such expenses were not wasted since the legal work done to date would be quite helpful to a trustee).

Second, this court heard considerable evidence involving potentially voidable transfers that may have occurred involving the Alleged Debtors and Highland/Highland-affiliates and, while the state court certainly provides a forum for eventually bringing fraudulent transfer claims, the court also heard evidence that none of these claims have actually been brought in the state court.<sup>124</sup> Moreover, to the extent fraudulent transfer claims were to be pursued in state court and were successful, the state court would still need the ability to reach the assets of alleged fraudulent transfer recipients (which, in this situation, include certain Highland-affiliates located in the Cayman Islands). The bankruptcy court has concerns whether a state court process could efficiently accomplish this task.<sup>125</sup> Similarly, it is worth noting that, while a request for a receiver was filed in the state court by Mr. Terry, such request had not yet been heard and decided by the state court. Thus, at the present time, it does not appear that there is an alternative forum to address the pertinent issues in this case, without the necessity of significant, additional steps being taken by the parties in the state court.

Third, this court believes that a federal bankruptcy proceeding is necessary in order to achieve an equitable result in this case. Specifically, the court heard evidence from the Alleged Debtors that, if this court chose to abstain and dismiss the Involuntary Petitions, the Alleged Debtors would ultimately pay all of their creditors in full, except for Mr. Terry. This clearly demonstrates how keeping the case in the bankruptcy court is necessary to allow an equitable

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<sup>124</sup> See, e.g., *In re Texas EMC Mgmt., LLC*, Nos. 11-40008 & 11-40017, 2012 WL 627844, at \*3 (Bankr. S.D. Tex. 2012) (noting that one of the reasons abstention was proper under section 305 of the Bankruptcy Code was because the issues to be litigated amongst the parties were already joined in the state court litigation); *Spade*, 258 B.R. at 236 (court held that one of the reasons abstention was warranted under section 305 of the Bankruptcy Code was because the petitioning creditors had already filed and had pending a “collection case” in the state court).

<sup>125</sup> See, e.g., *Smith*, 415 B.R. at 239 (the bankruptcy court held that there “are remedies under the Bankruptcy Code that are not available to Rhodes under state law, due to Mr. Smith's transfer of the majority of his assets to the Cook Island Trust,” and “federal proceedings may be necessary to reach a just and equitable solution”).

distribution to *all creditors*, including Mr. Terry. Additionally, a federal bankruptcy court has certain tools available to it that are not available to a state court such as the ability to invalidate potential *ipso facto* clauses in contracts pursuant to section 365 of the Bankruptcy Code, sell assets free and clear of liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, and impose the automatic stay pursuant to section 362 of the Bankruptcy Code. These are all useful tools available to the Alleged Debtors in a bankruptcy case that would be lost if this court were to ultimately abstain.

Finally, there was more than enough evidence showing the acrimonious and bitter relationship that exists between Mr. Terry and Mr. Dondero. Thus, the availability of an out-of-court arrangement being obtained in this case is, in this court's mind, slim to none.

In summation, the court finds that all of the factors above support this case staying with the bankruptcy court.

*iii. Factor 7: The Purpose for Which Bankruptcy Jurisdiction Has Been Sought.*

The Alleged Debtors have repeatedly argued that Mr. Terry filed this case in bad faith and as a litigation tactic to gain some sort of advantage in the state court proceedings. The court has already found above that these cases were not filed in bad faith and that Mr. Terry has met the necessary statutory requirements of section 303 of the Bankruptcy Code. Moreover, it is worth noting that at least one court has stated that the filing of an involuntary bankruptcy petition is always a "litigation tactic," but whether the filing is inappropriate for abstention purposes is a fact-dependent determination.<sup>126</sup> Here, the facts show that there was no inappropriateness

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<sup>126</sup> *In re Marciano*, 459 B.R. 27, 50 (B.A.P. 9th Cir. 2011) (noting that while the filing of the involuntary bankruptcy was a litigation tactic, the bankruptcy court did not abuse its discretion in denying the alleged debtor's motion to dismiss based upon the bankruptcy court's primary concern that the issue of equality of distribution would not effectively be dealt with in another forum).

behind Mr. Terry's decision to file the Involuntary Petitions. Specifically, Mr. Terry repeatedly and credibly testified that the purpose for filing the Involuntary Petitions was to ensure that creditors (including him) were treated fairly and received an equal distribution from the Alleged Debtors' assets, not to gain some sort of advantage in the state court. This testimony was absolutely consistent with additional evidence showing that, since the entry of the arbitration award, there has been a calculated effort (largely by Highland) to effectively liquidate the Alleged Debtors. Unlike the bankruptcy court in *In re Selectron Mgmt. Corp.*,<sup>127</sup> which had no evidence or "smoking gun" showing that steps were being taken by the alleged debtor to evade payment on the petitioning creditor's judgment, thereby necessitating abstention, this court has heard ample evidence showing that the Alleged Debtors, with the aid of Highland, were transferring assets away from the Alleged Debtors, so that Mr. Terry would have nowhere to look at the end of the day.

In light of the court's analysis of all the seven factors above, the Alleged Debtors have not credibly shown how both the Alleged Debtors and the creditors are better served outside of bankruptcy. If this matter were to remain outside of bankruptcy, there seems to be a legitimate prospect that the Alleged Debtors and Highland will continue dismantling the Alleged Debtors, to the detriment of Acis LP creditors. Abstention would fly in the face of fundamental fairness and the principles underlying the Bankruptcy Code.

Beyond just addressing the factors above, the Alleged Debtors have also argued that, if this court were to not abstain under section 305 of the Bankruptcy Code, there would be

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<sup>127</sup> *In re Selectron Mgmt. Corp.*, No. 10-75320-DTE, 2010 WL 3811863, at \*6-7 (Bankr. E.D.N.Y. Sept. 27, 2010); see also *In re White Nile Software, Inc.*, No. 08-33325-SGJ-11, 2008 WL 5213393, at \*4 (Bankr. N.D. Tex. Sept. 16, 2008) (finding that where the filing of a voluntary chapter 11 did not appear to be about insuring a distribution to creditors or winding down or giving a soft landing to a business or avoiding dismantling and dissipation of valuable assets or preserving avoidance actions, but rather was about changing the forum of ongoing litigation between the parties, abstention under section 305 was proper).

significant harm to the “equity” of the Alleged Debtors. Specifically, the Alleged Debtors have argued that, if this court were to enter orders for relief, the equity would be forced to “call” and ultimately liquidate CLO 2014-3 (and perhaps all of the CLOs Acis LP manages), resulting in substantial losses to the equity on their investments. First, to be clear, the current equity of the Alleged Debtors is being held by a Highland-affiliate called Neutra, Ltd., which actually only became the equity of the Alleged Debtors on December 19, 2017. But this is not the “equity” being referred to by the Alleged Debtors in its argument. Rather, the so-called “equity,” about which the Alleged Debtors seemed so concerned, is actually *certain parties that own the equity of the entity that owns the equity in the CLOs*—which includes (a) an unnamed third-party investor out of Boston (49%),<sup>128</sup> (b) a charitable foundation managed by a Highland-affiliate (49%), and (c) Highland employees (2%). However, abstention under section 305 of the Bankruptcy Code does not require this court to look at what is in the best interests of these third-parties (who are not current creditors or interest holders of the Alleged Debtors), but rather what is in the best interests of the Alleged Debtors and the creditors. Accordingly, the Alleged Debtors’ effort to argue potential harm to these parties is misplaced for purposes of evaluating abstention under section 305 of the Bankruptcy Code, and, if anything, further highlights who the Alleged Debtors are really out to protect—Highland and Highland-affiliates. Moreover, the court would note that, even if there were to be a “call” and liquidation of CLO 2014-3, thereby ending the Alleged Debtors’ right to receive future management fees, there would still be potential assets for a chapter 7 trustee to administer such as chapter 5 causes of action (which include fraudulent transfers) as well as the Alleged Debtors’ contingent claim for approximately

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<sup>128</sup> Notably, this entity never appeared at the Trial or filed papers stating that it would be harmed by entry of orders for relief in these cases.

\$3 million in expense reimbursement owing by Highland CLO Management Ltd., as part of the November 3, 2017 transfer of the Acis LP Note Receivable from Highland. Thus, even if the so-called doomsday scenario of an equity call on CLO 2014-3 (or other CLOs) were to happen, there is still a potential benefit to creditors if this court chooses not to abstain.

### **III. CONCLUSION**

In conclusion, these involuntary proceedings were appropriately filed under section 303, and orders for relief will be issued forthwith. This court declines to exercise its discretion to abstain, because a chapter 7 trustee appears necessary to halt the post-Arbitration Award transactions and transfers of value out of Acis LP, as discussed above. A chapter 7 trustee appears necessary to resolve the inherent conflicts of interest between the Alleged Debtors and Highland. A chapter 7 trustee will have tools available to preserve value that a state court receiver will not have. The bankruptcy court is single handedly the most efficient place to administer property of the estate for creditors. This is not just a two party dispute between Mr. Terry and the Alleged Debtors, and even if it were, dismissal or abstention is clearly not warranted.

**###END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW###**



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

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

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

Signed January 31, 2019

  
United States Bankruptcy Judge

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

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT, L.P., § CASE NO. 18-30264-SGJ-11  
§ (Chapter 11)  
Debtor. §

IN RE: §  
§  
ACIS CAPITAL MANAGEMENT GP, § CASE NO. 18-30265-SGJ-11  
L.L.C., § (Chapter 11)  
§  
Debtor. §

**BENCH RULING AND MEMORANDUM OF LAW IN SUPPORT OF:  
(A) FINAL APPROVAL OF DISCLOSURE STATEMENT; AND (B)  
CONFIRMATION OF CHAPTER 11 TRUSTEE'S THIRD AMENDED JOINT PLAN**

Before this court is a request by the Chapter 11 Trustee (herein so called) for final approval of the adequacy of a disclosure statement and for confirmation of his Third Amended

Joint Plan of Reorganization,<sup>1</sup> as amended, modified or supplemented (the “Plan”), for the two above-referenced debtors: (1) Acis Capital Management, L.P. (the “Debtor-Acis”), a Delaware limited partnership, and (2) Acis Capital Management GP, LLC, a Delaware limited liability company (the general partner of the Debtor-Acis; collectively, the “Debtors”). The two chapter 11 cases have been administratively consolidated.<sup>2</sup>

The hearing on these matters transpired over multiple days in December 2018, and the court considered the testimony of more than a dozen witnesses, more than 700 exhibits, and hundreds of pages of legal briefing. Based on the foregoing, the court *overrules all objections* and will confirm the Plan, including all proposed modifications to it. The Chapter 11 Trustee has demonstrated, by a preponderance of the evidence, that the Plan, as modified, satisfies the applicable provisions of the Bankruptcy Code including but not limited to Sections 1122, 1123, 1127, and 1129 of the Bankruptcy Code.<sup>3</sup> The court also approves on a final basis the adequacy of the accompanying disclosure statement to the Plan, determining that it meets the requirements set forth in Section 1125 of the Bankruptcy Code. Notice and solicitation with respect to the

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<sup>1</sup> Exhs. 508 & 509; *see also* DE ## 660, 661, 693, 702, & 769. References to “DE # \_\_” from time to time in this ruling relate to the docket number at which a pleading or other item appears in the docket maintained in these administratively consolidated Bankruptcy Cases, in Case # 18-30264.

<sup>2</sup> Note that the Debtor-Acis is, essentially, the debtor that is the operating company. As a general partner, Acis Capital Management GP, LLC is legally obligated on all of the operating company’s debt. *See* 6 Del. C. § 17-403(b) (“Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership that is governed by the Delaware Uniform Partnership Law in effect on July 11, 1999 (6 Del. C. § 1501 et seq.) to persons other than the partnership and the other partners.”); *see also* 6 Del. C. § 15-306(a) (“(a) Except as otherwise provided in subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law”). The Plan jointly addresses both of the Debtors’ debts.

<sup>3</sup> *Heartland Fed. Sav. & Loan Ass’n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sears Methodist Ret. Sys.*, No. 14-32821-11, 2015 Bankr. LEXIS 709, at \*8 (Bankr. N.D. Tex. Mar. 5, 2015); *In re Couture Hotel Corp.*, 536 B.R. 712, 732 (Bankr. N.D. Tex. 2015); *In re Mirant Corp.*, No. 03-46590, 2007 Bankr. LEXIS 4951, at \*19-20 (Bankr. N.D. Tex. Apr. 27, 2007).

Plan is determined to have complied with the applicable Bankruptcy Rules and due process. The court provides reasoning for its ruling below. The court directs the Chapter 11 Trustee to submit to the court for signing the proposed Findings of Fact and Conclusions of Law and Order that were filed at DE # 814. This Bench Ruling supplements those Findings of Fact and Conclusions of Law and Order and, where appropriate, should be considered additional findings and conclusions as contemplated by Fed. R. Bankr. Proc. 7052.

**I. Background.**<sup>4</sup>

The above-referenced bankruptcy cases (the “Bankruptcy Cases”) have been pending since January 30, 2018 and have been astonishingly contentious. The Chapter 11 Trustee has been in place since on or about May 14, 2018. The Plan (which is the fourth one proposed by the Chapter 11 Trustee) has been objected to by three related entities: (a) Highland Capital Management, L.P. (“Highland”), (b) Highland CLO Funding Ltd. (“HCLOF Guernsey”), and (c) Neutra, Ltd. (“Neutra Cayman”). The Chapter 11 Trustee loosely refers to these three objectors (the “Objectors”) as “the Highlands” because they are not only related to each other (*i.e.*, they are all, directly or indirectly, part of the Highland 2,000-member corporate organizational structure), but they also have been in “lockstep” with one another in objecting to virtually every position taken by the Chapter 11 Trustee during the Bankruptcy Cases.<sup>5</sup> These Objectors’ parties-in-interest status will be explained below.

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<sup>4</sup> For a complete set of background facts, the court incorporates herein by reference its Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Petitions, entered April 13, 2018. DE # 118. Exh. 243.

<sup>5</sup> It is also undisputed that, prior to the appointment of the Chapter 11 Trustee, *the Debtors* and Highland were affiliated and had a close relationship. Exhs. 17, 18, 22-27, 251, 619 & 649.

In simplest terms, the Debtor-Acis, which was formed in the year 2011, is primarily a CLO portfolio manager.<sup>6</sup> It manages hundreds of millions of dollars' worth of CLOs (which is an acronym for "collateralized loan obligations"). Specifically, it provides fund management services to various special purpose entities that hold CLOs. The Debtor-Acis was providing management services for five such special purpose entities (the "Acis CLOs") as of the time that it and its general partner were put into the involuntary Bankruptcy Cases. The parties have informally referred to the special purpose entities themselves as the "CLO Issuers" or "CLO Co-Issuers" but, to be clear, these special purpose entities (hereinafter, the "CLO SPEs") are structured as follows: (a) on the asset side of their balance sheets, the entities own pieces of senior debt owed by large corporations and, therefore, earn revenue from the variable interest payments made by those corporations on such senior debt; and (b) on the liability side of their balance sheets, the entities have obligations in the form of notes (*i.e.*, tranches of fixed interest rate notes) on which the CLO SPEs themselves are obligated—the holders of which notes are mostly institutions and pension funds (these tranches of notes are usually rated anywhere from Triple A to Single B, depending upon things such as their interest rate and perceived risk). The CLO SPEs make a profit, based on the spread or "delta" between: (a) the variable rates of interest paid on the assets that the CLO SPEs own (*i.e.*, the basket of senior notes); and (b) the fixed rates of interest that the CLO SPEs must pay on their own tranches of debt. At the bottom of the CLO SPEs' capital structure is their equity (sometimes referred to as "subordinated notes," but these "notes" are genuinely equity). As portfolio manager, the Debtor-Acis manages the CLO SPEs' pools of assets (by buying and selling senior loans to hold in the CLO SPEs'

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<sup>6</sup> The Debtor-Acis has managed other funds, from time to time, besides CLOs.

portfolios) and communicates with investors in the CLO SPEs. The CLO SPEs' tranches of notes are traded on the Over-the-Counter market.

To be perfectly clear, none of the CLO SPEs themselves are in bankruptcy. This has never been threatened or a concern. Only the Debtor-Acis which *manages* the CLO business is in bankruptcy. For the most part, the CLO SPEs have continued somewhat "business as usual" during the Chapter 11 Bankruptcy Cases (*i.e.*, they have continued to receive interest payments on their baskets of loans; the usual interest payments on their tranches of debt have been paid;<sup>7</sup> and baskets of loans have been bought and sold from time to time). The CLO SPEs have retained their own separate counsel during the Chapter 11 cases, have appeared from time-to-time on matters, and are not currently objecting to the Plan. There is also an indenture trustee (U.S. Bank National Association) for the CLO SPEs' debt, that has seemingly faithfully carried on its role during the Chapter 11 Bankruptcy Cases without many objections to the bankruptcy process—only making occasional statements aimed at ensuring that the indentures for the CLOs are not interfered with or disrespected. The indenture trustee has retained and appeared through its own separate counsel during the Chapter 11 Bankruptcy Cases and is not currently objecting to the Plan.

Historically, the Debtor-Acis has had four main sets of contracts that were at the heart of its business and allowed it to function. The Chapter 11 Trustee has from time-to-time credibly

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<sup>7</sup> The evidence reflected that there have been a couple of occasions recently when there were insufficient funds to make distributions to the equity. *E.g.*, Transcript 12/11/18 (PM) [DE # 790], at p. 15 (line 2) through p. 16 (line 18). But it appears to this court that these missed distributions were due to actions of Highland—as later explained herein—in improperly, surreptitiously attempting to liquidate the Acis CLOs, from the time period after the Chapter 11 Trustee was appointed, until the bankruptcy court issued an injunction to temporarily halt Highland's actions. *E.g.*, Transcript 12/11/18 (AM) [DE # 789], p. 67 (line 14) through p. 68 (line 6).

testified that these agreements essentially created an “eco-system” that allowed the Acis CLOs to be effectively and efficiently managed by the Debtor-Acis.

1. The PMAs with the CLO SPEs.<sup>8</sup>

First, the Debtor-Acis has various portfolio management agreements (the “PMAs”) *with the CLO SPEs*, pursuant to which the Debtor-Acis earns management fees. The PMAs have been the primary “assets” (loosely speaking) of the Debtor-Acis (to be more precise, the PMAs are executory contracts pursuant to section 365 of the Bankruptcy Code). They are what generate revenue for the Debtor-Acis.

2. The Sub-Advisory Agreement with Highland.<sup>9</sup>

Second, the Debtor-Acis had a Sub-Advisory Agreement (herein so called) with an insider, *Highland* (*i.e.*, one of the Objectors). Highland’s “insider” status will be further explained below. Pursuant to this agreement, the Debtor-Acis essentially sub-contracted for the use of Highland front-office personnel/advisors to perform management services for the Debtor-Acis (*i.e.*, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). The Debtor-Acis paid handsome fees to Highland pursuant to this agreement. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was rejected (with bankruptcy court approval)<sup>10</sup> by the Chapter 11 Trustee during the Bankruptcy Cases, when the Chapter 11 Trustee credibly represented that he had not only found resources to provide these services at a much lower cost to the estate, but he also had begun to

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<sup>8</sup> Exhs. 6-10.

<sup>9</sup> Exh. 17.

<sup>10</sup> *See* 11 U.S.C. § 365(a).

believe that Highland was engaging in stealth efforts to liquidate the Acis CLOs, to the detriment of the Debtor-Acis's creditors.<sup>11</sup>

3. The Shared Services Agreement with Highland.<sup>12</sup>

Third, the Debtor-Acis also had a Shared Services Agreement (herein so called) with Highland, pursuant to which the Debtor-Acis essentially sub-contracted for the use of Highland's back-office services (again, so that the Debtor-Acis could fulfill its obligations to the CLO SPEs under the PMAs). To be clear, the Debtor-Acis had no employees of its own—only a couple of officers and members. The Debtor-Acis paid handsome fees to Highland for the personnel and back-office services that Highland provided to the Debtor-Acis. This, too, was an executory contract pursuant to section 365 of the Bankruptcy Code. As explained below, this agreement was also rejected by the Chapter 11 Trustee during the Bankruptcy Cases (with bankruptcy court approval) for the same reasons that the Sub-Advisory Agreement with Highland was rejected.

4. The Equity PMA.<sup>13</sup>

Fourth, until a few weeks before the Bankruptcy Cases were filed, the Debtor-Acis also had yet another portfolio management agreement (distinct from its PMAs with the CLO SPEs) whereby the Debtor-Acis provided services not just to the CLO SPEs themselves, but separately to the equity holder in the CLO SPEs. This portfolio management agreement with the equity holder in the CLO SPEs is sometimes referred to by the parties as the "ALF PMA," but it would probably be easier to refer to it as the "Equity PMA" (for ease of reference, the court will refer to

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<sup>11</sup> See Transcript 12/11/18 (AM) [DE # 789], at p. 48 (line 15) through p. 49 (line 16); p. 50 (line 12) through p. 52 (line 7).

<sup>12</sup> Exh. 18.

<sup>13</sup> Exh. 11.

it as the “Equity/ALF PMA”).<sup>14</sup> The Debtor-Acis did not earn a specific fee pursuant to the Equity/ALF PMA, but the Chapter 11 Trustee and certain of his witnesses credibly testified that the Debtor-Acis considered the agreement valuable and very important, because it essentially gave the Debtor-Acis the ability to control the whole Acis CLO eco-system—in other words, gave the Debtor-Acis the ability to make substantial decisions on behalf of the CLO SPEs’ *equity*—distinct from making decisions for the CLO SPEs themselves pursuant to the PMAs. The more credible evidence before the court suggests that the Equity/ALF PMA delegated to the portfolio manager (*i.e.*, the Debtor-Acis) the right to control the terms of any liquidation of collateral in an optional redemption under the terms of the CLO indentures.<sup>15</sup> In any event, shortly before the Bankruptcy Cases were filed, agents of Highland and/or others controlling the Debtor-Acis (including but not limited to Mr. James Dondero—the chief executive officer of both the Debtor-Acis and of Highland): (a) caused the Debtor-Acis to terminate this Equity/ALF PMA (notably, the counter-party to this agreement, the equity owner, would have only been able to terminate it “for cause”<sup>16</sup>); and (b) then caused the equity owner to enter into a new Equity PMA with a newly formed offshore entity called Highland HCF Advisor, Ltd. (“Highland HCF”).<sup>17</sup> Mr. Dondero, in addition to being the chief executive of Highland and the Debtor-Acis, also became the president of the newly formed Highland HCF.<sup>18</sup> The Equity/ALF PMA

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<sup>14</sup> There were actually different iterations of the Equity/ALF PMA including one dated August 10, 2015, and another dated December 22, 2016.

<sup>15</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 11 at §§ 5 and 6.

<sup>16</sup> The Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager “for cause” at § 14(a)-(e). Exh. 11. On the contrary, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11.

<sup>17</sup> Exh. 23 (testimony of Scott Ellington), p. 175 (lines 6-25); *see also* Transcript 12/11/18 (AM) [DE # 789], at p. 54 (line 11) through p. 55 (line 5).

<sup>18</sup> *Id.* at p. 266 (lines 1-4).

would have been an executory contract of the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if it had not been terminated shortly before the Bankruptcy Cases. The court has heard credible testimony that leads it to conclude that the Equity/ALF PMA would have been assumed by the Debtor-Acis, pursuant to section 365 of the Bankruptcy Code, if not terminated by agents of Highland on the eve of bankruptcy. The court has heard credible testimony that it is important for a portfolio manager to have not only the PMAs with the CLO SPEs themselves, but also with the equity owners of the CLO SPEs.

## **II. A Few More Basics About CLOs.**

In the world of CLOs (like other public debt instruments) there are occasionally redemptions, refinancings, and resets. A redemption is essentially when the equity in the CLO, before maturity, calls for the liquidation of the collateral in the CLO and the repayment of the tranches of notes, so that the CLO comes to an end. A refinancing is when a lower interest rate can be accomplished in the market place on the tranches of debt of the CLO, but the maturity date and other terms remain in place (similar to a refinancing on a home mortgage). This can happen typically after a two-year non-call period. A reset is when the maturity date, the reinvestment period, or other changes in the terms of a CLO (beyond simply interest rate) are accomplished.<sup>19</sup>

It should be noted that the top tranche of notes in the CLO SPEs (AAA-rated) is considered the “controlling” class, and a majority of holders in this class can terminate the CLO manager (*i.e.*, the Debtor-Acis LP) for cause on 45 days’ notice, but these folks have apparently been content to ignore the Bankruptcy Cases and the fighting between the Debtor-Acis and

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<sup>19</sup> See generally Transcript 2/9/2018 [DE # 26], at p. 74-75.

Highland (as further described below)—no doubt because they are earning their fixed income stream without a hitch. And the bottom tranche of “notes” in the CLO SPEs (the equity) has voting rights and is a capital provider and, in certain ways, controls the CLO SPEs, by virtue of having the ability to make a redemption call after a certain “no-call” period—which would force a liquidation of the basket of loans in the CLO, with the proceeds paying down the tranches of notes, starting at the top with the Triple A’s. But, by virtue of the Equity/ALF PMA, the Debtor-Acis was really acting for the equity. It seems substantially likely to the court that this is why Highland and its agents caused the Debtor-Acis to terminate the Equity/ALF PMA (which, as mentioned above, was an agreement that the equity could have only terminated “for cause”—and it appears there would have been no “cause”).

### **III. The Non-Insider Creditors.**

The Debtor-Acis does not have many creditors. The non-insider creditors are, for the most part, Joshua Terry (“Mr. Terry”) and a few vendors (most of which are law firms).

Mr. Terry commenced the Bankruptcy Cases with the filing of involuntary bankruptcy petitions. Mr. Terry was the human being who formerly, quite successfully served as the portfolio manager for the Debtor-Acis for many years. Mr. Terry was terminated under contentious circumstances on June 9, 2016, after getting into disagreements with Mr. Dondero. Mr. Terry was technically an employee of Highland itself (like all employees are, in the Highland family of companies—no matter which subsidiary or affiliate they work for). After his employment termination, Highland sued Mr. Terry in September 2016. Mr. Terry asserted claims back against Highland and both of the above-referenced Debtors. The litigation was referred to arbitration, and, after a ten-day arbitration trial in September 2017 before “JAMS,” Mr. Terry obtained an Arbitration Award (herein so called), on October 20, 2017, jointly and

severally, against both of the Debtors in the amount of \$7,949,749.15, plus post-award interest at the legal rate. A Final Judgment (the “Terry Judgment”) confirming the Arbitration Award was entered on December 18, 2017, in the same amount as that contained in the Arbitration Award—\$7,949,749.15.

Mr. Terry commenced the Bankruptcy Cases when he became concerned that the Debtor-Acis was being rendered insolvent and unable to pay creditors including himself, due to actions undertaken by Highland and its agents immediately after entry of the Arbitration Award (*e.g.*, transfers of assets, contracts, and business away from the Debtor-Acis).

The Debtor-Acis also is obligated on large administrative expense claims, since: (a) a Chapter 11 Trustee was appointed very early—due to what the bankruptcy court perceived to be massive conflicts of interest with regard to the Debtors’ management; and (b) the Objectors have opposed virtually every action taken by the Chapter 11 Trustee during the Bankruptcy Cases, resulting in many long hearings.

#### **IV. The Objectors (all of which are “Insiders”).**

*There are no non-insider creditors objecting to the Plan.* Mr. Terry supports the Plan. The CLO SPEs and Indenture Trustee do not oppose the Plan. None of the vendors oppose the Plan. The U.S. Trustee is not opposing the Plan. As a technical matter, two impaired classes of creditors voted to accept the Plan.<sup>20</sup> *So who are the Objectors to the Plan (which Plan will be further described below) and what is their party-in-interest status here?*

As earlier mentioned, the Objectors are: (a) Highland, (b) HCLOF Guernsey, and (c) Neutra Cayman. As noted earlier, the Chapter 11 Trustee frequently refers to them collectively as “The Highlands”—but the Objectors do not like this conflation. At one time Highland and

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<sup>20</sup> Classes 2 and 3. *See* Exh. 613.

HCLOF Guernsey had the same lawyers. They do not anymore. However, they frequently file joint pleadings and take the same positions. Highland and Neutra Cayman do still have the same lawyers.

1. Highland.

Highland is a Dallas, Texas-based company that is a Registered Investment Advisor. Highland was founded in 1993 by Mr. Dondero, originally with a 75% ownership interest, and Mark K. Akada (“Mr. Akada”), originally with a 25% ownership interest. As mentioned earlier, Mr. Dondero is the chief executive of Highland. Highland, through its organizational structure of approximately 2,000 separate business entities, manages approximately \$14-\$15 billion of investor capital in vehicles including CLOs, private equity funds, and mutual funds. Highland provides employees to entities in the organizational structure, such as it did with the Debtor-Acis, through the mechanism of shared services agreements and sub-advisory agreements (as mentioned above). *Notably, Highland’s chief executive, Mr. Dondero, served as the President of the Debtor-Acis at all relevant times prepetition.*<sup>21</sup> Highland claims to be a large creditor of the Debtor-Acis for services provided to the Debtor-Acis under the Shared Services Agreement and the Sub-Advisory Agreement. The Chapter 11 Trustee disputes these claims and has asserted numerous claims back against Highland in an adversary proceeding (the “Highland Entities Adversary Proceeding”).

In any event, Highland is a *disputed insider creditor*. It is an “insider,” as contemplated by Bankruptcy Code section 101(31)(C), because it, beyond any shadow of a doubt, controlled the Debtor-Acis until these Bankruptcy Cases developed to the point of having a Chapter 11

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<sup>21</sup> One witness, Hunter Covitz, referred to the Debtor-Acis as the “structured credit arm of Highland.” Transcript 12/13/18 (AM) [DE # 793], at p. 57.

Trustee take charge of the Debtor-Acis. Highland does not seem to dispute that it is an insider.<sup>22</sup> But, for the avoidance of doubt, Highland should be considered an insider of the Debtor-Acis for at least the following reasons: (a) the same human being (Mr. Dondero) was president of the Debtor-Acis and was the chief executive of Highland; (b) Highland's General Counsel, Scott Ellington, testified that Mr. Dondero controlled them both;<sup>23</sup> and (c) Highland provided the Debtor-Acis with employees and management services pursuant to the Sub-Advisory Agreement and Shared Services Agreement.<sup>24</sup>

Additionally, the court believes that the Chapter 11 Trustee made a convincing argument in connection with Plan confirmation (and his justification for the separate classification of Highland's claim in the Plan from other general unsecured creditors) that Highland should also be regarded as a "competitor" of the Debtor-Acis at this juncture, since they are both in the fund management business and Highland's control over the Debtor-Acis has now been divested. Highland's competitor status, in addition to its insider status, warrants additional scrutiny of its

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<sup>22</sup> Under section 101(31) of the Bankruptcy Code, an insider includes certain enumerated parties, such as an officer of the debtor, affiliate, *etc.* Further, the list of enumerated "insiders" is not exclusive or exhaustive. *See Wilson v. Huffman (In re Missionary Baptist Foundation of Am., Inc.)*, 712 F.2d 206, 210 (5th Cir. 1983). Recently, the United States Supreme Court stated: "Courts have additionally recognized as insiders some persons not on that [101(31)] list—commonly known as 'nonstatutory insiders.' The conferral of that status often turns on whether the person's transactions with the debtor (or another of its insiders) were at arm's length." *U.S. Bank N.A. v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 963 (2018). The Fifth Circuit has noted that "cases which have considered whether insider status exists generally have focused on two factors in making that determination: (1) the closeness of the relationship between the parties and (2) whether the transaction . . . [was] conducted at arm's length." *Browning Interests v. Allison (In re Holloway)*, 955 F.2d 1008, 1011 (5th Cir. 1992).

<sup>23</sup> *E.g.*, Exh. 23, at pp. 160 (line 15) through 161 (line 4); p. 196 (lines 14-19); p. 219 (lines 1-21).

<sup>24</sup> *See* 11 U.S.C. §§ 101(2)(D); (31)(C)(5). The court notes that, although Highland has, from time to time, alleged that Mr. Terry is a "non-statutory insider" of the Trustee, it has never put on any credible evidence to support this contention.

motivations in objecting to the Plan. More importantly, it provides a sound legal and business justification for separately classifying its claim in the Plan.

2. HCLOF Guernsey.

The second Objector, HCLOF Guernsey, is an entity formed in the island nation of Guernsey. It has two allegedly independent Directors from Guernsey who have provided testimony in connection with confirmation of the Plan. It was enormously clear to the court (as will be elaborated upon below) that the two Directors of HCLOF Guernsey are—stated in the kindest way possible—mere “figureheads” for HCLOF Guernsey and they defer to Highland *entirely* to tell them what to do, what to say, and when. In any event, HCLOF Guernsey is the owner of the equity in the CLO SPEs (as earlier mentioned, this equity is sometimes referred to as the “subordinated notes” in the CLO SPEs). According to HCLOF Guernsey's 2017 Annual Report and Audited Financials, all of its subordinated notes issued by the Acis CLOs are physically held at and are pledged to HCLOF Guernsey's lender, NexBank, which happens to be a Dallas bank that is an affiliate of Highland.<sup>25</sup> HCLOF Guernsey was created in the year 2015 and was formerly known as “ALF.”<sup>26</sup> Its name was changed on October 30, 2017 (ten days after Mr. Terry's Arbitration Award was entered), to allegedly distance itself from the Debtor-Acis. The equity owner HCLOF Guernsey, in turn, has three equity owners: (i) a 49% equity owner that is a charitable fund (*i.e.*, a donor advised fund or “DAF”) that was seeded with contributions from *Highland*, is managed/advised by *Highland*, and whose *independent trustee is a long-time friend of Highland's chief executive officer, Mr. Dondero*; (ii) 2% is owned by *Highland employees*; and (iii) a 49% equity owner that is a third-party institutional investor based in

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<sup>25</sup> Exh. 647.

<sup>26</sup> “ALF” is short-hand for Acis Loan Funding, Ltd.

Boston, Massachusetts that only recently invested in HCLOF Guernsey (*i.e.*, in November 2017, just after the Terry Arbitration Award was issued), and desires to remain passive and anonymous (hereinafter, the “Passive Investor”).<sup>27</sup> Notably, the Debtor-Acis itself owned a small percentage of HCLOF Guernsey, in addition to providing management services to it, until October 24, 2017 (four days after the Terry Arbitration Award was issued).

The court has allowed HCLOF Guernsey to vigorously participate in the confirmation hearing (and other hearings during the Bankruptcy Cases), although its party-in-interest status has been questionable. So how is HCLOF Guernsey a party-in-interest? The answer is a bit of a stretch—but the court has decided it is impacted by the Plan, so it should have the right to object. Its party-in-interest status has evolved during the Bankruptcy Cases.

First, early on in these Bankruptcy Cases, HCLOF Guernsey (together with Highland) sued the Chapter 11 Trustee in the above-mentioned “Highland Entities Adversary Proceeding”—mostly, if not entirely, seeking injunctive relief. At that point, the Chapter 11 Trustee treated HCLOF Guernsey as a disputed creditor,<sup>28</sup> since it was seeking equitable relief that could arguably be monetized.<sup>29</sup> However, HCLOF Guernsey subsequently withdrew its requests for relief in that Highland Entities Adversary Proceeding. But then, the Chapter 11 Trustee subsequently filed claims *against* HCLOF Guernsey in the Highland Entities Adversary Proceeding (along with his claims against Highland and a couple of other Highland entities) asserting avoidance actions and other causes of action against HCLOF Guernsey (among other

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<sup>27</sup> The testimony was that the Passive Investor committed to a \$150 million investment (\$75 million immediately and \$75 million callable over the next several years).

<sup>28</sup> In fact, on August 15, 2018, the Chapter 11 Trustee filed a proof of claim on behalf of HCLOF Guernsey. HCLOF Guernsey has since objected to the proof of claim.

<sup>29</sup> *See* 11 U.S.C. §§ 101(5)(B) & 101(10).

things, the Chapter 11 Trustee alleged that HCLOF Guernsey schemed with Highland to terminate the Equity/ALF PMA, in a step toward systematically dismantling the Debtor-Acis of its value). Thus, HCLOF Guernsey may ultimately owe money to this estate. But most importantly, HCLOF Guernsey should be deemed a party-in-interest because of a proposed temporary injunction in the Plan that essentially would enjoin (for a finite, defined period) HCLOF Guernsey from exercising certain of its rights with regard to its equity in the CLO SPEs, pending resolution of the Highland Entities Adversary Proceeding. This temporary injunction in the Plan, directed towards HCLOF Guernsey and affiliates, will be further described below.

### 3. Neutra Cayman.

Neutra Cayman is a Cayman island exempted company that is the equity owner *of the Debtor-Acis itself* (in contrast to HCLOF Guernsey, which only owns equity in the CLO SPEs). Neutra Cayman only acquired its equity interest in the Debtor-Acis the day after the Terry Judgment was entered (on December 18, 2017), and for no consideration, from the Dugaboy Investment Trust (a family trust on which Mr. Dondero’s sister is named trustee, that previously owned 74.9% of the Debtor-Acis) and from Mr. Akada (who previously owned 25% of the Debtor-Acis).<sup>30</sup> The court concludes that Neutra Cayman has standing to object to the Plan,

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<sup>30</sup> The court is repeatedly referring to the Debtor-Acis but, to be clear, there are two consolidated Debtors: Acis Capital Management, L.P. (“Acis LP”) and Acis Capital Management GP, LLC (“Acis GP/LLC”). See note 2, *supra*. When Acis LP was first formed, it was owned by one general partner (Acis GP/LLC, with a .1% interest) and it had three limited partners: (a) the Dugaboy Investment Trust (a Dondero family trust of which either Mr. Dondero or his sister, Nancy Dondero, have been the trustee at all relevant times) with a 59.9% interest; (b) Mr. Terry with a 25% interest; and (c) Mr. Akada with a 15% interest. When Acis GP/LLC was formed (*i.e.*, the .1% owner of Acis LP), its sole member was the Dugaboy Investment Trust. After Mr. Terry was terminated by Highland, his 25% limited partnership interest in Acis LP was forfeited and divided among the two remaining limited partners: Mr. Akada (increasing his interest by 10% up to 25%), and the Dugaboy Investment Trust (increasing its interest by 15% up to 74.9%). But, most importantly, on the day after entry of Mr. Terry’s Final Judgment (*i.e.*, on December 18, 2017), both Mr. Akada and the Dugaboy Investment Trust conveyed their entire limited partnership interests in Acis LP—25% and 74.9%, respectively—to Neutra Cayman. The Dugaboy Investment Trust also conveyed its 100% membership interest in Acis GP/LLC to Neutra Cayman.

since it is an equity owner of the Debtors (albeit only having acquired its equity about a month before the bankruptcy). As with HCLOF Guernsey, the court also concludes that Neutra-Cayman is absolutely, beyond any reasonable doubt, controlled by Highland, as explained further below.

**V. The Plan.**

The Plan is fairly simple, considering the complexity of the business and the relationships, and the contentiousness of the Bankruptcy Cases. Again, there aren't many creditors.

The Plan proposes<sup>31</sup> that the Debtor-Acis, as a "Reorganized Debtor," will continue with the business operations of the Debtors after the Effective Date<sup>32</sup> of the Plan. Specifically, the Debtor-Acis will assume, pursuant to section 365 of the Bankruptcy Code, its CLO PMAs and continue to serve as the portfolio manager to the CLO SPEs (and as to any resets of the CLOs therein). The Reorganized Debtor will continue to earn fees and will pay claims from post-Effective Date income as provided in the Plan. The Reorganized Acis will actively pursue additional fund management contracts. Again, there is no objection by the CLO SPEs to the Plan, and the indenture trustee on the tranches of CLO notes has no objection.

Mr. Terry (again, the former human manager of the Debtor-Acis and also the largest creditor) shall receive 100% of the equity interests in the Reorganized Debtor, in exchange for a negotiated \$1 million reduction in his partially secured claim.<sup>33</sup> The remainder of his claim will

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<sup>31</sup> This is merely a high-level summary of the Plan. The Plan terms, as modified, shall in all ways govern, not this summary.

<sup>32</sup> The "Effective Date" is defined, essentially, as the first business day which is fourteen (14) days after entry of an order confirming the Plan, if the confirmation order is not stayed.

<sup>33</sup> Mr. Terry has asserted partial secured status as to his claim in the proofs of claim he has filed in these cases. The Chapter 11 Trustee credibly testified that there was no other logical party to take the equity of

be treated as an unsecured claim. Each unsecured creditor will receive on the Plan Effective Date an unsecured cash flow note in the full amount of its claim, which notes will mature three years after the Effective Date of the Plan, with equal quarterly payments of principal and interest, at 5% interest per annum. These cash flow notes are expected to yield payment in full (actually 102%) to the unsecured creditors.<sup>34</sup>

As for the sub-advisory and shared services agreements with Highland, as noted earlier, the Chapter 11 Trustee, with bankruptcy court approval, has already (as of August 2018) rejected these during the Bankruptcy Cases, pursuant to section 365 of the Bankruptcy Code. The Chapter 11 Trustee caused the Debtor-Acis to subsequently contract, with bankruptcy court approval, with a different entity, Brigade Capital Management, L.P. (“Brigade”), to provide the sub-advisory and shared services going forward, for a minimum two-year term (unless the Reorganized Debtor and Brigade otherwise agree), at a much cheaper cost than Highland.<sup>35</sup> Thus, Brigade will provide sub-servicing and sub-advisory services to the Reorganized Debtor.

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the Reorganized Debtor, at this juncture, and that he had negotiated this reduction to Mr. Terry’s secured claim, and he thought it was justified by the circumstances of this case. While the Objectors have argued that the secured status of Mr. Terry’s claim may be subject to challenge under section 547(b) of the Bankruptcy Code, section 547(b) is discretionary (*e.g.*, a “trustee may avoid any transfer” that might be avoidable as a preference). The Chapter 11 Trustee credibly emphasized that this was negotiated treatment of an asserted secured claim, and he had no “exclusivity” on proposing a plan if someone else had wanted to propose something different. Transcript 12/11/18 (AM) [DE # 789], at p. 70 (line 3) through p. 71 (line 2).

<sup>34</sup> Insider claims—namely Highland—are separately classified from general unsecured claims under the Plan. To the extent such claims are ultimately allowed (after any allowed defenses and offsets), and to the extent such claims are not equitably subordinated by Bankruptcy Court adjudication, these claims will receive the same treatment as other general unsecured claims (cash flow notes). To the extent any of these claims are ultimately allowed but equitably subordinated, they will receive subordinated promissory notes, accruing interest at 5% per annum, that will not be payable until all non-subordinated claims have been paid in full (they will have maturity dates to occur on the earlier of: (i) the date that is two years after the date all Unsecured Cash Flow Notes have been paid in full, or (ii) five years after the Effective Date). The expected recovery under the Plan for the insider claims is from 65% to 100%.

<sup>35</sup> An entity named Cortland Capital Markets Services LLC (“Cortland”) is actually providing some of the back-office shared services agreement type functions.

As for the Equity/ALF PMA, it is not an agreement with the Debtor-Acis anymore to either be assumed or rejected, pursuant to section 365. However, in the Highland Entities Adversary Proceeding, the Chapter 11 Trustee seeks to avoid the termination of the Equity/ALF PMA. Pursuant to the Plan, the Reorganized Debtor will be vested with certain Assets of the Debtors, including Estate Claims and Estate Defenses, to be administered and liquidated by the Reorganized Debtor.

1. The Highland Entities Adversary Proceeding (Adv. Proc. No. 18-03212).

Suffice it to say that the Highland Entities Adversary Proceeding is a somewhat significant part of the Plan; it is what justifies the temporary injunction that is a critical part of the Plan. With regard to the Highland Entities Adversary Proceeding, the Defendants in it (there are five of them) are: (i) Highland; (ii) HCLOF Guernsey; (iii) Highland HCF (*i.e.*, the Cayman Island entity that was recently formed to essentially replace the Debtor-Acis under the Equity/ALF PMA); (iv) Highland CLO Management, Ltd. (“Highland Management”) (an entity registered in the Cayman Islands on October 27, 2017—seven days after Mr. Terry’s Arbitration Award); and (v) Highland CLO Holdings, Ltd. (yet another entity incorporated in the Cayman Island on October 27, 2017). The Highland Entities Adversary Proceeding is essentially a multi-faceted fraudulent transfer action. The statutory predicates for the relief sought are sections 502, 542, 544, 547, 548, and 550 of the Bankruptcy Code and Texas Business & Commerce Code § 24.001 et seq. (“TUFTA”).

Distilled to its essence, the Highland Entities Adversary Proceeding argues that Highland, along with its related Co-Defendants, *orchestrated a systematic transfer of value away from the Debtor-Acis to other Highland entities* (all of those transferee-entities are offshore entities—whereas the Debtor-Acis is a Delaware entity), beginning almost immediately after Mr. Terry

was terminated in June 2016, and continuing on during Mr. Terry's litigation/arbitration with the Debtor-Acis, and then rapidly unfolding after the Arbitration Award. This was allegedly done to denude the Debtor-Acis of value and make the Debtors "judgment proof." This was allegedly also done to ensure that the Debtor-Acis's very valuable business as portfolio manager would be taken over by other Highland entities and remain under Highland's and Mr. Dondero's control.<sup>36</sup>

The evidence is rather startling on this point. Among other things, pursuant to amendments made to the Debtor-Acis's Sub-Advisory Agreement and Shared Services Agreements with Highland, starting soon after Mr. Terry was terminated, the fees owed by the Debtor-Acis to Highland under these agreements shot up to an enormously higher level. Then, in April 2017, a new CLO was issued (or actually a former Acis CLO was reset) and a new Highland-affiliated Cayman Island entity was ultimately put in place to manage it instead of the Debtor-Acis (even though the Debtor-Acis managed all other CLOs in the Highland corporate empire). Numerous other transactions were undertaken through the Fall of 2017, removing assets and agreements away from the Debtor-Acis. For example, a multi-million dollar note receivable owed to the Debtor-Acis by Highland was transferred out of the Debtor-Acis,<sup>37</sup> and

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<sup>36</sup> Exh. 627.

<sup>37</sup> On November 3, 2017, the Debtor-Acis, Highland, and Highland Management (a newly created, offshore Highland affiliate) entered into that certain Agreement for Assignment and Transfer of Promissory Note (the "Note Assignment and Transfer Agreement"). Exh. 225. The Note Assignment and Transfer Agreement, among other things, transferred a \$9.5 million principal amount promissory note executed by Highland and payable to the Debtor-Acis (the "Note"), Exh. 218, from the Debtor-Acis to Highland Management (the "Note Transfer"). The Assignment and Transfer Agreement memorializing this transaction is signed by Mr. Dondero for the Debtor-Acis. The document recites that (i) Highland is no longer willing to continue providing support services to the Debtor-Acis, (ii) the Debtor-Acis, therefore, can no longer fulfill its duties as a collateral manager, and (iii) Highland Management agrees to step into the collateral manager role if the Debtor-Acis will assign the Note to it. Notably, Highland Management was registered in the Cayman Islands on October 27, 2017, roughly a week before the Note Transfer. Thus, Highland Management had no portfolio or collateral management experience whatsoever when it entered the Assignment and Transfer Agreement. To the contrary, it appears Highland Management was an entity that was created specifically to hold the Note and eventually take possession of the CLO PMAs in an international forum that would be difficult for Mr. Terry to reach. The Debtor-

shares in HCLOF Guernsey held by the Debtor-Acis were sold back to HCLOF Guernsey (four days after the Arbitration Award). And then the Equity/ALF PMA was terminated so that the Debtor-Acis would no longer have management-control over HCLOF Guernsey as its portfolio manager—arguably putting Highland in a position to liquidate the Acis CLOs and put the Debtor-Acis out of business. Specifically, on October 27, 2017, just seven days after Mr. Terry's Arbitration Award, the Debtor-Acis ostensibly terminated its own portfolio management rights under the Equity/ALF PMA<sup>38</sup> and transferred its authority and its valuable portfolio management rights—for no value—to Highland HCF, an affiliate of Highland. It appears that the only alleged consideration for these transfers, to the extent there was any, was the satisfaction of purported debts owed to other Highland entities or their representatives.

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Acis appears to have received no or insufficient consideration for the Note Transfer. The primary consideration for the Note Transfer was an alleged payable due from the Debtor-Acis to Highland in the approximate amount of \$7.5 million for participation fees, which was transferred to Highland Management shortly before the Note Assignment and Transfer Agreement was entered. The validity of the alleged “participation fees” is unknown. The remainder of the consideration for the Note Transfer is a promise to pay certain expenses of the Debtor-Acis, which has apparently never occurred. In any event, it appears highly likely that the Note Transfer took away the Note as an asset from which Mr. Terry could collect his judgment.

<sup>38</sup> As mentioned earlier, the Equity/ALF PMA provided that the Debtor-Acis could only be removed as portfolio manager by the equity owner (now known as HCLOF Guernsey) “*for cause*” at § 14(a)-(e). Exh. 11. Meanwhile, the Debtor-Acis could terminate the Equity/ALF PMA without cause upon at least ninety (90) days’ notice, pursuant to § 13(a)-(c). Exh. 11. It would appear that these terms were wholly ignored by the persons orchestrating the Equity/ALF PMA termination. It appears that the Debtor-Acis was simply manipulated to consent and agree to its removal and replacement as portfolio manager of HCLOF Guernsey. This transfer of the Debtor-Acis's portfolio management rights to the offshore entity Highland HCF was accomplished by way of a new portfolio management agreement entered into by the equity owner (now known as HCLOF Guernsey) and Highland HCF on October 27, 2017, which empowered Highland HCF with the same broad authority to direct the management of HCLOF Guernsey as was previously held by the Debtor-Acis LP under the Equity/ALF PMA. See Exh. 19, October 27, 2017 PMA §§ 1 & 5(a)-(q). This agreement appears to have been further solidified in a second portfolio management agreement dated November 15, 2017. Exh. 215. The Debtor-Acis received no consideration for this transfer.

The Highland Defendants argue that the Equity/ALF PMA (its termination being arguably the most significant transfer referenced in the Highland Entities Adversary Proceeding) did not have value. But the evidence convinces the court that it absolutely did. A witness, Mr. Zachary Alpern, credibly testified that the portfolio manager (under the Equity/ALF PMA) made decisions regarding the underlying financial instruments including seeking an optional redemption and negotiating a reset. Mr. Alpern also credibly testified about the importance, in the CLO industry, of the portfolio manager having control of a CLO's equity to ensure an "evergreen fee stream."<sup>39</sup> Additionally, Mr. Terry also credibly testified that the portfolio manager (not the CLO equity interest holder) has the right to control the terms of the liquidation of collateral in an optional redemption under the terms of the indentures.<sup>40</sup> The Chapter 11 Trustee also credibly testified that the Equity/ALF PMA allowed the Debtor-Acis to have control of an optional redemption.<sup>41</sup> Finally, a witness, Mr. Klein, credibly testified about the value of the Equity/ALF PMA and the negative impact of its transfer on the Debtor-Acis LP.<sup>42</sup>

To be clear, Highland and HCLOF Guernsey have argued in opposition to the Chapter 11 Trustee's position that it is HCLOF Guernsey—the actual equity holder of the CLO SPEs—that had/has the absolute power and authority to control the CLO SPEs' destinies and it is ludicrous to suggest otherwise. However, not only does the Equity/ALF PMA appear to this court to have delegated the relevant power and authority *to the Debtor-Acis*, but Highland's own expert on this

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<sup>39</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 65-67, 81-93 and Transcript 8/23/18 (PM) at pp. 34-35, 38-40, 46, and 49.

<sup>40</sup> Transcript 12/18/18 [DE # 804], at pp. 77-78. *See also* Exh. 405, Transcript 8/27/18 (AM) at pp. 63-75.

<sup>41</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 53.

<sup>42</sup> Exh. 405, Transcript 8/27/18 (PM) at pp. 143-144, 147-159 and 205-207.

topic, Mr. Castro, testified that the “actual humans” who would make the decision for HCLOF Guernsey as to whether to request an optional redemption of the Acis CLOs were not the HCLOF Guernsey directors but, rather, Highland executives Mr. Dondero, Mr. Okada, and Highland employee Mr. Covitz (acting for Highland HCF).<sup>43</sup> Moreover, Mr. Alpern credibly testified that, before the Terry Arbitration Award, the Debtor-Acis, as the portfolio manager under the Equity/ALF PMA, rather than the HCLOF Guernsey’s directors, issued the notices of optional redemption for HCLOF Guernsey.<sup>44</sup>

The court concludes that the Chapter 11 Trustee has demonstrated a likelihood of success on the merits with regard to his claims set forth in the Highland Entities Adversary Proceeding. Therefore, the Temporary Injunction that is part of the Plan is supportable (as further explained below). Of course, the nature and extent of the rights ultimately recovered by the Debtor-Acis will either be determined in the Highland Entities Adversary Proceeding or, as HCLOF Guernsey’s own Guernsey expert conceded, in a binding arbitration in Dallas, Texas under the terms of the Equity/ALF PMA.<sup>45</sup>

## 2. The Plan Injunction.

The most controversial aspect of the Plan—the aspect of it that seems to be the primary focus of the Objectors—is a *portion* of an injunction in the Plan (the “Temporary Injunction”). The Temporary Injunction would *temporarily* enjoin the following parties *from effectuating an optional redemption or liquidating the Acis CLOs* and related actions: (i) Highland; (ii) HCLOF

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<sup>43</sup> Exh. 406, Transcript 8/28/18 (PM) at pp. 61-63.

<sup>44</sup> Exh. 404, Transcript 8/23/18 (AM) at pp. 85-89 and Exhs. 323-325 (Notices of Optional Redemption signed by the Debtor-Acis as portfolio manager of HCLOF).

<sup>45</sup> Transcript 12/13/18 (PM) [DE #794], at pp. 116, 118-19, 122, 124 (Corfield); *see also*, p. 140 (McGuffin).

Guernsey; (iii) CLO Holdco, Ltd. (the donor advised fund, seeded with Highland contributions and managed by Highland that owns 49% of HCLOF Guernsey); (iv) Neutra Cayman; (v) Highland HCF (the Cayman Island entity created shortly before the Bankruptcy Cases to replace the Debtor-Acis under the Equity/ALF PMA); (vi) Highland Management (the Highland-created entity that entered into a portfolio management agreement with a new Acis-CLO that was established in 2017); and (vii) any affiliates of Highland and their respective employees, agents, representatives, transferees, assigns, and successors.<sup>46</sup> This Temporary Injunction is proposed to only last until the earlier of when: (a) the creditors of the Debtors are paid in full; (b) resolution of the Highland Entities Adversary Proceeding; (c) a material breach in the Plan; or (d) the bankruptcy court terminates the Temporary Injunction upon request of a party-in-interest. ***Fully consensual resets of the Acis CLOs are permissible if HCLOF Guernsey, as the equity owner in the CLO SPEs, chooses to agree to resets.*** The basis for the Temporary Injunction is as follows: The Chapter 11 Trustee has asserted numerous claims in the Highland Entities Adversary Proceeding against Highland, HCLOF Guernsey, and affiliates, including claims to recover the Debtor-Acis's rights under the Equity/ALF PMA.<sup>47</sup> The Temporary Plan Injunction essentially provides for the continuation, after the Effective Date, of injunctive relief that the bankruptcy court previously granted in its Preliminary Injunction Order (the "Preliminary Injunction") [DE # 21 in Adversary No. 18-03212-sgj] entered on July 10, 2018 in the Highland Entities Adversary Proceeding. The Preliminary Injunction was originally set to expire by its

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<sup>46</sup> There is another portion of this Plan injunction that is more of a general plan injunction (*i.e.*, very typical) that would prohibit actions against the Debtors, Reorganized Debtor and the Estate Assets, based on acts occurring before the Effective Date, which would be permanent and would not expire upon the occurrence of any event that causes the Temporary Plan Injunction to expire.

<sup>47</sup> See Exh. 627, Trustee's Counterclaims and Claim Objection.

own terms upon confirmation of the Plan but would be extended pursuant to an order confirming the Plan, through the Effective Date of the Plan.

As the Fifth Circuit has stated, the four elements to justify a preliminary injunction are (a) substantial likelihood of success on the merits; (b) substantial threat that the plaintiff will suffer irreparable injury; (c) the threatened injury outweighs any harm the injunction might cause the defendant; and (d) the injunction is in the public interest.<sup>48</sup> Each element is present in these cases.

*Immediate and Irreparable Harm.* The court finds and concludes that the Temporary Injunction is legally permissible, necessary, and appropriate to avoid immediate and irreparable harm to the Reorganized Debtor (*i.e.*, evisceration of the Acis CLOs, by parties with unclean hands, that would have no authority to effectuate a liquidation of the CLOs, absent the prepetition wrongful termination of the Equity/ALF PMA). Mr. Scott, a director of HCLOF Guernsey, testified that, absent the Temporary Plan Injunction, HCLOF Guernsey would call for an optional redemption of the Acis CLOs.<sup>49</sup> The testimony of Ms. Bestwick, the other director of HCLOF Guernsey, also implied that, when the injunction expires, HCLOF Guernsey would redeem the Acis CLOs so that they could once again be managed by Highland.<sup>50</sup> The Chapter 11 Trustee credibly testified that if the Acis CLOs are liquidated, there is nothing for the Debtor-Acis to manage.<sup>51</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction

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<sup>48</sup> *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Women's Med. Ctr. of N.W. Houston v. Bell*, 248 F.3d 411, 419 n.15 (5th Cir. 2001); *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998).

<sup>49</sup> Exh. 721, Mr. Scott Depo. at pp. 204.

<sup>50</sup> Exh. 719, Bestwick Depo. at p. 112.

<sup>51</sup> Exh. 405, Transcript 8/27/18 (AM) at p. 40.

is very important because it protects the revenues under the Acis PMAs, which is a source of potential recovery to creditors under the Plan.<sup>52</sup> Mr. Terry credibly testified that the Temporary Plan Injunction is a critical component of the Plan and that the Debtor-Acis would have no going concern value without it. In fact, without the Plan Injunction, Mr. Terry will be precluded from reorganizing the business and paying creditors.<sup>53</sup>

The Objectors have argued that the Chapter 11 Trustee cannot suffer irreparable harm because he has an adequate remedy at law. This argument misses the mark. The destruction of the Debtors' ongoing business, which has the potential to repay creditors under the Plan in two years, constitutes irreparable harm. The fact that the estate possesses a number of avoidance claims for damages against Highland and its affiliates, and could potentially obtain damages on such claims, does not render the destruction of the Debtor-Acis's ongoing business any less harmful. Indeed, according to the Fifth Circuit:

[T]he mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.' For example, some courts have found that a remedy at law is inadequate if legal redress may be obtained only by pursuing a multiplicity of actions.<sup>54</sup>

*Likelihood of Success on the Merits.* The Chapter 11 Trustee has also demonstrated a likelihood of succeeding on the merits in the Highland Entities Adversary Proceeding.

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<sup>52</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>53</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>54</sup> *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (citing *Lee v. Bickell*, 292 U.S. 415, 421 (1934) ("we are not in doubt, the multiplicity of actions necessary for redress at law [is] sufficient . . . to uphold the remedy by injunction.")).

The record contains substantial evidence of both intentional and constructive fraudulent transfers with regard to the Equity/ALF PMA and other assets.<sup>55</sup> The numerous prepetition transfers that occurred around the time of and after the Terry Arbitration Award appear more likely than not to have been made to deprive the Debtor-Acis of value and with actual intent to hinder, delay or defraud the Debtors' creditors. Highland's only purported business justifications for the prepetition transfers were that the Passive Investor demanded it and that the Debtor-Acis's brand was toxic in the market place.<sup>56</sup> However, these business justifications were not supported (and, in fact, were contradicted) by the evidence.

Indeed, while representatives of Highland and its affiliates said that the Passive Investor's demands were the reason for the termination (*i.e.*, essentially a "transfer") of the Equity/ALF PMA, the Passive Investor's representative testified that this was untrue and that these alleged demands were never made by the Passive Investor.<sup>57</sup> In fact, the Passive Investor was just that—a passive, minority investor in HCLOF Guernsey with no ability to influence or control any of

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<sup>55</sup> *E.g.*, Exh. 22, Transcript 2/6/18 at pp. 82-109, 130, 202-244, and the exhibits discussed therein; Exh. 201, Transcript 3/21/18 at pp. 110-133 & 186-191; Exh. 24, Transcript 3/22/18 at pp. 71-75 & pp. 204-205; Transcript 12/11/18 [DE # 789], at pp. 52-56; *see also* Transcript 8/27/18 (AM) [DE # 552], at p. 52; Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98;

<sup>56</sup> Highland General Counsel Scott Ellington testified that the Passive Investor said it had no interest in doing business with the Debtor-Acis because the Debtor-Acis brand was purportedly toxic and, consequently, nothing associated with the Debtor-Acis could be managed or marketed as a CLO. Exh. 23, Transcript 2/7/18 at pp. 55-58. Mr. Ellington further testified that the Passive Investor demanded that the Equity/ALF PMA be transferred. Exh. 23, Transcript 2/7/18 at pp. 203-204. Mr. Ellington also testified that, because the Passive Investor would be putting in additional capital in connection with any reset CLOs, it had the ability to "start calling the shots" and dictate the terms of any reset transactions. Exh. 23, Transcript 2/7/18 at p. 226. Additionally, Highland executive Mark Okada testified that a reset transaction could not be performed by the Debtor-Acis because the market would not accept the Debtor-Acis as a portfolio manager and the Debtor-Acis was no longer risk-retention compliant. Exh. 25, Transcript 3/23/18 at p. 53. Additionally, Mr. Dondero testified that the "Boston investor" deal was contingent on getting away from the Debtor-Acis and getting a new collateral manager. Exh. 25, Transcript 3/23/18 at pp. 143-144.

<sup>57</sup> *See* Exh. 720 and excerpts read in to the trial record on 12/11/18 (PM) at pp. 149-157.

the actual investment decisions.<sup>58</sup> The only other business justification Highland and HCLOF Guernsey have suggested for the prepetition transfers was that the Debtor-Acis “was a shell” and not capable of being risk retention compliant.<sup>59</sup> However, Highland portfolio manager Hunter Covitz testified that in October 2017, prior to the Terry Arbitration Award, there was a structure in place that would comply with risk retention.<sup>60</sup> Mr. Covitz could not convincingly distinguish why the “shell” status of the Debtor-Acis was distinguishable from the “shell” status of other Highland-related entities that were the recipients of various fraudulent transfers.<sup>61</sup> Mr. Covitz also subsequently admitted that the Passive Investor did not request that the Debtor-Acis end its involvement with HCLOF Guernsey through the Equity/ALF PMA fraudulent transfer or request that ALF change its name to HCLOF [Guernsey].<sup>62</sup> Mr. Covitz’s testimony contradicted the testimony provided by Scott Ellington, General Counsel<sup>63</sup> and Mr. Dondero.<sup>64</sup> And, at bottom, if the Debtor-Acis was a thinly capitalized “shell,” it appears to be only because Highland systematically made it that way after the Terry Arbitration Award.

The evidence established overwhelmingly that there is a substantial likelihood that the transfers were part of an intentional scheme to keep assets away from Mr. Terry as a creditor. Highland put on an expert, Mr. Greenspan, who testified that he did not consider whether the

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<sup>58</sup> Exh. 720, Depo. of Passive Investor representative at pp. 32-33.

<sup>59</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 55-58.

<sup>60</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 77-78.

<sup>61</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 78; Transcript 12/18/18 [DE # 804], at pp. 59-63.

<sup>62</sup> Transcript 12/13/18 (AM) [DE # 793], at p. 103.

<sup>63</sup> See Exh. 23, Transcript 2/7/18 at pp. 177-178.

<sup>64</sup> See Ex. 25, Transcript 3/23/28 at pp. 143-44.

Equity/ALF PMA transfer was an “actual” fraudulent transfer, but only considered whether the transfer was “constructively” fraudulent.<sup>65</sup> While Highland has taken the position that termination of the Equity/ALF PMA was not a transfer, Mr. Greenspan testified that the termination of a contract can constitute a transfer and acknowledged that the definition of a transfer in the Bankruptcy Code does not include a value component.<sup>66</sup>

*Balance of Harms.* The Chapter 11 Trustee has also shown the balance of harms weighs in his and the estates’ favor in granting the Plan’s Temporary Injunction. The Chapter 11 Trustee is entitled to the Temporary Injunction pending resolution of the claims asserted in the Highland Entities Adversary Proceeding. The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction is important to the Plan, because it allows the cash flow from the CLO management to be collected by the Reorganized Debtor, and that is the source of revenue available at this time to pay creditors.<sup>67</sup> Mr. Terry also credibly testified that the Temporary Plan Injunction is a critical component of the Plan necessary to preserve the Debtors’ going concern value and allow the Reorganized Debtor to generate new business and repay creditors.<sup>68</sup> Conversely, in this court’s view, there is no real harm to Highland or the Co-Defendants because they can ask for a reset under the Plan.<sup>69</sup> Mr. Scott, a director of HCLOF Guernsey, testified that

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<sup>65</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 116-117 and 161.

<sup>66</sup> Transcript 12/12/18 (PM) [DE # 792], at pp. 92-98. Section 548(a)(1)(A) of the Bankruptcy Code only requires that a transfer be made with actual intent to hinder, delay or defraud creditors. In the context of an intentionally fraudulent transfer claim, questions of value are immaterial. 11 U.S.C. § 548(a)(1)(A). The definition of “transfer” under the Texas Uniform Fraudulent Transfer Act (“TUFTA”) also does not include a value component. Tex. Bus. & Comm. Code Ann. § 24.002(12) (West, Westlaw through 2017).

<sup>67</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 71-72.

<sup>68</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 40-41, 54-55.

<sup>69</sup> Transcript 12/11/18 (AM) [DE # 792], at p. 92.

HCLOF Guernsey can sell its interest in the subordinated notes in the market.<sup>70</sup> The Chapter 11 Trustee credibly testified that the Temporary Plan Injunction would not impair the value of the subordinated notes because a rational investor would not want to liquidate the Acis CLOs, but rather would acquire them to do a reset under the Plan.<sup>71</sup> Mr. Terry credibly testified that even if the Acis CLOs are not reset, it still does not make sense to redeem the Acis CLOs.<sup>72</sup>

*Public Interest.* Finally, issuance of the Plan Injunction is consistent with public policy. Public policy favors the equitable collecting of a debtor's assets, maximizing the value of those assets, and distributing the proceeds in an orderly fashion in accordance with the priorities and safeguards set forth in the Bankruptcy Code, rather than in an uncontrolled, piecemeal, and potentially wasteful way. Public policy also supports successful reorganizations.<sup>73</sup> The public interest is furthered by confirming a plan that saves the Debtor-Acis's business operations and allows it to pay its creditors under a successful plan of reorganization. The public interest is also furthered by maintaining the status quo through the Temporary Plan Injunction so that the avoidance action relating to the Equity ALF PMA can be determined on its merits. The public interest is not furthered by allowing potential wrongdoers to complete the last step in what appears likely to have been a scheme to strip the Debtor-Acis of its assets, steal its business, and leave it unable to pay creditors. The public interest is not furthered by leaving the Debtors

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<sup>70</sup> Exh. 721, Mr. Scott Depo. at p. 28.

<sup>71</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 23-24.

<sup>72</sup> Transcript 12/12/18 (AM) [DE #791], at p. 82.

<sup>73</sup> *Tex. Comptroller of Pub. Accounts v. Transtexas Gas Corp. (In re Transtexas Gas Corp.)*, 303 F.3d 571, 580 (5th Cir. 2002).

without sufficient resources to pursue and effectively litigate potentially valuable causes of action.

In sum, the court finds and concludes that the proposed Plan injunction (including the Temporary Injunction) is legally permissible and justified under all the circumstances. It is narrowly tailored to address the specific harm to which it is directed and comports with governing case and statutory authority and applicable rules of bankruptcy and civil procedure. The Plan Injunction is consistent with Fifth Circuit precedent.<sup>74</sup> Such an injunction would not violate section 524(e) of the Bankruptcy Code. That subsection provides that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.”<sup>75</sup> The Plan Injunction would not affect the liability of any entity, or the liability of any property. The injunction would only temporarily prohibit Highland and its Co-Defendants from exercising one form of economic recourse, thereby preserving the status quo while the Chapter 11 Trustee and/or Reorganized Debtor has a fair opportunity to prosecute the

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<sup>74</sup> The Fifth Circuit, in an unpublished opinion, has recognized the propriety of an injunction to preserve the status quo in cases where equitable relief is sought. *See Animale Group v. Sunny’s Perfume, Inc.*, 256 F. App’x 707, 709 (5th Cir. 2007) (“Because Defendants seek equitable relief, the district court was authorized to preserve the status quo by entering a limited asset freeze.”). The Chapter 11 Trustee’s claims in the Highland Entities Adversary Proceeding to avoid fraudulent transfers seek equitable relief. *See United States ex rel. Rahmen v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999) (“The complaint’s request to void transfers as fraudulent—a form of rescission—is also an equitable remedy.”); *Dong v. Miller*, No. 16-CV-5836 (NGG) (JO), 2018 U.S. Dist. LEXIS 48506, at \*30-31 (E.D.N.Y. Mar. 23, 2018) (“The setting-aside of a fraudulent conveyance is a form of equitable relief.”). *See also Iantosca v. Step Plan Servs.*, 604 F.3d 24, 33 (1st Cir. 2010) (affirming preliminary injunction where creditors had a “colorable claim that appellants’ own supposed interest under the settlement rests upon a fraudulent conveyance”); *Seidel v. Warner (In re Atlas Fin. Mortg., Inc.)*, Adv. No. 13-03222, 2014 Bankr. LEXIS 140 at \*10 (Bankr. N.D. Tex. Jan. 14, 2014) (granting preliminary injunction where complaint sought avoidance of fraudulent transfers under the Bankruptcy Code and the Texas Uniform Fraudulent Conveyance Act); *Paradigm Biodevices, Inc. v. Centinel Spine, Inc.*, No. 11 Civ. 3489 (JMF), 2013 U.S. Dist. LEXIS 66858, at \*7 (S.D.N.Y. May 9, 2013) (authority to grant preliminary injunction existed because plaintiff alleged not only a legal claim for money damages, but also an equitable claim to avoid fraudulently transferred assets).

<sup>75</sup> 11 U.S.C. § 524(e).

Highland Entities Adversary Proceeding.<sup>76</sup> Likewise, the proposed injunction does not contravene any other provision of the Bankruptcy Code or the Bankruptcy Rules.<sup>77</sup> Finally, the Chapter 11 Trustee's avoidance claim relating to the Equity/ALF PMA transfer under TUFTA also provides a statutory basis for injunctive relief.<sup>78</sup>

3. Feasibility of the Plan—Specific Findings and Conclusions Regarding Mr. Terry and Brigade.

The Objectors have challenged the feasibility of the Plan.<sup>79</sup> The court finds and concludes that the preponderance of the evidence supported the feasibility of the Plan. Among other things, the Chapter 11 Trustee credibly testified that Mr. Terry has an excellent track record as a portfolio manager, and that there is no reason why Mr. Terry will not be able to obtain new business—that is, new portfolios to manage which will provide additional revenue streams for the Reorganized Debtor.<sup>80</sup> The evidence was credible and compelling that Mr. Terry

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<sup>76</sup> See *In re Seatco, Inc.*, 259 B.R. 279, 283-84 (Bankr. N.D. Tex. 2001) (approving temporary injunction of suit against nondebtor on guaranty of debt treated in plan).

<sup>77</sup> Compare *Omni Mfg. v. Smith (In re Smith)*, 21 F.3d 660, 666-67 (5th Cir. 1994) (disapproving injunction extending time to file proof of claim beyond limits set in Bankruptcy Rules 3003(c)(3) and 9006(b)(1)); *Chiasson v. Bingler (In re Oxford Mgmt.)*, 4 F.3d 1329, 1334 (5th Cir. 1993) (disapproving injunction ordering payment that altered distribution scheme set forth in § 726(b)); *Unites States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (disapproving injunction ordering spousal support payments contrary to § 523(a)(5)).

<sup>78</sup> Tex. Bus. & Comm. Code Ann. § 24.008 (West, Westlaw through 2017) (providing a creditor may obtain “an injunction against further disposition by the debtor or the transferee, or both, of the asset transferred or of other property . . . [or] any other relief the circumstances may require.”). TUFTA’s injunction provision is construed broadly and courts have found that “[a] claim for fraudulent transfer under Texas law contemplates the issuance of a preliminary injunction.” *Sargeant v. Al Saleh*, 512 S.W.3d 399, 413 (Tex. App.—Corpus Christi 2016, no pet.); accord, *Janvey v Alguire*, 647 F.3d 585, 602-03 (5th Cir. 2011).

<sup>79</sup> 11 U.S.C. § 1129(a)(11).

<sup>80</sup> Transcript 12/11/18 (AM) [DE # 789], at p. 90 (lines 5-12). Moreover, to the extent there are any gaps, recoveries from the Highland Entities Adversary Proceeding might eventually be available for ongoing operations and payment of creditors.

will be capable of fulfilling the equity owner position in the Reorganized Debtor (stepping in to essentially run the Reorganized Debtor) and will be able to ensure the feasibility of the Plan. He is well qualified to reorganize the Debtor-Acis. Mr. Terry testified that his role with the Reorganized Debtor will be similar to the role he very successfully performed for the Debtor-Acis.<sup>81</sup> The Debtor-Acis received numerous awards during Mr. Terry's service as the portfolio manager of the Acis CLOs.<sup>82</sup> The arbitration panel that issued the Arbitration Award found that Mr. Terry was terminated for essentially doing the right thing for investors.<sup>83</sup> Mr. Terry credibly testified that numerous market participants have expressed an interest in working with the Reorganized Debtor if the Plan is confirmed.<sup>84</sup>

Moreover, the court finds and concludes that Brigade (who stepped in as sub-advisor in place of Highland during the Bankruptcy Cases and is a registered investment advisor) is qualified to serve as a sub-advisor to the Reorganized Acis. Mr. Jared Worman, a portfolio manager for Brigade,<sup>85</sup> credibly testified that Brigade, founded in the year 2007, currently has \$20 billion of total assets under management, \$5 billion of which consists of six U.S. CLOs, two U.S. CDOs, and three European CLOs.<sup>86</sup> Mr. Worman credibly testified that Brigade has issued 17 CLOs and has reset or refinanced several of them.<sup>87</sup> Mr. Worman and Mr. Terry credibly

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<sup>81</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 172-73.

<sup>82</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 162-163 and Exh. 752.

<sup>83</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 161-62.

<sup>84</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 16-18.

<sup>85</sup> Mr. Worman has an undergraduate degree from Emory University and an MBA from Wharton.

<sup>86</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 84.

<sup>87</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 86.

testified that Brigade is willing to serve as sub-advisor to the Reorganized Acis for fifteen basis points.<sup>88</sup> Highland attempted to show with evidence and argument that Brigade had made some failed trades since stepping in as sub-advisor to the Acis CLOs and that this perhaps made them unfit to serve in this role. But Mr. Terry credibly testified that the fact that a few failed trades were made by Brigade does not make them unfit to serve as sub-advisor to Reorganized Acis, and that trades out of compliance with the applicable CLO tests occasionally happen, and Brigade has handled them appropriately.<sup>89</sup> In fact, the evidence suggested that at least ten failed trades occurred while Highland was acting as sub-advisor to the Debtor-Acis.<sup>90</sup>

Highland's suggestions that Brigade is not up to the task to manage the Reorganized Debtor are specious. Likewise, HCLOF Guernsey's insistence that it will not be getting the benefit of its bargain if the Acis CLOs are not managed by Highland personnel going forward appears to be a manufactured position aimed at thwarting Mr. Terry at all costs. Not only is there no credible evidence of Brigade mismanagement but, to the contrary, it appears that Highland (prior to the Debtor-Acis's rejection of the Sub-Advisory Agreement and Shared Services Agreement), intentionally liquidated assets of the CLO SPEs and built up cash without reasonable justification. Specifically, Mr. Terry credibly testified that there were \$85 million in purchases in the Acis CLOs in the hours leading up to the entry of the orders for relief, but virtually no purchases of loans in the CLOs afterwards—only sales.<sup>91</sup> And Mr. Worman further

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<sup>88</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 89; Transcript 12/12/18 (AM) [DE # 791], at p. 62.

<sup>89</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 182-83; Transcript 12/18/18 [DE # 804], at pp. 72-73.

<sup>90</sup> See Exhs. 727, 728; Transcript 12/11/18 (PM) [DE # 790], at pp. 71-74, 182-83.

<sup>91</sup> Transcript 12/12/18 (AM) [DE # 791], at pp. 18-19, 28-31; Transcript 12/18/18 [DE # 804], at pp. 87-89; *see also*, Terry Demonstrative.

credibly testified that Highland, while acting as sub-advisor, allowed approximately \$380 million in cash to build up in the Acis CLOs. Meanwhile, Brigade has subsequently reduced that cash balance by \$280 million to approximately \$100 million.<sup>92</sup> Mr. Worman also credibly testified that Brigade has purchased approximately \$300 million in loans for the Acis CLOs.<sup>93</sup> The Chapter 11 Trustee and Mr. Terry both credibly testified that the build-up of cash in the Acis CLOs while Highland was sub-advisor, rather than the loans acquired by Brigade, left the Acis CLOs without sufficient interest income to make a distribution to the equity holders.<sup>94</sup> Certain contradictory testimony of Hunter Covitz was not convincing that: (a) there were very few conforming loans available to be purchased for the Acis CLOs in the approximately four months that elapsed between the entry of the Order for Relief and the time when Highland was terminated as sub-advisor;<sup>95</sup> and (b) it made more sense to accumulate cash to pay down the AAA notes rather than invest in new loans.<sup>96</sup> The court found more convincing the testimony of Mr. Terry: (a) that there was \$310 billion of performing loans rated above CCC in the S&P loan index in May of 2018 available for purchase in CLO-6 that would have satisfied the weighted average life test;<sup>97</sup> (b) that Highland purchased loans for CLO-7 that would have satisfied the weighted average life constraints in the Debtor-Acis's CLO-4, CLO-5, and CLO-6;<sup>98</sup> and (c)

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<sup>92</sup> Transcript 12/11/18 (PM) [DE # 790], at p. 100.

<sup>93</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 70, 94.

<sup>94</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 67-69; Transcript 12/11/18 (PM) [DE # 790], at pp. 70-71; Transcript 12/12/18 (AM) [DE # 791] at pp. 34-37.

<sup>95</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 12-13.

<sup>96</sup> Transcript 12/13/18 (AM) [DE # 793], at pp. 13-16.

<sup>97</sup> Transcript 12/18/18 [DE # 804], at p. 87.

<sup>98</sup> Transcript 12/18/18 [DE # 804], at pp. 87-88.

that, although there was no change in market conditions, Highland essentially stopped buying collateral for the Acis CLOs<sup>99</sup> after the entry of the Orders for Relief.<sup>100</sup>

4. Resets—Non-impairment of Anyone’s Rights.

The Plan only contemplates *consensual* resets of the Acis CLOs—in other words, only if HCLOF Guernsey requests resets.<sup>101</sup> Messrs. Worman and Terry both credibly testified that they believed the Reorganized Acis and Brigade could perform a consensual reset of the Acis CLOs.<sup>102</sup> Mr. Terry credibly testified that other asset managers have been able to issue or reset CLOs after a bankruptcy proceeding.<sup>103</sup> Mr. Terry also credibly testified that he wants to come to a resolution with HCLOF Guernsey and consensually reset the Acis CLOs.<sup>104</sup>

HCLOF Guernsey has taken the position that it and its new Passive Investor (new as of mid-November 2017—just before the Bankruptcy Cases) only want to be involved with CLOs that are managed by Highland or Highland affiliates. Is the Plan impairing their rights—to the extent the Plan (and any subsequent re-sets) brings in Brigade as the sub-advisor to the Reorganized Debtor (whereas Highland was in that sub-advisor role before)? It appears no. The

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<sup>99</sup> Transcript 12/18/18 [DE # 804], at pp. 88-89.

<sup>100</sup> Highland has also argued that the Plan is not feasible because the administrative expense claims are extremely high (to which the Chapter 11 Trustee responds, it is of Highland’s making, since Highland has objected to literally every action proposed by the Chapter 11 Trustee). The court does not believe there is a legitimate feasibility problem here. Not only has the court not ruled yet on final professional fee applications, but the Chapter 11 Trustee represented that certain professionals have agreed to defer their fees (beyond payment in full on the Effective Date) as necessary.

<sup>101</sup> See Plan § 6.08.

<sup>102</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 86-90, 176-178; Transcript 12/12/18 (AM) [DE # 793], at pp. 16-18.

<sup>103</sup> Transcript 12/11/18 (PM) [DE # 790], at pp. 179-180.

<sup>104</sup> Transcript 12/18/18 [DE # 804], at p. 74.

Offering Memorandum between HCLOF Guernsey and the Passive Investor, dated November 15, 2017, pursuant to which the Passive Investor agreed to invest in HCLOF Guernsey, provided that there may be a change in circumstances following the date of the Offering Memorandum and that any forward-looking statements in the Offering Memorandum involved risks and uncertainties “because they relate to events and depend on circumstances that may or may not occur in the future.”<sup>105</sup> Heather Bestwick, one of the HCLOF Guernsey directors, testified that the Offering Memorandum does not require HCLOF Guernsey to invest only in Highland-managed funds<sup>106</sup> and instead expressly provides that HCLOF Guernsey will invest in “CLOs managed by other asset managers.”<sup>107</sup> Another witness, Mr. McGuffin, testified that the HCLOF Guernsey directors’ fiduciary duties require them to act independently and objectively in the best interests of HCLOF Guernsey, and also require them to consider a change in circumstances.<sup>108</sup> HCLOF Guernsey’s counsel, HCLOF Guernsey’s director, and the Passive Investor have all testified that they would consider doing a reset with the Reorganized Acis in the event the Plan is confirmed.<sup>109</sup>

Mr. Terry credibly testified that a reset of the Acis CLOs can occur after the expiration of the reinvestment periods of the Acis CLOs.<sup>110</sup> The Plan is feasible regardless of whether a reset of the Acis CLOs is requested by HCLOF Guernsey. Messrs. Phelan and Terry both credibly

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<sup>105</sup> See Exh. 90, HCLOF Guernsey Offering Memorandum, at pp. 4-5.

<sup>106</sup> See Exh. 719, Bestwick Depo., at pp. 109, 118-121.

<sup>107</sup> See Exh. 90, HCLOF Offering Memorandum, at p. 12.

<sup>108</sup> Transcript 12/13/18 (PM) [DE # 794], at pp. 142-145.

<sup>109</sup> See Exh. 602, p. 12 of 70 (statement by HCLOF Guernsey’s Counsel); Exh. 719 at pp. 166-167 (Heather Bestwick); Exh. 720, p. 72.

<sup>110</sup> Transcript 12/18/18 [DE # 804], at pp. 82-83.

testified that the Reorganized Debtor will have cash flow from multiple potential sources—including the revenues from the CLO PMAs with the Acis CLOs, potential new business developed by the Reorganized Acis, and the outcome of any potential litigation claims.<sup>111</sup>

## **VI. General Credibility Assessments.**

In ruling in a contested matter such as confirmation, and weighing the preponderance of the evidence, the credibility of witnesses and contradictions in their testimony naturally can be significant. Here, there were some noteworthy problems and contradictions with some of the testimony provided by the Objectors' witnesses. They are summarized below.

### **1. Scott Ellington: A Seemingly Manufactured Narrative to Justify Prior Actions.**

Scott Ellington testified on February 7, 2018 at the trial on the involuntary petitions, and the court was asked to consider his testimony again in connection with confirmation (he did not attend the confirmation hearing). He is the General Counsel, Chief Legal Officer, and a Partner at Highland. Mr. Ellington testified that the Debtor-Acis's name is "toxic" in the market place and that, due to the litigation with Mr. Terry and allegations in that litigation, "nothing can be associated with the Acis brand and be managed as a CLO or marketed as a CLO."<sup>112</sup> Mr. Ellington elaborated that it had been determined in late 2016 or 2017 that re-sets or re-financings of the Acis CLOs were a prudent thing to pursue (in fact, there was indeed a trend of refinancings and resets for this vintage of CLOs in the market place) and, in connection with that, the Debtor-Acis's contracts and assets needed to be diverted to different, newly created entities because: (a) the "Acis" name was toxic and underwriters and investors were not going to

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<sup>111</sup> Transcript 12/11/18 (AM) [DE # 789], at pp. 72, 88-90; Transcript 12/12/18 (AM) [DE # 791], at p. 53.

<sup>112</sup> Exh. 23, p. 55 (line 17) through p. 56 (line 7); p. 98 (lines 8-12).

be interested in re-financings or resets for CLOs managed by the Debtor-Acis;<sup>113</sup> and (b) the new Passive Investor wanted the Debtor-Acis out of the picture.<sup>114</sup> Mr. Ellington further elaborated: “The equity, you know, calls the tune, so to speak, in terms of the CLO . . .”<sup>115</sup> In summary, an overarching theme of Mr. Ellington’s testimony was that the Debtor-Acis was tainted or toxic in the marketplace and the Passive Investor wanted the Debtor-Acis out of the picture—thus, this was the motivation for the prepetition transactions orchestrated by Highland prior to the Bankruptcy Cases. The problems with the Scott Ellington testimony were at least two-fold. First, there is no credible evidence that the Debtor-Acis is/was toxic in the market place. In fact, in April 2017 (well after the litigation with Mr. Terry commenced), the Debtor-Acis issued a new CLO (CLO-7). And in market publications as recently as August 21, 2017, Highland was touting the *Acis* structure stating “our vehicle will allow us to issue between six and 12 CLOs over the next few years.”<sup>116</sup> Second, the Passive Investor denies demanding that the Debtor-Acis be removed as the CLO manager. Term sheets as recent as August 21, 2017 contemplated the Debtor-Acis as the continuing portfolio manager of CLOs, with apparently no protestations by the Passive Investor.<sup>117</sup>

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<sup>113</sup> *E.g., Id.* at p. 177 (line 21) though p. 178 (line 12); p. 184 (lines 13-17) (“The underwriters in this case, Mizuho, Goldman, et al., the equity, they said we want every possible relation to anything that could be legacy Acis or Acis-related affiliates to be severed”).

<sup>114</sup> *Id.* at p. 202 (lines 11-13) (“we have third-party investors that said we don’t want to be involved in this brand; and their equity is one of the reasons that new CLOs can be launched”); p. 203 (lines 7-8) (“It was call the deal and terminate the CMAs or transfer the CMAs”); p. 223 (lines 8-12) (“Because if the involuntary remains, and I’m just – I’m just being frank – we’ve already been told by equity holders, including the separate account, BBK, that you may have seen on some of the exhibits, they’re pulling everything.”).

<sup>115</sup> *Id.* at p. 74 (lines 3-6).

<sup>116</sup> Exh. 801, pp. 3 & 5.

<sup>117</sup> Exh. 802, p.1.

2. Michael Pugatch: The Passive Investor Made Into a Scapegoat.

The reality is that Highland, indeed, started working on the concept of doing resets of some of the older vintage Acis CLOs in at least early 2017 (and perhaps late 2016). Highland, in fact, completed a reset of one Acis CLO in April 2017 (with the Debtor-Acis still in place as the portfolio manager for that reset in April 2017). As part of that process of implementing resets for the Acis CLOs, Highland worked on bringing in a new investor or investors to have a share of the equity tranche of the Acis CLOs. Highland finally obtained the commitment of the Passive Investor in November 2017, after starting initial discussions with them in the second quarter of 2017.<sup>118</sup> A representative for the Passive Investor referred to itself as “passive” in a deposition.<sup>119</sup> Concepts and documentation for the Passive Investor’s investment in the Acis CLOs were discussed for a while during 2017. As recently as August 2017, the negotiations with the Passive Investor appeared to contemplate the Debtor-Acis still as the portfolio manager for the CLOs.<sup>120</sup> Then the arbitration trial with Mr. Terry began in September 2017 and the Terry Arbitration Award was issued on October 20, 2017. Suddenly, it appears that the dismantling of the Debtor-Acis began with all deliberate speed. The court believes, based on the totality of the evidence, that it was Highland who did not want the Debtor-Acis as CLO manager going forward, so that Highland could keep reaping the benefits of the reset CLOs. Specifically, when deposed on the topic, a representative for the Passive Investor, Mr. Pugatch, denied the accuracy of Mr. Ellington’s testimony, stating that the Passive Investor “viewed Acis and Highland as interchangeable from the perspective of the—you know, the actual investment

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<sup>118</sup> See Exh. 720, Pugatch Deposition Transcript dated November 27, 2018, p. 18, lines 14-20.

<sup>119</sup> *Id.* at p. 22 (lines 2-3) (“we’re you know, 49 percent sort of passive minority investor”).

<sup>120</sup> Exh. 802, p. 1.

opportunity.”<sup>121</sup> When asked, “Are you aware that Scott Ellington, general counsel for HCM, testified that [the Passive Investor] said with absolute certainty that they had no interest in doing business with Acis because the Acis brand was purportedly toxic and, consequently, nothing associated with Acis could be managed or marketed as a CLO?” Mr. Pugatch testified that he had read that testimony and that the statement was not true.<sup>122</sup> He further stated that “the ultimate sort of name change did not come from [the Passive Investor].”<sup>123</sup> In fact, when further asked whether the Passive Investor knew why Acis CLO Funding Limited changed its name to Highland CLO Funding Limited (*i.e.*, HCLOF Guernsey), Mr. Pugatch testified, “We were told that it was a change in the brand or the name, as requested by Highland.”<sup>124</sup> And when asked “Did [the Passive Investor] request that the name be changed?” he answered “No.”<sup>125</sup> When asked whether the Passive Investor considered “Acis toxic in the industry?” Mr. Pugatch answered: “No. What I would say is, when the suggested name change did occur, there were commercial reasons given to us as to why that would be beneficial in terms of the ongoing management of those CLOs and the intended investment thesis around the investment that we had made, which seemed to make commercial sense.”<sup>126</sup> When Mr. Pugatch was asked, “Those reasons were given by Highland, correct?” he replied “Correct” and confirmed that they were not demanded by the Passive Investor.<sup>127</sup> Mr. Pugatch was emphatic that the Passive Investor was

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<sup>121</sup> *Id.* at p. 30 (lines 19-20).

<sup>122</sup> *Id.* at p. 31 (lines 6-19).

<sup>123</sup> *Id.* (lines 24-25).

<sup>124</sup> *Id.* at p. 27 (lines 24-25).

<sup>125</sup> *Id.* at p. 28 (lines 1-3).

<sup>126</sup> *Id.* at p. 32 (lines 1-8).

<sup>127</sup> *Id.* at p. 32 (lines 9-12).

just that—a passive investor—that did not have the ability to “start calling the shots” and dictate the terms of any reset transactions.<sup>128</sup> When asked if the Passive Investor was concerned about the Terry Arbitration Award, Mr. Pugatch replied: “The award itself, no. I think the only thing we were concerned about or focused on was that vis-à-vis our equity investment in Highland CLO Funding Limited and, in turn, the equity that that vehicle held in the various CLOs was appropriately, you know, ring-fenced or not exposed to any potential damages or economic loss in value as a result of that arbitration award.”<sup>129</sup>

The Passive Investor further testified that Brigade has “a fine reputation in the market” but that it had no interaction with them historically.<sup>130</sup> The Passive Investor also testified that it was concerned about the cash buildups that had happened recently due to actions while Highland had still been the sub-advisor on the Acis CLOs.<sup>131</sup>

### 3. The Seemingly Rehearsed Testimony of the Two HCLOF Guernsey Witnesses.

The court was presented with video depositions of HCLOF Guernsey’s two non-executive directors (*i.e.*, its only directors): Mr. William Scott<sup>132</sup> and Ms. Heather Bestwick.<sup>133</sup> It was very apparent to the court that HCLOF Guernsey is controlled by Highland in every way. Putting things in the kindest way possible, Mr. Scott and Ms. Bestwick appear to be nominal figureheads who are paid to act like they are in charge, while they are not. They are both

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<sup>128</sup> *Id.* at p. 32 (lines 16-17); pp. 33-35.

<sup>129</sup> *Id.* at p. 43 (lines 3-9); p. 89.

<sup>130</sup> *Id.* at p. 68 (lines 11-13).

<sup>131</sup> *Id.* at p. 82, lines 9-24.

<sup>132</sup> *See* Exh. 721.

<sup>133</sup> *See* Exh. 719.

basically professional directors-for-hire, for companies that choose to form/organize in the nation of Guernsey.

Ms. Bestwick testified that she is a nonexecutive director for six companies in Guernsey (none of the others are in the CLO business).<sup>134</sup> She testified that she earned £35,000 per year to serve as a director of HCLOF Guernsey.<sup>135</sup> She testified that she was selected by Highland<sup>136</sup> and that Highland also made the decision to hire HCLOF Guernsey's law firm in the Bankruptcy Cases.<sup>137</sup> Ms. Bestwick, when questioned as to why the Equity/ALF PMA it had with the Debtor-Acis was terminated shortly after the Terry Arbitration Award was issued, testified that she was told it was "a condition precedent to the new Passive Investor" coming in and that she was told this by Highland.<sup>138</sup> She also testified that she had never talked to the Passive Investor (who, of course, is a 49% owner of HCLOF Guernsey)<sup>139</sup> or Grant Scott (the trustee of the charitable organization that owns 49% of HCLOF Guernsey).<sup>140</sup> She reiterated that she only talks to Highland employees. She also was under the impression that terminating the Equity/ALF PMA would improve marketability of the CLOs going forward but that it was the same people and "business as usual for us."<sup>141</sup> She testified that she learned of the Terry

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<sup>134</sup> *Id.* at pp. 7-8; p. 21 (line 5) through p. 22 (line 20); p. 26 (lines 10-12).

<sup>135</sup> *Id.* at p. 43 (lines 18-19).

<sup>136</sup> *Id.* at p. 42 (lines 17-25).

<sup>137</sup> *Id.* at p. 53 (lines 7-20).

<sup>138</sup> *Id.* at p. 16 (line 13) through p. 17 (line 23); p. 58 (line 21) through p. 60 (line 17).

<sup>139</sup> *Id.* at p. 188 (lines 12-15).

<sup>140</sup> *Id.* at p. 188 (line 19) through p. 189 (line 9).

<sup>141</sup> *Id.* at p. 189 (lines 12-15); p. 200 (line 22).

Arbitration Award in mid-April 2018 (some six months after the fact)<sup>142</sup> and “[y]ou’d have to ask Highland”<sup>143</sup> why it did not inform her sooner. Her testimony was clear that she defers to Highland on everything, stating that as directors they were “heavily reliant on our service providers, and that means Highland.”<sup>144</sup> With regard to a lawsuit that HCLOF Guernsey filed against Mr. Terry in Guernsey during the Bankruptcy Cases, she testified that it was neither her nor the other director, William Scott’s, idea.

Mr. Scott, the other HCLOF Guernsey director, is a “professional director” for 10-15 Guernsey companies<sup>145</sup>—all of which are “paying assignments.”<sup>146</sup> He became rather incensed when testifying, at the suggestion that he and Ms. Bestwick were not in control of HCLOF Guernsey, stating that board minutes and other documents would show that they took a great level of interest in running the company.<sup>147</sup> He testified that he earned £40,000 per year to serve as a director of HCLOF Guernsey and that, due to the extra work of the Bankruptcy Cases, he also was charging another £350 per hour, after the first 35 hours<sup>148</sup> (the court notes, anecdotally, that it required participation in court hearings by a director of HCLOF Guernsey each time that HCLOF Guernsey took a position in court). Mr. Scott confirmed that he was not aware of the litigation with Mr. Terry nor the Acis Bankruptcy Cases until April 2018.<sup>149</sup> He also testified

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<sup>142</sup> *Id.* at p. 61 (lines 3-19); p. 130 (line 14) through p. 136 (line 2).

<sup>143</sup> *Id.* at p. 137 (line 21).

<sup>144</sup> *Id.* at p. 152 (lines 18-19).

<sup>145</sup> *See* Exh. 721 at p 8 (line 9) through p. 9 (line 5); p. 79 (lines 20-25).

<sup>146</sup> *Id.* at p. 80 (lines 3-5).

<sup>147</sup> *Id.* at p. 13 (lines 1-12); p. 22 (line 23) through p. 23 (line 12).

<sup>148</sup> *Id.* at p. 80 (lines 6-18).

<sup>149</sup> *Id.* at p. 132 (line 20) through p. 135 (line 10).

that Highland had proposed the legal counsel HCLOF Guernsey used in the Bankruptcy Cases and that he had never disagreed with Highland's advice.<sup>150</sup> He confirmed that all investment decisions were made by Highland and that he and Ms. Bestwick's role was to "police" service providers.<sup>151</sup> Like Ms. Bestwick, Mr. Scott testified that they were told that the Passive Investor had made it a condition precedent to their investment in HCLOF Guernsey that "Acis depart."<sup>152</sup> But he had not talked to the Passive Investor.<sup>153</sup> As if all this deference to Highland were not enough, HCLOF Guernsey's lender is NexBank (an affiliate of Highland—which is based in Dallas, not Guernsey) and HCLOF Guernsey has given its actual equity notes to NexBank as security for its loans from NexBank.<sup>154</sup> Also, interestingly, when asked about the adversary proceeding that HCLOF Guernsey filed against the Chapter 11 Trustee a few months ago in the Bankruptcy Cases (*i.e.*, the Highland Entities Adversary Proceeding—it was originally commenced by Highland and HCLOF Guernsey as Plaintiffs), Mr. Scott testified that "we haven't sued the trustee, he has sued us" but later acknowledged his mistake when corrected by counsel.

This court is not naïve—it realizes that so-called "fiduciary services firms" are apparently a typical thing in the world of off-shore jurisdictions that are large financial centers.<sup>155</sup> Maybe

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<sup>150</sup> See generally *id.* at pp. 277-280.

<sup>151</sup> *Id.* at p. 106 (lines 1-7).

<sup>152</sup> *Id.* at p. 254 (line 20) through p. 260.

<sup>153</sup> *Id.* at p. 155 (lines 2-25).

<sup>154</sup> See Exh. 719 at p. 213 (line 2-22); Exh. 721 at p. 129 (line 10) through p. 130 (line 13).

<sup>155</sup> During the testimony of both Ms. Bestwick and Mr. Scott, the court was reminded of an old TV commercial in which an actor states, "I am not a doctor, but I play one on TV." The court could not help but conclude that these were not real directors but were playing them (when legally necessary).

the system works, for the most part and in many business contexts. But not when trying to convince a bankruptcy court of the bona fides of transactions that look like attempts to denude another party of value and/or to thwart creditors. And not when accusations are made that you are the alter ego of the party (Highland) who orchestrated the company's creation. The evidence was overwhelming that: (a) the HCLOF Guernsey Directors do whatever they are told to do by Highland; (b) they do not talk to anyone else but Highland; (c) they have never challenged Highland; (d) they let Highland pick and consult with their lawyers; and (e) they were not made aware by Highland of the Terry Arbitration Award, the Terry Judgment, the involuntary bankruptcy petitions, or pleadings that lawyers filed in the Bankruptcy Cases on HCLOF Guernsey's behalf.

In summary, the testimony of these two HCLOF Guernsey Directors was of little or no value in convincing the court that the Objector, HCLOF Guernsey, has valid concerns of its own (separate from Highland's) with regard to the bona fides of the Plan.

## **VII. Conclusion.**

This Bench Ruling and Memorandum Opinion is intended to address some of the most pertinent facts and issues raised in connection with confirmation of the Plan. Among other things, the court believed it was necessary to stress, in a separate ruling: (a) *the unique status of the Objectors* (they are "insiders" as defined in the Bankruptcy Code whose prepetition actions suggest unclean hands—this seems highly relevant to consider, when there are no non-insider creditors or other relevant parties objecting to the Plan); (b) *the appropriateness and legality of the proposed Plan Injunction* that would temporarily prevent nonconsensual redemptions/liquidations (it is in all ways justified given the allegations in the Highland Entities Adversary Proceeding and under the traditional four-prong test for preliminary injunctions); and

(c) *the feasibility of the Plan* (Mr. Terry and Brigade are well qualified to perform their contemplated roles).

The court will separately sign the Findings of Fact, Conclusions of Law and Order Confirming Plan submitted by the Chapter 11 Trustee to address all other relevant issues.

**#### End of Bench Ruling and Memorandum Opinion ####**